

THIRTEENTH DIVISION

[CA-G.R. SP NO. 89803, September 27, 2006]

**CARMELITA RAMOS, PETITIONER, VS. KEPPEL MONTE BANK AND
NERI G. LOY, RESPONDENTS.**

D E C I S I O N

CRUZ, J.:

On March 12, 2001, a writ of execution was issued against Project Movers Realty and Development Corporation (or "PMRDC") and Mario Villamor for the satisfaction of the judgment by compromise dated November 10, 1999 rendered by the Regional Trial Court (or "RTC") of Quezon City (Branch 222) in Civil Case No. Q-97-32611 entitled "Monte de Piedad and Savings Bank (now Keppel Monte Bank) vs. Project Movers Realty and Development Corp. and Mario Villamor".

Pursuant to the writ of execution, that parcel of land (or "subject property") located at No. 969 Pedro Gil St., Paco, Manila and covered by Transfer Certificate of Title (or "TCT") No. 205458 in the name of PMRDC was levied upon by branch sheriff Neri G. Loy (or "sheriff") on March 23, 2001.

On November 14, 2001, the sheriff issued a Notice of Sale on Execution of Real Property announcing that the subject property would be sold at public auction on December 7, 2001, at 9:30 a.m., at the Manila City Hall. The notice was published in the November 22 and 29, 2001 and December 6, 2001 issues of "The Foreign Post", a newspaper of general circulation.

At the public auction, Keppel Monte Bank (or "Keppel"), formerly Monte de Piedad and Savings Bank, the judgment creditor, was the highest bidder. Consequently, a Certificate of Sale over the subject property was issued to Keppel on December 10, 2001.

As PMRDC failed to redeem the subject property within redemption period, Keppel consolidated its title therein, resulting in the issuance of TCT No. 259401 in its name on May 26, 2003.

On September 22, 2004, a writ of possession over the subject property was issued in favor of Keppel. Pursuant to said writ, notices to vacate dated October 19, 2004 and January 31, 2005 were served by the sheriff on Carmelita Ramos (or "petitioner") as occupant of the subject property.

To thwart the enforcement of the abovementioned writ of possession and notices to vacate, petitioner filed the instant petition (as amended) for injunction and damages, with an application for preliminary injunction and temporary restraining order, against Keppel and the sheriff (or "respondents", when collectively). She claimed that she is the lessee of the subject property per Contract of Lease dated

July 2, 2002 she executed with First Apollo Realty Development Corporation (or "First Apollo"), as lessor, but was not given notice of the levy and that, consequently, the levy and notices to vacate are null and void. She added that the Notice of Levy/Attachment was issued way back on November 14, 1997, or beyond the five-year period for execution of a final and executory judgment as prescribed by Sec. 6, Rule 39 of the 1997 Rules of Civil Procedure; and that the writ of possession is not available as there was no extrajudicial foreclosure of mortgage pursuant to Act No. 3135, as amended.

For its part, Keppel maintains that the levy and sale in execution of the subject property are valid, such acts being presumed to have been regularly performed by the sheriff; that assuming petitioner was not notified of the levy, such omission merely constitutes a formal defect which was cured by the notice given regarding the execution sale on December 7, 2001; and that having failed to timely object to the execution proceedings, petitioner is estopped from assailing the validity of the levy and sale of the subject property.

Anent petitioner's claim that the judgment by compromise can no longer be enforced by mere motion, Keppel points out that the compromise agreement in Civil Case No. Q-97-32611 was approved by the RTC on November 10, 1999 and that, upon its motion, a writ of execution was issued on March 12, 2001; that pursuant to said writ, a notice of levy was issued in respect to the subject property on March 23, 2001 and the execution sale was held on December 7, 2001; and that the levy and sale of the subject property at public auction were conducted within the five-year period for executing the RTC's final judgment by motion. Opposing petitioner's prayer for preliminary injunction, Keppel asserts that the latter has no right to possess the subject property and, therefore, is not entitled to injunctive relief.

At the outset, We observe that the petition did not implead, as public respondent, the judge who issued the assailed writ of possession (Sec. 5, Rule 65, *id.*). But even if we are to disregard this procedural infirmity, the petition must still fail.

Sec. 9 (b), Rule 39, *id.*, outlines the procedure for satisfaction of a money judgment by levy:

Sec. 9. Execution of judgments for money, how enforced. –

(a) x x x.

(b) *Satisfaction by levy.* – If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

x x x