

SPECIAL SIXTH DIVISION

[CA-G.R. SP No. 131229, May 29, 2014]

UNION BANK OF THE PHILIPPINES, PETITIONER, VS. HON. ENCARNACION JAJA G. MOYA, IN HER CAPACITY AS PRESIDING JUDGE OF BRANCH 146 OF THE REGIONAL TRIAL COURT OF MAKATI CITY, TERESITA S. TERENCIO AND VIRGILIO R. VALDEZ, RESPONDENTS.

D E C I S I O N

ABDULWAHID, J.:

Before us is a petition for certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure, which seeks to annul and set aside the twin *Orders* dated October 19, 2012^[1] and May 28, 2013^[2], respectively, of the Regional Trial Court, Branch 146, Makati City, in LRC Case No. M-5643.

The undisputed facts, as culled from the records of the case, are as follows:

On March 20, 2007, respondent Teresita S. Terencio executed in favor of petitioner Union Bank of the Philippines a *Real Estate Mortgage*^[3] over a parcel of land located at 3099 Gen. P. Garcia St., Bangkal, Makati, and covered by Transfer Certificate of Title No. 223388.^[4] The mortgage was executed to secure the full and prompt payment of respondent Terencio's loan obligation in the principal amount of Php5,000,000.00.^[5]

Respondent Terencio defaulted on her loan obligation, thus, on September 12, 2008, petitioner filed a *Petition for Extrajudicial Foreclosure of Real Estate Mortgage*^[6] under Act No. 3135, as amended by Act No. 4118. After due notice and publication, the subject property was sold at public auction to petitioner, being the highest bidder, and upon expiration of the one-year redemption period, petitioner consolidated its ownership over the property, resulting in the cancellation of TCT No. 223388 and the issuance of TCT No. 227650^[7] in petitioner's name.

Despite demands^[8] made upon respondent Terencio to vacate and deliver the possession of the property in favor of petitioner, the former refused to do so. Thus, on March 7, 2012, petitioner filed an *Ex-Parte Petition for Issuance of Writ of Possession*^[9] before the RTC of Makati. During an *ex-parte* hearing held on May 4, 2012, petitioner duly presented its witnesses and documentary evidence.^[10]

On June 22, 2012, before the court *a quo* could decide on the foregoing petition, respondent Virgilio R. Valdez filed a *Motion for Leave of Court for Allowance to Intervene (Motion for Intervention)*.^[11] In the said motion, respondent Valdez claimed to be the former registered owner of the subject parcel of land under TCT No. 214329. Respondent Valdez alleged that he only agreed to the transfer of title in the name of respondent Terencio upon the execution of an *Absolute Deed of Sale*

but without full payment of the purchase price due thereon, upon the latter's plea that the title be already transferred in her name to enable her to secure a loan with the property as collateral. However, respondent Terencio's promise to pay the full purchase price with the proceeds of the said loan did not materialize, despite repeated demands made by respondent Valdez. Instead, respondent Valdez subsequently caused the annotation of an adverse claim on TCT No. 223388 and, to respondent Valdez's shock, petitioner subsequently foreclosed and purchased the subject property at public auction. Thus, respondent Valdez prayed that he be allowed to intervene in the case and present evidence of his ownership over the real property subject of the case. He further prayed that an order be issued: (1) declaring the extrajudicial foreclosure sale null and void; and (2) denying the issuance of a writ of possession in favor of petitioner.

On July 23, 2012, petitioner filed an *Opposition* to the *Motion for Intervention*,^[12] maintaining that said motion was fatally defective for violating the three-day notice rule, since petitioner received a copy of said motion only in the late afternoon of June 29, 2012, the very day the hearing on the motion had been set. Thus, it was deprived of its right to be present during the hearing. Moreover, petitioner posited that intervention is not proper in an *ex-parte* proceeding such as that involving petitions for issuance of a writ of possession upon consolidation of title in a foreclosure sale. Corollarily, respondent Valdez cannot invoke the lone exception to the ministerial duty of the court to issue a writ of possession since he had not proven possession of the property in question. Finally, petitioner asserted that it was a mortgagee in good faith and for value, with no prior notice of respondent Valdez's adverse claim.

On October 19, 2012, the RTC issued the first assailed *Order*, disposing the case in favor of respondent Valdez, viz:^[13]

WHEREFORE, the Motion to Intervene filed by Virgilio Valdez is GRANTED. Considering that petitioner already terminated the presentation of its evidence, the presentation of evidence for intervenor, Virgilio R. Valdez is set on December 10, 2012 at 9:30a.m.

SO ORDERED.

Petitioner moved for reconsideration^[14] of the foregoing *Order*, but the same was denied in the second assailed *Order* dated May 28, 2013, to wit:^[15]

WHEREFORE, the Motion for Reconsideration filed by petitioner is denied for lack of merit. Set the presentation of intervenor's evidence on July 31, 2013 at 2:00 p.m.

SO ORDERED.

Aggrieved, petitioner filed the instant petition, praying for the annulment and/or reversal of the above-assailed *Orders* of the RTC and the issuance of a temporary restraining order or writ of preliminary injunction on the following grounds:^[16]

I

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING RESPONDENT VALDEZ'S MOTION TO INTERVENE

DESPITE THE FATAL FLAW OF THE MOTION IN ITS FAILURE TO COMPLY WITH THE 3-DAY NOTICE RULE ENUNCIATED IN SECTION 4, RULE 15 OF THE RULES OF COURT;

II

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING RESPONDENT VALDEZ'S MOTION TO INTERVENE DESPITE OVERWHELMING PRELIMINARY EVIDENCE SHOWING THAT HE IS NOT IN POSSESSION OF THE PROPERTY;

III

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING RESPONDENT VALDEZ'S MOTION TO INTERVENE DESPITE HIS FAILURE TO COMPLY WITH THE REQUIREMENTS FOR A VALID INTERVENTION UNDER RULE 19 OF THE RULES OF COURT;

IV

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING RESPONDENT VALDEZ'S MOTION TO INTERVENE NOTWITHSTANDING THE EX PARTE NATURE OF PROCEEDINGS FOR ISSUANCE OF WRIT OF POSSESSION AND THE MINISTERIAL DUTY OF THE COURT TO ISSUE THE SAME; *and*

V

A TEMPORARY RESTRAINING ORDER (TRO) OR WRIT OF PRELIMINARY INJUNCTION SHOULD BE ISSUED IMMEDIATELY TO PREVENT GRAVE INJUSTICE FROM BEING PERPETRATED BY RESPONDENTS ON PETITIONER.

With respect to the first assignment of error, suffice it to state that any defect in the motion due to non-compliance with the three-day rule has been sufficiently cured by the fact that petitioner was able to file a timely opposition to said motion, which opposition was duly considered in the resolution of the motion. While it is true that Section 4, Rule 15, of the 1997 Rules of Civil Procedure requires a movant to furnish the other party with a copy of the motion in such a manner as to ensure the latter's receipt thereof no less than three days before the date of hearing, the same is not a hard and fast rule. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.^[17]

However, we find merit in petitioner's position that respondent Valdez has not sufficiently proven his right to intervene in an *ex-parte* proceeding for the issuance of a writ of possession.

Section 1, Rule 19 of the 1997 Rules of Civil Procedure provides for the requirements of a valid intervention, as follows:

SECTION 1. *Who may intervene.* – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof may, with leave of court, be allowed to intervene in the action. **The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.** (Emphasis supplied)

In *Ongco vs. Dalisay*, the Supreme Court had occasion to explain intervention and its requisites, to wit:^[18]

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein for a certain purpose: to enable the third party to protect or preserve a right or interest that may be affected by those proceedings. This remedy, however, is not a right. The rules on intervention are set forth clearly in Rule 19 of the Rules of Court x x x

x x x

x x x

x x x

It can be readily seen that intervention is not a matter of right, but is left to the trial court's sound discretion. The trial court must not only determine if the requisite legal interest is present, but also take into consideration the delay and the consequent prejudice to the original parties that the intervention will cause. Both requirements must concur, as the first requirement on legal interest is not more important than the second requirement that no delay and prejudice should result. To help ensure that delay does not result from the granting of a motion to intervene, the Rules also explicitly say that intervention may be allowed only before rendition of judgment by the trial court.

In *Executive Secretary v. Northeast Freight*, this Court explained intervention in this wise:

Intervention is not a matter of absolute right but may be permitted by the court when the applicant shows facts which satisfy the requirements of the statute authorizing intervention. Under our Rules of Court, what qualifies a person to intervene is his possession of a legal interest in the matter in litigation or in the success of either of the parties, or an interest against both; or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof. As regards the legal interest as qualifying factor, this Court has ruled that such interest must be of a direct and immediate character so that the intervenor will either gain or lose by the direct legal operation of the judgment. The interest must be actual and material, a concern which is more than mere curiosity or academic or sentimental desire; it must not be indirect and contingent, indirect and remote, conjectural, consequential or collateral. **However, notwithstanding the presence of a legal interest, permission to intervene is subject to the sound discretion of the court, the exercise of which is limited by**