

## TWENTY-THIRD DIVISION

[ CA-G.R. CV NO. 02836, January 23, 2014 ]

**IN RE: EX-PARTE PETITION FOR ISSUANCE OF WRIT OF POSSESSION, PHILIPPINE NATIONAL BANK PETITIONER-APPELLEE, VS. ALMA T. PLACENCIA FONTANOZA, OPPOSITOR-APPELLANT.**

### D E C I S I O N

**LLOREN, J.:**

This is an appeal from the Order<sup>[1]</sup> dated February 21, 2012 of the Regional Trial Court, 9<sup>th</sup> Judicial Region, Branch 23, Molave, Zamboanga del Sur, in Special Case No. 2011-50-090.

Spouses Salvador and Alma Fontanoza (Sps. Fontanoza) obtained a loan from the Ozamiz Branch of Philippine National Bank (PNB). They mortgaged a parcel of land situated at Barangay Dao, Mahayag, Zamboanga del Sur covered by OCT No. P-29,979 in favor of PNB as security. They failed to pay the loan so the PNB extrajudicially foreclosed the property. PNB emerged as the lone bidder and acquired the property for P236,000.00 in the public auction sale conducted on January 8, 2002. It registered the sale on January 28, 2002. Sps. Fontanoza failed to redeem the property.<sup>[2]</sup>

On July 18, 2011, PNB filed an Ex-Parte Petition for Issuance of Writ of Possession.<sup>[3]</sup> In the Resolution<sup>[4]</sup> dated August 17, 2011, the trial court granted the petition. Per Certificate of Finality<sup>[5]</sup> dated November 21, 2011, the said resolution became final and executory on September 15, 2011.

On November 25, 2011, Alma Placencia Fontanoza (oppositor-appellant) filed an Opposition with Urgent Motion to Recall Writ of Possession Whenever Issued.<sup>[6]</sup> She pointed out that she filed before the trial court Civil Case No. 2011-20458 against PNB for specific performance, among others. Also, she alleged that there is an existing contract for the repurchase of the property since she had already paid the agreed down payment.

In the Order<sup>[7]</sup> dated December 19, 2011, the trial court directed PNB to comment on the opposition. Accordingly, PNB filed a Reply<sup>[8]</sup> to the opposition. It denied the perfection of the contract of repurchase by contending that the various deposits for payment thereon constituted a mere offer which was not yet accepted. Also, it alleged that it was able to return all the deposits since the offer was not accepted.

Oppositor-appellant filed a Rejoinder<sup>[9]</sup> to the reply of PNB. She alleged that she remains in possession of the property not as mortgagor but as purchaser. She attached receipts and deposit slips to show that she had fully paid the repurchase price as of January 21, 2008.

In the assailed order, the trial court disposed of the opposition as follows:

WHEREFORE, premises considered, the OPPOSITION filed by Alma T. Placencia Fontanoza to the Resolution of the Court dated August 17, 2011 is hereby DENIED for lack of merit.

ALMA T. PLACENCIA FONTANOZA, her heirs and/or agents, and all persons claiming right any (sic) are hereby ORDERED TO VACATE the premises of the subject parcel of land and from its improvements constructed therein which are specifically covered by Certificate of Title No. P-29,979 immediately upon notice. Thereafter, PLACING and GIVING the possession of the said subject parcel of land and its existing improvements to herein Petitioner Philippine National Bank.<sup>[10]</sup>

Oppositor-appellant now comes to this Court with the following assigned errors:

I

THE ISSUANCE OF THE WRIT OF POSSESSION BY THE COURT A QUO IS WITHOUT DUE PROCESS;

II

UNDER THE GIVEN SET OF FACTS AND CIRCUMSTANCES, THE ISSUANCE OF A WRIT OF POSSESSION IS NO LONGER MINISTERIAL; AND

III

IN THIS PARTICULAR CASE, THE ISSUANCE OF A WRIT OF POSSESSION WILL DEPEND (O)N THE SUCCESS OF PNB IN CIVIL CASE NO. 2011-20-458.<sup>[11]</sup>

The pivotal issue is whether, under the circumstances, the issuance of the writ of possession is unjust.

The following clarifies the nature of the function of a court in the issuance of writ of possession to a purchaser in an extrajudicial foreclosure:

The time-honored precept is that after the consolidation of titles in the buyer's name, for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. The writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the writ following these express provisions of law neither exercises his official discretion nor judgment. As such, the court granting the writ cannot be charged with having acted without jurisdiction or with grave abuse of discretion. To accentuate the writ's ministerial character, the Court disallowed injunction to prohibit its issuance despite a pending action for annulment of mortgage or the foreclosure itself.<sup>[12]</sup>

In *Barican v. Intermediate Appellate Court*,<sup>[13]</sup> however, the Supreme Court deemed it inequitable to issue a writ of possession in favor of the purchaser in the auction sale. In the said case, the mortgagee bank took five years from the time of foreclosure before filing the petition for the issuance of writ of possession. Also, the