



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

SPOUSES MONTANO T.
TOLOSA and MERLINDA
TOLOSA,

Petitioners,

G.R. No. 183058

Present:

CARPIO, J.,
Chairperson,
VELASCO, JR.,*
BRION,
DEL CASTILLO, and
PEREZ, JJ.

- versus -

UNITED COCONUT
PLANTERS BANK,
Respondent.

Promulgated:

APR 03 2013 *HL Catapangan*

x ----- x

DECISION

PEREZ, J.:

A purchaser at an extrajudicial foreclosure sale is entitled to a writ of possession as a matter of right after consolidation of ownership for failure of the mortgagor to redeem the property.¹ The exceptions to this rule are at the heart of this petition for review filed pursuant to Rule 45 of the *Rules of Court*, primarily assailing the 31 May 2007 Decision² rendered by the

* Per Special Order No. 1437 dated 25 March 2013.

¹ *Lam v. Metropolitan Bank and Trust Company*, G.R. No. 178881, 18 February 2008, 546 SCRA 200, 206.

² Penned by CA Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicedican and Antonio L. Villamor.

Nineteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 00593,³ the decretal portion of which states:

WHEREFORE, in view of all the foregoing premises, the Orders dated December 1, 2004, and January 31, 2005, issued by the Honorable public respondent are hereby ANNULLED and SET ASIDE, and a new one is issued granting the issuance of writ of possession in favor of petitioner UCPB for the properties now covered by TCT Nos. T-30403 and T-30404 and Tax Declaration Nos. ARP/TD No. 2054 (PIN 038-12-006-04-050) and ARP/TD No. 2056 (PIN 038-12-006-04-051).

SO ORDERED.⁴

The Facts

On 7 April 1997, petitioners Spouses Montano and Merlinda Tolosa (*Spouses Tolosa*) entered into a Credit Agreement with respondent United Coconut Planters Bank (*UCPB*) for the purpose of availing of the latter's credit facilities.⁵ To secure their credit availments, the Spouses Tolosa executed deeds of real estate mortgage over four properties in Barangay Caticlan, Malay, Aklan, which were registered and/or declared for taxation purposes in their names under the following certificates of title and/or tax declarations, to wit: (a) Transfer Certificate of Title (TCT) Nos. T-23589; (b) Original Certificate of Title (OCT) No. P-14743; (c) Tax Declaration No. ARP-TD 1561 (038-12-006-04-051); and Tax Declaration No. ARP-TD 93-006-0362 (038-12-006-04-050).⁶ For failure of the Spouses Tolosa to pay their principal obligation which amounted to ₱13,300,000.00, exclusive of interests, penalties and other charges, UCPB foreclosed the mortgage on the aforesaid realties and filed a petition for the extra-judicial sale thereof with the Office of the Clerk of Court and Ex-Officio Sheriff of Kalibo, Aklan on 22 October 1999.⁷

After the due notice and publication, the mortgaged properties were sold on 4 January 2000 at a public auction where UCPB tendered the highest bid of ₱17,240,000.00. The proceeds of the sale were credited towards the partial satisfaction of the Spouses Tolosa's mortgage obligation which, inclusive of interests, penalties and other charges, was pegged at ₱24,253,847.64.⁸ Issued the corresponding certificate of sale,⁹ UCPB

³ CA *rollo*, 31 May 2007 Decision in CA-G.R. SP No. 00593, pp. 226-235.

⁴ Id. at 234.

⁵ Records, CAD Case No. 3028, Parties' 7 April 1997 Credit Agreement, pp. 38-44.

⁶ Deeds of Real Estate Mortgage, id. at 57-67.

⁷ UCPB's 9 August 1999 Petition for Sale Under Act No. 3135, As Amended, id. at 53-55.

⁸ Spouses Tolosa's 16 June 2000 Letter, id. at 72.

⁹ 4 January 2000 Certificate of Sale, id. at 6-8.

caused the same to be registered with the Office of the Register of Deeds of Aklan on 5 January 2000.¹⁰ For failure of the Spouses Tolosa to exercise their right of redemption within the prescribed one year period, UCPB went on to consolidate its ownership over the subject realties on 22 January 2001.¹¹ With the cancellation of those in the name of the Spouses Tolosa, the following certificates of title and tax declarations were subsequently issued in the name of UCPB, to wit: (a) TCT No. T-30403; (b) TCT No. T-30404; (c) Tax Declaration No. ARP-TD 2054 (038-12-006-04-050); and (d) Tax Declaration No. ARP-TD 2056 (038-12-006-04-051).¹²

On 2 September 2004, UCPB filed an *ex-parte* petition for issuance of a writ of possession in the cadastral case docketed as Cadastral Case No. 3028 before the Regional Trial Court (**RTC**), Branch 5, Kalibo Aklan.¹³ Notified of the filing of the petition,¹⁴ the Spouses Tolosa filed their 8 November 2004 Opposition, calling the RTC's attention to the pendency of the complaint for declaration of nullity of promissory notes, foreclosure of mortgage and certificate of sale as well as accounting and damages which they instituted against UCPB. Docketed as Civil Case No. 6180 before Branch 8 of the RTC, the complaint alleged that the Spouses Tolosa were misled by UCPB into signing the Credit Agreement, Promissory Notes and Real Estate Mortgage sued upon. In addition to not releasing the full amount of their loans, UCPB was likewise faulted for supposedly failing to disclose the actual interests it charged and for causing the extrajudicial foreclosure of the mortgage despite the Spouses Tolosa's overpayment of their loans.¹⁵ Claiming that there was *prima facie* showing of invalidity of their mortgage obligation, the foreclosure of the mortgage and the sale of their properties, the Spouses Tolosa prayed that the issuance of the writ of possession be held in abeyance and that UCPB's petition therefor be consolidated with Civil Case No. 6180.¹⁶

On 1 December 2004, the RTC issued an order, holding in abeyance the issuance of the writ of possession sought by UCPB. Citing equity and substantial justice as reasons for its disposition, the RTC ruled that the pendency of Civil Case No. 6180 necessitated the suspension of the grant of UCPB's petition since there was a possibility that the latter's foreclosure of the mortgage may be adjudged violative of the Spouses Tolosa's rights as mortgagors. While conceding that the issuance of a writ of possession is

¹⁰ Id. at 163.

¹¹ UCPB's 22 January 2001 Affidavit of Consolidation, id. at 163-164.

¹² UCPB's TCTs and Tax Declarations, id. at 9-12.

¹³ UCPB's 30 July 2004 Ex-Parte Petition, id. at 2-5.

¹⁴ RTC's 23 September 2004 Notice of hearing, id. at 16.

¹⁵ Spouses Tolosa's 29 May 2002 Amended Complaint, id. at 24-34.

¹⁶ Spouses Tolosa's 8 November 2004 Opposition, id. at 20-23.

ministerial as a general rule, the RTC held that said function ceases to be of said nature where the grant of the writ “will prejudice another pending case for the nullification of the auction sale” and “might work inequity and injustice to mortgagors.”¹⁷ With its motion for reconsideration of the foregoing order¹⁸ further denied for lack of merit in the RTC’s Order dated 31 January 2005,¹⁹ UCPB filed its Rule 65 petition for *certiorari* which was docketed as CA-G.R. SP No. 00593 before the CA.²⁰

On 31 May 2007, the CA rendered the herein assailed decision, nullifying the RTC’s 1 December 2004 Decision and granting the writ of possession sought by UCPB. Finding that the ministerial nature of the issuance of a writ of possession left no discretion on the part of the RTC insofar as the grant of UCPB’s application is concerned, the CA ruled that questions regarding the validity of the foreclosure sale as well as the propriety of the grant of writ can be raised by the Spouses Tolosa in the same proceedings pursuant to Section 8 of Act 3135. The fact that the Credit Agreement, Promissory Notes and Real Estate Mortgage executed by the Spouses Tolosa had yet to be declared invalid also led the CA to enunciate that the mere pendency of Civil Case No. 6180 cannot defeat the right to a writ of possession the law grants to UCPB as the absolute and registered owners of the subject realties.²¹ The Spouses Tolosa’s motions for reconsideration²² of this decision were denied for lack of merit in the CA’s second assailed Resolution dated 21 May 2008,²³ hence, this petition.

The Issues

The Spouses Tolosa seek the reversal of the CA’s assailed decision and resolution on the following grounds, to wit:

- I. **THE CA REVERSIBLY ERRED IN NOT FINDING THAT THE PRIMA FACIE NULLITY OF THE MORTGAGE OBLIGATION AND THE FORECLOSURE SALE JUSTIFIED THE RTC’S ORDER TO HOLD IN ABEYANCE THE ISSUANCE OF THE WRIT OF POSSESSION SOUGHT BY UCPB.**
- II. **THE CA REVERSIBLY ERRED IN ORDERING THE GRANT OF THE WRIT OF POSSESSION SOUGHT BY**

¹⁷ RTC’s 1 December 2004 Order, id. at 75-76.

¹⁸ UCPB’s 28 December 2004 Motion for Reconsideration, id. at 84-87.

¹⁹ RTC’s 31 January 2005 Order, id. at 88.

²⁰ CA *rollo*, CA-G.R. SP No. 00593, UCPB’s 14 April 2005 Petition for *Certiorari*, pp. 2-11.

²¹ CA’s 31 May 2007 Decision, id. at 226-235.

²² Spouses Tolosa’s 22 June 2007 Motions for Reconsideration, id. at 242-255; 280-297.

²³ CA’s 21 May 2008 Resolution, id. at 343-345.

UCPB DESPITE THE RULE THAT THE SURPLUS IN THE BID PRICE SHOULD FIRST BE PAID TO THE MORTGAGOR BEFORE HE CAN BE DEPRIVED OF POSSESSION OF THE PROPERTY MORTGAGED.²⁴

The Court's Ruling

The petition is bereft of merit.

A writ of possession is simply an order by which the sheriff is commanded by the court to place a person in possession of a real or personal property.²⁵ Under Section 7 of Act No. 3135, as amended, a writ of possession may be issued in favor of a purchaser in a foreclosure sale either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond. Within 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,²⁶ in the registration or cadastral proceedings of the registered property.²⁷ The law requires only that the proper motion be filed, the bond approved and no third person is involved.²⁸ After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right.²⁹ In the latter case, the right of possession becomes absolute because the basis thereof is the purchaser's ownership of the property.³⁰

The rule is likewise settled that the proceeding in a petition for a writ of possession is *ex-parte* and summary in nature.³¹ As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.³² The issuance of the writ of possession is, in turn, a ministerial

²⁴ *Rollo*, Spouses Tolosa's 21 July 2008 Petition for Review, pp. 20-21.

²⁵ *Motos v. Real Bank (A Thrift Bank), Inc.*, G.R. No. 171386, 17 July 2009, 593 SCRA 216, 224.

²⁶ *Sagarbarria v. Philippine Business Bank*, G.R. No. 178330, 23 July 2009, 593 SCRA 645, 651-652.

²⁷ *Metropolitan Bank & Trust Company v. Santos*, G.R. No. 157867, 15 December 2009, 608 SCRA 222, 233.

²⁸ *Motos v. Real Bank (A Thrift Bank), Inc.*, supra, note 25 at 225 citing *Metropolitan Bank and Trust Company v. Tan*, G.R. No. 159934, 26 June 2008, 555 SCRA 502, 512.

²⁹ *Spouses Alex and Julie Lam v. Metropolitan Bank & Trust Company*, G.R. No. 178881, 18 February 2008, 546 SCRA 200, 206.

³⁰ *Torbela v. Rosario*, G.R. No. 140528, 7 December 2011, 661 SCRA 633, 683.

³¹ *Fernandez v. Espinoza*, G.R. No. 156421, 14 April 2008, 551 SCRA 136, 150.

³² *Oliveros v. The Hon. Presiding Judge, RTC, Branch 24, Biñan, Laguna*, G.R. No. 165963, 3 September 2007, 532 SCRA 109, 119.

function in the exercise of which trial courts are not granted any discretion.³³ Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure,³⁴ it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage.³⁵ Corollarily, any question regarding the validity of the extrajudicial foreclosure sale and the resulting cancellation of the writ may, likewise, be determined in a subsequent proceeding as outlined in Section 8³⁶ of Act No. 3135.³⁷

Gauged from the foregoing principles, we find that the CA committed no reversible error in ordering the issuance of the writ of possession sought by UCPB. The record shows that UCPB caused the extrajudicial foreclosure of the mortgage on the subject realties as a consequence of the Spouses Tolosa's default on their mortgage obligation. As the highest bidder at the 4 January 2000 foreclosure sale, UCPB consolidated its ownership on 22 January 2001 or upon failure of the Spouses Tolosa to exercise their right of redemption within the one-year period therefor prescribed. Subsequent to the issuance of the certificates of title and tax declarations over the same properties in its name, UCPB complied with the requirements under Act 3135 by filing its *ex-parte* petition for issuance of a writ of possession before the RTC on 2 September 2004. Since UCPB had already become the absolute and registered owner of said properties, the CA correctly ruled that it was the ministerial duty of the RTC to issue the writ of possession in favor of the former.

In urging the reversal of the assailed decision and resolution, the Spouses Tolosa argue that the *prima facie* merit of their complaint in Civil Case No. 6180 justified, at the very least, the deferment of the issuance of the writ of possession. For this purpose, they call our attention to the supposed fact that UCPB not only failed to release the entirety of the

³³ *Esperidion v. Court of Appeals*, 523 Phil. 664, 667-668.

³⁴ *Idolor v. Court of Appeals*, 490 Phil. 808, 814 (2005).

³⁵ *Metropolitan Bank and Trust Company v. Tan*, G.R. No. 159934, 26 June 2008, 555 SCRA 502, 512.

³⁶ SECTION 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

³⁷ *Cua Lai Chu v. Laqui*, G.R. No. 169190, 11 February 2010, 612 SCRA 227, 235.

proceeds of their loans but also violated Republic Act No. 3765³⁸ by failing to specify the rates of interest it charged on their mortgage obligation. Insisting that they were misled by UCPB into signing the Credit Agreement, Promissory Notes and Real Estate Mortgage which they impugned in Civil Case No. 6180, the Spouses Tolosa also claim that, discounting the illegal interests and charges imposed thereon, their mortgage obligation only amounted to ₱14,041,000.00 and was more than amply discharged by the ₱17,240,000.00 proceeds realized at the foreclosure sale.

Given the ministerial nature of the RTC's duty to issue the writ of possession after the purchaser has consolidated its ownership, it has been ruled, moreover, that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ.³⁹ More to the point, a pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession.⁴⁰ Regardless of the pendency of such suit, the purchaser remains entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.⁴¹ Otherwise stated, the issuance of the writ of possession remains the ministerial duty of the RTC until the issues raised in the annulment case are, once and for all, decided by a court of competent jurisdiction.⁴²

To be sure, the foregoing rule admits of a few jurisprudential exceptions. In *Cometa v. Intermediate Appellate Court*,⁴³ the judgment debtor filed a separate action to invalidate the auction sale of properties approximately worth ₱500,000.00 for the unusually low price of ₱57,396.85. Citing equitable considerations, this Court upheld the deferment of the issuance of the writ of possession sought by the judgment creditor on the ground that the validity of the auction sale is an issue that requires pre-emptive resolution to avoid injustice. In the case of *Barican v. Intermediate Appellate Court*,⁴⁴ on the other hand, the Court ruled that the duty ceases to be ministerial where the property mortgaged had been, in the meantime, sold to third parties who had assumed the mortgagor's indebtedness and took possession of the property. In *Sulit v. Court of Appeals*,⁴⁵ the mortgagee's failure to deliver the surplus from the proceeds of the foreclosure sale

³⁸ *The Truth in Lending Act*.

³⁹ *Fortaleza v. Lapitan*, G.R. No. 178288, 15 August 2012, 678 SCRA 469, 484.

⁴⁰ *Spouses Rempson & Milagros Samson v. Judge Mauricio M. Rivera*, G.R. No. 154355, 20 May 2004, 428 SCRA 759, 769.

⁴¹ *Torbela v. Spouses Andres Rosario and Lena Duque-Rosario*, *supra*, note 30.

⁴² *Fortaleza v. Lapitan*, *supra*, note 39 at 485.

⁴³ 235 Phil. 569 (1987).

⁴⁴ 245 Phil. 316 (1988).

⁴⁵ 335 Phil. 914 (1997).

equivalent to at least 40% of the mortgage debt was likewise found sufficient justification for the non-issuance of the writ of possession sought.

The Spouses Tolosa invoked the Court's ruling in *Barican* which is not, however, on all fours with the case at bench. Aside from the fact that the Spouses Tolosa appear to have remained in possession of the subject realties, there is no showing in the record these properties have, in the meantime, been acquired or transferred to third persons whose adverse possession and/or interest would have justified the non-issuance of the writ of possession sought by UCPB. Absent showing that the mortgaged properties had been sold at an unusually low price or that the foreclosure sale had been attended with irregularities, the ruling in *Cometa* is also of little utility to the Spouses Tolosa's cause. Despite the latter's insistence on the supposed *prima facie* invalidity of their mortgage obligation and the foreclosure proceedings, we find that the CA correctly steered clear from said issues since they have yet to be definitively resolved in Case No. 6180.

The Spouses Tolosa are similarly out on a limb in relying on *Sulit* which was premised on the existence of surplus from the proceeds realized in the foreclosure sale. Considering that their mortgage obligation was computed by UCPB at an aggregate of ₱24,253,847.64, inclusive of interests, penalties and other charges, the ₱17,240,000.00 realized at the foreclosure sale of the properties mortgaged clearly left no surplus to speak of in the case. The Spouses Tolosa would, of course, have us believe that, without the invalid interests and charges imposed by the UCPB, their obligation would have only amounted to ₱14,041,000.00 and would have meant a surplus of ₱3,199,000.00 from the proceeds realized at the foreclosure sale.⁴⁶ Like the matter of the invalidity of their mortgage obligation to which it is inextricably linked, however, this issue has yet to be resolved in Case No. 6180 and, for said reason, cannot justify the non-issuance of the writ of possession in favor of UCPB.

At any rate, the exception made in *Sulit* had been held inapplicable where, as here, the period to redeem has already expired or when the ownership over the property had already been consolidated in favor of the mortgagee-purchaser.⁴⁷ Having consolidated its ownership over the subject properties after the Spouses Tolosa failed to exercise their right of redemption, UCPB was correctly found by the CA entitled to a writ of possession. Since any question regarding the validity of the mortgage or its

⁴⁶ *Rollo*, pp. 38-39.

⁴⁷ *Metropolitan Bank & Trust Co. v. Lamb Construction Consortium Corporation*, G.R. No. 170906, 27 November 2009, 606 SCRA 159, 171, citing *Saguan v. Philippine Bank of Communications*, G.R. No. 159882, 23 November 2007, 538 SCRA 390.

foreclosure cannot be a legal ground for refusing a writ of possession,⁴⁸ the RTC's ministerial duty to issue the same writ was by no means rendered discretionary by the pendency of Civil Case No. 6180. While there are, concededly, exceptions to the foregoing rules as above-discussed, none of them was adequately established in the Spouses Tolosa's petition.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. Accordingly, the CA's assailed 31 May 2007 Decision and 21 May 2008 Resolution are **AFFIRMED *in toto***.

SO ORDERED.




JOSE PORTUGAL PEREZ
Associate Justice

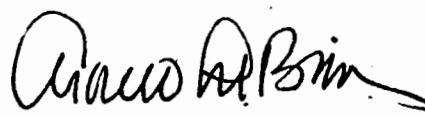
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice




ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice