

FOURTH DIVISION

[CA-G.R. CV NO. 97456, November 17, 2014]

**PLANTERS DEVELOPMENT BANK, PETITIONER-APPELLEE, VS.
TITAN IKEDA CONSTRUCTION AND DEVELOPMENT
CORPORATION, OPPOSITOR-APPELLANT.**

DECISION

SORONGON, J.:

This is an appeal filed by oppositor-appellant Titan Ikeda Construction and Development Corporation seeking to reverse and set aside the Order^[1] dated May 27, 2011 of the Regional Trial Court (RTC) of Parañaque City, Branch 195 in LRC Case Nos. 10-0029 to 10-0033 granting the petition for writ of possession filed by petitioner-appellee Planters Development Bank on the condominium units covered by Condominium Certificate of Title (CCT) Nos. 4108, 4109, 4111, 3492 and 3493.

Culled from the records are the following factual backdrop:

On November 21, 1996, oppositor-appellant Titan Ikeda Construction and Development Corporation (*Titan* for brevity) executed in favor of petitioner-appellee Planters Development Bank (*Bank* for brevity) two deeds of real estate mortgage over several condominium units to secure its loan obligations with the latter in the following amounts: 1) Php66,000,000.00^[2] secured by CCT Nos. 4107^[3], 4108^[4], 4109^[5], 4110^[6], and 4111^[7]; and 2) Php11,500,000.00^[8] secured by CCT Nos. 3492^[9] and 3493.^[10]

Titan allegedly failed to pay its outstanding loan obligations amounting to Php43,470,081.17 which resulted in the filing of a petition for extra-judicial foreclosure of real estate mortgages by the Bank before the Regional Trial Court of Parañaque on September 11, 2009. At the public auction sale held on October 22, 2009 the Bank emerged as the highest bidder and to whose favor a Certificate of Sale^[11] dated November 6, 2009 was consequently issued. On November 26, 2009, the Bank caused the registration and annotation of the certificate of sale at the back of the CCTs of the mortgaged properties.

The three-month redemption period prescribed under the General Banking Act expired without Titan redeeming the mortgaged condominium units. Thus, the Bank executed an affidavit of consolidation of ownership which was registered in the Registry of Deeds of Parañaque City on January 29, 2010. Pursuant thereto, said property registry cancelled CCT Nos. 4108, 4109, 4111, 3492, and 3493 registered in the name of Titan and issued in their stead CCT Nos. 010-2010001817^[12], 010-2010001818^[13], 010-2010001820^[14], 010-2010001821^[15], 010-2010001822^[16] in the name of the Bank.

The Bank thereafter filed on March 3, 2010 the *Ex-Parte Petition for Issuance of a Writ of Possession* before the court *a quo*.

Previously, however, on February 3, 2010, Titan filed a *Complaint for Breach of Contract and Damages with Prayer for a Temporary Restraining Order and Preliminary Injunction* against the Bank, the *Ex-Officio* Sheriff of the RTC of Parañaque City and the Register of Deeds of Parañaque City^[17] before the RTC of Paranaque, Branch 196 and docketed as Civil Case No. 10-0037. In the said complaint, Titan asked for the nullification of the auction sale of the subject properties and cancellation of annotations in the CCT's based on the following grounds: 1) The Bank violated the mortgage agreement when it sold the two condominiums subject of the mortgage with CCT Nos. 4107 and 4110 to Philippine Chemstel Industries, Inc.; and 2) the conduct of the foreclosure proceedings and public auction sale was illegal because Titan was not in default of its obligation; no demand to pay was made upon Titan; and the filing of the extrajudicial foreclosure was unauthorized due to the absence of a secretary's certificate.

Titan moved for the consolidation of Civil Case No. 10-0037 and

LRC Case Nos. 10-0029-10-0033, but its motion was denied by Order^[18] of the trial court dated November 26, 2010.

The court *a quo* granted the Bank's petition for issuance of writ of possession by Order^[19] dated May 27, 2011, rationalizing as follows:

After evaluating petitioner's oral and documentary evidence, this court is convinced that petitioner is entitled to a writ of possession. It appearing that all conditions for it had already been complied with. "The rule is that after the redemption period has expired, the purchaser of the foreclosed property has the right to be placed on possession thereof. "Possession then becomes an absolute right of the purchaser as owner, and upon proper application and proof of the title the issuance of writ of possession becomes a ministerial duty of the court" (Spouses Edmundo and Lourdes Sarrosa vs. Willy O. Dizon, G.R. No. 183027, July 26, 2010 citing United Coconut Planters Bank vs. Reyes, 193 SCRA 756 and F. David Enterprise vs. Insular Bank of Asia and America, 191 SCRA 516).

WHEREFORE, let a writ of possession issue in favor of petitioner Planters Development Bank and against Titan Ikeda Construction and Development Corporation, ordering all occupants, tenants and any and all persons claiming rights under it, to vacate the premises covered by CCT Nos. 4108, 4109, 4111, 3492 and 3493 (now CCT Nos. 010-2010001817, 010-2010001818, 010-2010001820, 010-2010001821 and 010-2010001822 in the name of petitioner). To serve this purpose, the Sheriff of this Court is hereby ordered to place petitioner, in possession thereof, with the assistance of the barangay tanods or local police if necessary.

SO ORDERED.^[20]

Displeased, Titan then filed a Notice of Appeal^[21] on June 14, 2011.

Thereafter, in accordance with the assailed Order, the sought Writ of Possession^[22] was issued on July 4, 2011 commanding the Sheriff to place the Bank in possession of the subject condominium units and eject all its present occupants. The Sheriff, in turn, on July 5, 2011, issued Notices to Vacate^[23] and served, together with the writ of possession, to Titan and all adverse occupants, tenants and persons claiming rights over the subject condominium units.

A day after the service of the writ of possession and notices to vacate or on July 6, 2011, Titan filed a *Very Urgent Motion for Lifting and Setting Aside the Writ of Possession and Quashal of Notice to Vacate*^[24] alleging that there are third persons in adverse possession of the condominium units subject of the writ of possession and notices to vacate. Hence, the issuance by the court *a quo* of a writ of possession in favor of the Bank ceases to be ministerial and may no longer be done *ex-parte*. Titan asked for the deferment of the implementation of the writ of possession and the notice to vacate pending determination by the court *a quo* of the nature of the possession of these third persons.

On July 11, 2011, a certain Renato Austria Muyot (Muyot) filed an *Urgent Motion for Special Order*^[25] also asking the court *a quo* to hold in abeyance the enforcement of the writ of possession. He claimed that he has been in possession of the three condominium units, covered by the writ of possession, namely: Unit 2-A of the Cleveland Tower and Units 30-D and 15-D of the Washington Tower, pursuant to a Contract of Lease with Option to Buy^[26] executed between him and Titan on September 19, 2003. By virtue thereof, he had introduced necessary improvements in the said condominium units. He also lamented that the five day grace period for him to vacate and remove all these improvements is surely insufficient.

On July 19, 2011, Functional Desk Supplies (*Functional* for brevity) filed with this Court a *Petition for Prohibition with Very Urgent Application for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order*^[27] against the Presiding Judge of the court *a quo*, Judge Aida Estrella Macapagal, Branch Clerk of Court Atty. Maria Corazon R. Millares, Branch Sheriff Alejandro P. Abrematea and herein petitioner-appellee Bank, docketed as *CA-G.R. SP No. 120353*. Functional questioned the issuance of the writ of possession and implementation of the notice to vacate based on the foregoing grounds: *first*, the issuance of the writ of possession was improper because there are third parties, including Functional, who are in adverse possession of the subject condominium units; and *second*, the Branch Sheriff was guilty of grave abuse of discretion when it issued a notice to vacate to an occupant, whose condominium unit is not among those covered by the writ of possession. In Resolutions dated August 1, 2011 and November 4, 2011, the Former Special Eleventh Division of the Court of Appeals granted^[28] Functional's prayer for a TRO and enjoined the respondents therein from implementing the writ of possession and notice to vacate.

On July 26, 2011, the court *a quo* issued an Order^[29] denying Titans' motion to lift and set aside the writ of possession and quashal of notice to vacate for failure of Titan's counsel or any of its authorized representative to appear on the date of

hearing despite due notice which according to the trial court constitutes abandonment or lack of interest to pursue its motions.

As mentioned earlier, Titan appealed to this Court the May 27, 2011 Order of the trial court granting the writ of possession based on two (2) issues, thus:

I. WHETHER OR NOT PLANTERS DEVELOPMENT BANK IS ENTITLED TO THE POSSESSION OF THE AUCTIONED CONDOMINIUM UNITS CONSIDERING THAT THERE WAS DELIBERATE VIOLATION OF THE MORTGAGE CONTRACTS AND THE FORECLOSURE PROCEEDINGS AND SALE AT PUBLIC AUCTION WERE SADDLED WITH FATAL IRREGULARITIES; AND

II. WHETHER OR NOT THERE WERE INNOCENT THIRD PARTIES WITH SUPERIOR RIGHTS AFFECTED BY THE IMPLEMENTATION OF THE WRIT OF POSSESSION.

In the first issue, Titan assails the issuance of the writ of possession on the ground that the foreclosure proceeding was illegally conducted. *First*, the Bank hastily foreclosed the subject condominium units without giving notice to Titan that it was already in default in the payment of its loan obligations; *second*, Titan was never informed of the foreclosure proceeding, the auction sale and issuance of the certificates of sale in favor of the Bank; *third*, the Bank sold two condominium units to Chemstel Industries, Inc. prior to the foreclosure proceeding; *fourth*, the redemption period should be one (1) year and not three-months as applied by the RTC; and *fifth*, Jose Acetre is not an authorized representative of the Bank. Considering the foregoing fatal infirmities surrounding the foreclosure proceedings, Titan submits that the issuance of the writ of possession ceases to be ministerial on the part of the court *a quo*.

Titan further argues that the court *a quo* should have never granted the application for the writ of possession because there are still pending cases involving the subject condominium units which should be settled ahead of it. Thus, it asserts the issuance of the writ of possession in favor of the Bank is tantamount to confiscation of its properties without due process of law.

We reject Titan's contentions.

Section 7^[30] of Act No. 3135^[31], as amended by Act No. 4118^[32], provides that a writ of possession may be issued to the purchaser in a foreclosure sale either (1) within the one (1) year redemption period upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.^[33]

During the one-year redemption period, the purchaser may apply for a writ of possession by filing a petition in the form of an *ex parte* motion under oath, in the registration or cadastral proceedings of the registered property. The law requires only that the proper motion be filed, the bond approved and no third person is involved.^[34] On the other hand, after the lapse of the redemption period, the purchaser, upon proper application and proof of title, has the right to be entitled to

a writ of possession. It is at this point that the right of possession of the purchaser can be considered to have ripened into the absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion.^[35]

Notably in the present case, the Bank, being proclaimed as the highest and winning bidder in the foreclosure sale, has an absolute right to take possession of the foreclosed condominium units because Titan failed to redeem the same upon the expiration of the redemption period. Moreso, ownership of the said properties had already been consolidated and new CCT's were in fact issued under the name of the Bank, hence, the issuance of the writ of possession in its favor does not involve exercise of discretion but becomes a mere ministerial duty of the trial court.

Contrary to the claim of Titan, we cannot recall the issuance of the writ of possession on the ground that the foreclosure proceeding was illegally and unlawfully conducted. It has been a long-established doctrine that any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether Titan was indeed in default of his obligations; or whether there was lack of notice of the scheduled dates for foreclosure sale and public auction; or whether the subject condominiums units were sold to third-parties prior to the foreclosure sale; or whether the redemption period of Titan is three months or one year; or whether Jose Acetre is an authorized representative of the Bank; or whether there were pending cases involving the same subject condominium units, the purchaser is still entitled to a writ of possession without prejudice, of course, to the resolution of these issues in a separate and appropriate proceeding.^[36] The ruling of the Supreme Court in *Hon. Fernandez, RTC of Pasig City, Br. 158 and United Overseas Bank Phils. vs. Spouses Espinoza*,^[37] is fitting to the case at bar:

Consequently, the RTC under which the application for the issuance of a writ of possession over the subject property is pending cannot defer the issuance of the said writ in view of the pendency of an action for annulment of mortgage and foreclosure sale. The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure.

Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.

The spouses Espinoza's position that the issuance of the writ of possession must be deferred pending resolution of Civil Case No. 66256 is therefore unavailing. As we have recounted above, this Court has long settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.

Indeed, the proceeding in a petition for a writ of possession is ex parte