

THIRTEENTH DIVISION

[CA-G.R. CV No. 96607, March 19, 2014]

**BANGKO MABUHAY (RURAL BANK OF TANZA (CAVITE), INC.,
PETITIONER-APPELLEE, VS. SPOUSES FERNANDO AND PAULINA
LYN TELMO, OPPOSITORS-APPELLANTS.**

D E C I S I O N

YBAÑEZ, J.:

This is an appeal from the Decision dated 17 May 2010 and Order dated 9 August 2010,^[1] respectively, of the Regional Trial Court, Branch 15, Naic, Cavite, in LRC Cadm. 459-D-108, for the Issuance of a Writ of Possession, granting the petition and directing the Clerk of Court to issue the corresponding writ of possession in favor of the petitioner.

The Facts

On 20 August 1996, spouses Fernando and Paula Lyn Telmo executed a Promissory Note, in favor of Rural Bank of Tanza (Cavite), Inc., the sum of One Million Six Hundred Thousand Pesos (P1,600,000.00).^[2] The loan was secured by a Real Estate Mortgage executed by the said spouses involving two (2) separate parcels of land located in Indang, Cavite, and covered by Declaration of Real Property No. (21184) 20763 and Declaration of Real Property TD No. 14845, respectively, including the building and all improvements thereon.^[3]

For failure of the mortgagors to pay their loan obligation despite demands, the mortgagee bank caused the extrajudicial foreclosure of the subject properties. Thus, Rural Bank of Tanza (Cavite), Inc. filed an Application For Foreclosure of Real Estate Mortgage before the Regional Trial Court, Branch 15, Naic, Cavite.^[4]

On 28 April 2000, a Notice of Extra-Judicial Sale was issued.^[5] On June 5, 2000, an Auction Sale was held involving the subject properties with Rural Bank of Tanza (Cavite), Inc. as the sole and highest bidder.^[6]

On 13 June 2000, a Certificate of Sale was issued by the Office of the Ex-Officio Sheriff, Regional Trial Court, Branch 15, Naic, Cavite, in favor of the Rural Bank of Tanza (Cavite), Inc. being the sole and highest bidder for the sum of One Million Six Hundred Thousand Pesos (P1,6000.00).^[7] Subsequently, on 26 June 2001, the President/General Manager of Rural Bank of Tanza (Cavite), Inc. executed an Affidavit of Consolidation after the period of redemption of the foreclosed properties expired on even date.^[8]

On 29 August 2003, Bangko Mabuhay (formerly Rural Bank of Tanza (Cavite), Inc.) filed before the Regional Trial Court, Branch 15, Naic, Cavite, a Petition for Issuance of a Writ of Possession involving the two (2) parcels of land including all the

improvements thereon.^[9] The petition was docketed as LRC Rec. No. CADM-459-D-108.

On 27 January 2004, Spouses Fernando and Paulina Lyn Telmo filed their Comment/Opposition to the petition.^[10] On 5 February 2004, Banko Mabuhay filed its Reply to the Comment/Opposition of oppositors-spouses.^[11] On 17 February 2004, oppositors-spouses filed a Rejoinder to petitioner's reply.^[12] And on 24 February 2004, Banko Mabuhay filed a Sur-Rejoinder.^[13]

Thereafter, presentation of evidence ensued.

In a Decision dated 17 May 2000,^[14] the trial court granted the petition and directed the Clerk of Court to issued the corresponding Writ of Possession in favor of petitioner Bangko Mabuhay (Rural Bank of Tanza (Cavite), Inc.

The Issues

Before Us, respondents-appellants contend that:

(1) THE DECISION ERRED IN NOT HOLDING THAT PETITIONER-APPELLEE FAILED TO ESTABLISH ITS CLAIM BY PREPONDERANCE OF EVIDENCE.

(2) THE DECISION ERRED IN NOT HOLDING THAT THE PETITION IS FATALLY DEFECTIVE FOR INVALID VERIFICATION.^[15]

Our Ruling.

The appeal is not meritorious.

The focal issue of this case is whether the issuance of the writ of possession over the properties subject of the foreclosure of the real estate mortgage is proper.

Oppositors-appellants contend that the trial court committed an error in not holding that the petitioner-appellee is not entitled to a writ of possession because the auction sale failed to comply with the provisions of Section 2, Act No. 3135, as amended,^[16] and Section 6, Republic Act 7353.^[17] Oppositors-appellants further contend that the auction sale should have been conducted in the Municipal Building of Indang, Cavite, and not in the Hall of Justice of Naic, Cavite. Oppositors-appellants also contend that there was lack of certificate of posting, no proof of publication and the consolidation of ownership is premature.

We are not persuaded.

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.^[18] The right of the purchaser to the possession of the foreclosed property becomes absolute upon the expiration of the redemption period. The basis of this right to possession is the purchaser's ownership of the property. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the

writ of possession becomes a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function.^[19]

In the present case, title to the said properties have been consolidated and issued in the name of petitioner-appellee as oppositors-appellants failed to redeem the subject properties within the one year redemption period. Thus, the issuance of the writ of possession in favor of the petitioner-appellee bank became a matter of course and the trial court has no discretion on the matter.

While the oppositors-appellants question the regularity and validity of the foreclosure, the same cannot be raised as a justification for opposing the petition for the issuance of the writ of possession. The said issues may be raised and determined only after the issuance of the writ of possession. The judge with whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. The writ issues as a matter of course. "The rationale for the rule is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership."^[20] To underscore this mandate, Section 8 of Act No. 3135 gives the debtor-mortgagor the right to file a petition for the setting aside of the foreclosure sale and for the cancellation of a writ of possession in the same proceedings where the writ was issued within 30 days after the purchaser-mortgagee was given possession. The court's decision thereon may be appealed by either party, but the order of possession shall continue in effect during the pendency of the appeal.^[21]

Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court. The same is true with its implementation; otherwise, the writ will be a useless paper judgment — a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.^[22]

WHEREFORE, the Decision dated 17 May 2010 and Order dated 9 August 2010, respectively, of the Regional Trial Court, Branch 15, Naic, Cavite, in LRC Cadm. 459-D-108, are **AFFIRMED**.

SO ORDERED.

Dimaampao, (Chairperson), and Sadang, JJ., concur.

^[1] Records, pp. 129-123 and p. 129.

^[2] Records, Exhibit C, p. 86.

^[3] Records, Exhibit B, p. 85.

^[4] Records, Exhibit D, p. 87.

^[5] Records, Exhibit E, p. 88.

^[6] Records, Exhibit G, p. 90.

^[7] Records, Exhibit H, p. 91.

^[8] Records, Exhibit I, p. 92.