Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

UNITED COCONUT PLANTERS BANK, Petitioner,	**G.R. No. 162757** Present:
-versus-	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
CHRISTOPHER LUMBO and MILAGROS LUMBO, Respondents.	Promulgated: DEC 11 2013

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DECISION

BERSAMIN, *J.*:

The implementation of a writ of possession issued pursuant to Act No. 3135 at the instance of the purchaser at the foreclosure sale of the mortgaged property in whose name the title has been meanwhile consolidated cannot be prevented by the injunctive writ.

The Case

Petitioner United Coconut Planters Bank (UCPB) appeals the decision promulgated on November 27, 2003,[1] whereby the Court of Appeals (CA) reversed and set aside the order issued on March 19, 2002 by the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 8,[2] denying the motion of respondents Christopher Lumbo and Milagros Lumbo for the issuance of a

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[1] *Rollo*, at 56-64; penned by Associate Justice Josefina Guevara-Salonga (retired), and concurred in by Associate Justice Salvador Valdez, Jr. (retired/deceased) and Associate Justice Arturo D. Brion (now a Member of this Court).

[2] Id. at 118-120.

writ of preliminary injunction to prevent the implementation of the writ of possession issued against them.

Antecedents

The respondents borrowed the aggregate amount of ₱12,000,000.00 from UCPB. To secure the performance of their obligation, they constituted a real estate mortgage on a parcel of land located in Boracay, Aklan and all the improvements thereon that they owned and operated as a beach resort known as Titay's South Beach Resort. Upon their failure to settle the obligation, UCPB applied on November 11, 1998 for the extrajudicial foreclosure of the mortgage, and emerged as the highest bidder at the ensuing foreclosure sale held on January 12, 1999. The certificate of sale was issued on the same day, and UCPB registered the sale in its name on February 18, 1999. The title over the mortgaged property was consolidated in the name of UCPB after the respondents failed to redeem the property within the redemption period.

On January 7, 2000, the respondents brought against UCPB in the RTC[3] an action for the annulment of the foreclosure, legal accounting, injunction against the consolidation of title, and damages (Civil Case No. 5920).

During the pendency of Civil Case No. 5920, UCPB filed an *ex parte* petition for the issuance of a writ of possession to recover possession of the property (Special Proceedings No. 5884). On September 5, 2000, the RTC granted the *ex parte* petition of UCPB,[4] and issued on December 4, 2001 the writ of possession directing the sheriff of the Province of Aklan to place UCPB in the actual possession of the property. The writ of possession was served on the respondents on January 23, 2002 with a demand for them to peacefully vacate on or before January 31, 2002. Although the possession of the property was turned over to UCPB on February 1, 2002, they were allowed to temporarily remain on the property for humanitarian reasons.[5]

On February 14, 2002, the respondents filed in the RTC handling Special Proceedings No. 5884 a petition to cancel the writ of possession and to set aside the foreclosure sale.[6] They included an application for a writ of preliminary injunction and temporary restraining order to prevent the implementation of the writ of possession.

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3 Branch 8, Kalibo, Aklan.
4 Branch 9, Kalibo, Aklan.
5 *Rollo*, pp. 241-242 (Partial Sheriff's Return of Service).
6 The records show that the case was re-raffled to the RTC, Kalibo, Aklan, Branch 4.

It is notable that Special Proceedings No. 5884 was consolidated with Civil Case No. 5920 on March 1, 2002. [7]

On March 19, 2002, the RTC denied the respondents' application for the issuance of a writ of preliminary injunction.[8] Aggrieved by the denial, the respondents brought a petition for *certiorari* and/or *mandamus* in the CA (C.A.-G.R. SP No. 70261).

The CA's Ruling

On November 27, 2003, the CA resolved C.A.-G.R. SP No. 70261 by granting the respondents' petition, setting aside the assailed orders, and enjoining the RTC from implementing the writ of possession "pending the final disposition of the petition for its cancellation and the annulment of the foreclosure sale."[9] It held as follows:

> A careful review of the records of this case reveals that the respondent judge committed glaring errors of jurisdiction in his assailed order in denying the petitioners' entreaty for injunctive relief pending the determination of the propriety of the writ of possession and the adjudication of the action for the annulment of the disputed foreclosure sale.
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> In the assailed order, the respondent judge opined, albeit erroneously, that the present petition for the cancellation of the writ of possession is premature to avail of the remedies under Section 8 of Act 3135 as amended by Act 4118 considering that the petitioners are still in possession of the foreclosed property.
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> Sec. 8 of Act 3135 as amended by Act 4118, provides:
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> *"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."*

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7 Branch 4, Kalibo, Aklan.
8 *Rollo*, p. 120.
9 Id. at 64.

As the records would show, although the petitioners are still in possession of the subject properties as they were allowed to temporarily stay thereat by the respondent bank, it cannot be gainsaid that the latter has already obtained the possession of the said properties. This being so, the petitioners have the legal recourse to file a petition for the cancellation of the writ of possession based on the cited legal grounds, i.e. that the mortgage was not violated or that the sale was not made in accordance with the provisions of the law. Clearly, the respondent judge erred in declaring that the said petition was prematurely filed.

Contrary to the dissertation of the respondent judge, the plain language of the law actually does not require the debtor to file a petition to cancel the writ of possession only after the purchaser had obtained possession of the foreclosed property subject of the writ. It merely states that the petition should not be filed later that thirty (30) days after the purchaser was given possession. Neither does the law qualify whether the possession is full or partial, nor permanent or temporary, as to justify the availability of the legal remedy to the mortgagor. What the plain language of the law espouses is the right of the debtor to question the validity of the foreclosure sale and the propriety of the issuance of the writ of possession.

Statutes, it must be stressed, should be construed in light of the objective to be achieved and the evil or mischief to be suppressed. Equally notable is the well-established rule that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.

Sadly, the respondent judge, in erroneously interpreting Section 8 of Act 3135, failed to observe these elementary rules considering that the law is clear and ambiguous (sic) and in fact explicitly manifest its true intention to afford the debtor legal recourses. Instead of conforming to these rules, the respondent judge interpreted the said law in a manner which betrays its true intent.

Admittedly, in this case, a writ of possession was issued against the petitioners and that the respondent bank had already been given possession of the foreclosed property although the same is only partial. This being the case, the petitioners clearly have the legal recourse to file the said petition.

In fact, this disquisition of the respondent judge respecting the untimely filing of the petition for the cancellation of the disputed writ completely contradicts the basis of his subsequent pronouncement that injunctive relief cannot be made available to the petitioners since the act complained of is already fait accompli. On one hand, when it comes to the issue of the timeliness of the petition, the disposition of the respondent judge is that the respondents are yet to gain possession of the foreclosed properties. In contrast, when it respects the propriety of the prayer for injunctive relief, he in turn declares that the act sought to be restrained is already fait accomplice on the supposition that although the Sheriff's Return of Service dated 6 March 2002 is denominated as a partial return, the possession of the said properties had already been given to the respondent judge.

> Peremptorily, the respondent judge gravely abused his discretion in bending his discourses on the matter of possession depending upon what issue implores adjudication. What is undeniable, however, is the fact that the petitioners are still in possession of the foreclosed property as they are admittedly allowed to temporarily stay thereat and that irrespective thereof, they have every right under the law to question the propriety of the issued writ by way of a petition.
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> Moreover, the respondent judge erred in declaring that he could not act on the application for injunctive relief because the writ was issued by another court of coordinate jurisdiction. The petition was filed before the same branch of the RTC of Kalibo, Aklan but was re-raffled to another branch and later on consolidated before the branch of the respondent judge where the action for the annulment of the foreclosure sale is pending. Thus, the case, which incidentally is a mere continuation of the de-parte proceeding before the same court though not before the same branch.
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> What is more appalling is that by denying the petitioners' prayer for injunctive relief, he in effect resolved the main case before him, which is the petition for the cancellation of the writ of possession. The course of his dissertation in the assailed order already manifests his predisposition to deny the petition for the cancellation of the disputed writ. Considering that there is an urgent and paramount necessity for the writ to be issued in order to prevent serious damage on the part of the petitioners pending the trial proceedings in the annulment suit, especially so since the same is also pending before the respondent judge, the Resolution dated 22 October 2003 which temporarily enjoins the implementation of the writ of possession issued against the petitioners is hereby made permanent awaiting the final disposition on the issues regarding the validity of the foreclosure sale and the said writ of possession.[10]

UCPB sought the reconsideration of the decision, but the CA denied its motion for reconsideration on March 8, 2004.

Hence, UCPB appeals by petition for review on *certiorari*.

Issues

In its petition for review,[11] UCPB asserts that the CA did not rule in accordance with prevailing laws and jurisprudence when it granted the respondents' petition for *certiorari* and enjoined the implementation of the writ of possession issued by the RTC in favor of UCPB; that the respondents were not entitled to the issuance of an injunctive writ; that assuming, *arguendo*, that the CA was within its jurisdiction to issue the assailed

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10 Id. at 61-64.
11 Id. at 13-45.

decision and resolution, no bond was posted to the effect that the respondents would pay to UCPB all the damages that it would sustain by reason of the injunction should the Court finally decide that they were not entitled to the injunctive writ; that the assailed decision and resolution were tantamount to a pre-judgment of the respondents' petition to cancel the writ of possession; and that the respondents were illegally attempting to wrest away its possession of the property.

In their comment,[12] the respondents maintain that the rule that "prohibition cannot lie against the implementation of a writ of possession"[13] was not absolute; and that the petition was infirm for raising mixed questions of fact and of law.

Ruling of the Court

The petition is impressed with merit.

To resolve the issue of whether the CA correctly granted the injunctive writ to enjoin the implementation of the writ of possession the RTC had issued to place UCPB in the possession of the mortgaged property, it is necessary to explain the nature of the writ of possession and the consequences of its implementation.

A writ of possession commands the sheriff to place a person in possession of real property. It may be issued in the following instances, namely: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged property, and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage, pending redemption under Section 7 of Act No. 3135, as amended by Act No. 4118; and (4) execution sales, pursuant to the last paragraph of Section 33, Rule 39 of the *Rules of Court*.[14]

With particular reference to an extra-judicial foreclosure of a real estate mortgage under Act No. 3135, as amended by Act No. 4118, the purchaser at the foreclosure sale may apply *ex parte* with the RTC of the province or place where the property or any part of it is situated, to give the purchaser possession thereof *during the redemption period*, furnishing bond

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12 Id. at 262-278.

13 Id. at 273.

14 *Mallari v. Government Service Insurance System*, G.R. No. 157659, January 25, 2010, 611 SCRA 32, 44; citing *Philippine National Bank v. Sanao Marketing Corporation* , G.R. No. 153951, July 29, 2005, 465 SCRA 287, 299-300; *Autocorp. Group and Autographics, Inc. v. Court of Appeals*, G.R. No. 157553, September 8, 2004, 437 SCRA 678, 689.

in an amount equivalent to the *use* of the property for a period of twelve months, to indemnify the debtor should it be shown that the sale was made without violating the mortgage or without complying with the requirements of Act No. 3135; and the RTC, *upon approval of the bond*, order that a writ of possession be issued, addressed to the sheriff of the province in which the property is situated, who shall then execute said order *immediately*.[15] We underscore that the application for a writ of possession by the purchaser in a foreclosure sale conducted under Act No. 3135 is *ex parte* and summary in nature, brought for the benefit of one party only and without notice being sent by the court to any person adverse in interest. The relief is granted even without giving an opportunity to be heard to the person against whom the relief is sought.[16] Its nature as an *ex parte* petition under Act No. 3135, as amended, renders the application for the issuance of a *writ of possession* a non-litigious proceeding.[17] Indeed, the grant of the writ of possession is but a ministerial act on the part of the issuing court, because its issuance is a matter of right on the part of the purchaser.[18] The judge issuing the order for the granting of the writ of possession pursuant to the express provisions of Act No. 3135 cannot be charged with having acted without jurisdiction or with grave abuse of discretion.[19]

The reckoning of the period of redemption by the mortgagor or his successor-in-interest starts from the registration of the sale in the Register of Deeds. Although Section 6[20] of Act No. 3135, as amended, specifies that the

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[15] Section 7 of Act No. 3135, as amended by Act No. 4118, states:

> Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (now Regional Trial Court) of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered four hundred ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[16] *Mallari v. Government Service Insurance System*, G.R. No. 157659, January 25, 2010, 611 SCRA 32, 50; citing *Santiago v. Merchants Rural Bank of Talavera, Inc.*, G.R. No. 147820, March 18, 2005, 453 SCRA 756, 763-764.

[17] Id., citing *Penson v. Maranan*, G.R. No. 148630, June 20, 2006, 491 SCRA 396, 407.

[18] *Oliveros v. Presiding Judge, RTC, Branch 24, Biñan, Laguna*, G.R. No. 165963, September 3, 2007, 532 SCRA 109, 118-119.

[19] *Ong v. Court of Appeals*, G.R. No. 121494, June 8, 2000, 333 SCRA 189, 197-198.

[20] Section 6, Act No. 3135, as amended, reads:

> Sec. 6. *Redemption*. – In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, **may redeem the same at anytime within the term of one year from and after the date of the sale**; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act. (Emphasis supplied)

period of redemption starts *from* and *after* the date of the sale, jurisprudence has since settled that such period is more appropriately reckoned from the date of registration. In *Mallari v. Government Service Insurance System*,[21] the Court explains the shift, *viz*:

> In this regard, we clarify that the redemption period envisioned under Act 3135 is reckoned *from the date of the registration of the sale*, not from and after the date of the sale, as the text of Act 3135 shows. Although the original *Rules of Court* (effective on July 1, 1940) incorporated Section 464 to Section 466 of the *Code of Civil Procedure* as its Section 25 (Section 464); Section 26 (Section 465); and Section 27 (Section 466) of Rule 39, with Section 27 still expressly reckoning the redemption period to be "at any time within twelve months *after the sale*;": and although the *Revised Rules of Court* (effective on January 1, 1964) continued to provide in Section 30 of Rule 39 that the redemption be made from the purchaser "at any time within twelve (12) months *after the sale*," the 12-month period of redemption came to be held as beginning "to run not from the date of the sale but from the time of registration of the sale in the Office of the Register of Deeds." This construction was due to the fact that the sheriff's sale of registered (and unregistered) lands did not take effect as a conveyance, or did not bind the land, until the sale was registered in the Register of Deeds.
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> Desiring to avoid any confusion arising from the conflict between the texts of the *Rules of Court* (1940 and 1964) and Act No. 3135, on one hand, and the jurisprudence clarifying the reckoning of the redemption period in judicial sales of real property, on the other hand, the Court has incorporated in Section 28 of Rule 39 of the current *Rules of Court* (effective on July 1, 1997) the foregoing judicial construction of reckoning the redemption period from the date of the registration of the certificate of sale, to wit:
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> > Sec. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed*. — The judgment obligor, or redemptioner, may redeem the property from the purchaser, **at any time within one (1) year from the date of the registration of the certificate of sale,** by paying the purchaser the amount of his purchase, with one *per centum* per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.
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> > Property so redeemed may again be redeemed within sixty (60) days after the last redemption upon payment of the sum paid on the last redemption, with two *per centum* thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his

[21] Supra note 16, at 44-48.

> own, with interest. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty (60) days after the last redemption, on paying the sum paid on the last previous redemption, with two *per centum* thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest.
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> Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the registry of deeds of the place, and if any assessments or taxes are paid by the redemptioner or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registry of deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens. (30a)
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> Accordingly, the mortgagor or his successor-in-interest must redeem the foreclosed property *within one year from the registration of the sale with the Register of Deeds* in order to avoid the title from consolidating in the purchaser. x x x

If the redemption period expires without the mortgagor or his successor-in-interest redeeming the foreclosed property within one year from the registration of the sale with the Register of Deeds, the title over the property consolidates in the purchaser. The consolidation confirms the purchaser as the owner entitled to the possession of the property without any need for him to file the bond required under Section 7 of Act No. 3135.[22] The issuance of a writ of possession to the purchaser becomes a matter of right upon the consolidation of title in his name,[23] while the mortgagor, by failing to redeem, loses all interest in the property.[24]

The property was sold at the public auction on January 12, 1999, with UCPB as the highest bidder. The sheriff issued the certificate of sale to UCPB on the same day of the sale. Considering that UCPB registered the certificate of sale in its name on February 18, 1999, the period of redemption was one year from said date. By virtue of the non-redemption by the respondents within said period, UCPB consolidated the title over the property in its name.

It is clear enough, therefore, that the RTC committed no grave abuse of discretion but acted in accordance with the law and jurisprudence in denying the respondents' application for the injunctive writ filed on February 14, 2002 in Special Proceedings No. 5884 to prevent the implementation of the writ of possession issued on December 4, 2001.

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22 *Chailease Finance Corporation v. Ma*, G.R. No. 151941, August 15, 2003, 409 SCRA 250, 253, 254.
23 *Mallari v. Government Service Insurance System*, supra note 16, at 49.
24 *Yulienco v. Court of Appeals*, G.R. No. 141365, November 27, 2002, 393 SCRA 143, 152.

Consequently, the CA grossly erred in granting the respondents' petition for *certiorari* and/or *mandamus*, and in enjoining the RTC from implementing the writ of possession in favor of UCPB.

Other weighty considerations justify resolving this appeal in favor of UCPB.

The first is that the CA did not properly appreciate the nature of the supposed error attributed to the RTC.

Assuming, though not conceding, that the RTC did err in denying the respondents' application for injunction to prevent the implementation of the writ of possession, its error related only to the correct application of the law and jurisprudence relevant to the application for injunction. As such, the error amounted only to one of judgment, not of jurisdiction. An error of judgment is one that the court may commit in the exercise of its jurisdiction, and such error is reviewable only through an appeal taken in due course. In contrast, an error of jurisdiction is committed where the act complained of was issued by the court without or in excess of jurisdiction, and such error is correctible only by the extraordinary writ of *certiorari*.[25]

Considering that there is no question that the RTC had jurisdiction over both Civil Case No. 5920 and Special Proceedings No. 5884, it should follow that its consideration and resolution of the respondents' application for the injunctive writ filed in Special Proceedings No. 5884 were taken in the exercise of that jurisdiction. As earlier made plain, UCPB as the registered owner of the property was at that point unquestionably entitled to the full implementation of the writ of possession. In the absence of any clear and persuasive showing that it capriciously or whimsically denied the respondents' application, its denial of the application did not constitute grave abuse of discretion amounting to either lack or excess of jurisdiction.

It was of no consequence at all that UCPB made its *ex parte* application for the writ of possession the action (Special Proceedings No. 5884) when Civil Case No. 5920 (in which the respondents were seeking the annulment of the foreclosure and the stoppage of the consolidation of title, among other reliefs sought) was already pending in the RTC, for the settled jurisprudence is to the effect that the pendency of an action for the annulment of the mortgage or of the foreclosure sale does not constitute a legal ground to prevent the implementation of a writ of possession.[26]

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[25] *AAG Trucking v. Yuag*, G.R. No. 195033, October 12, 2011, 659 SCRA 91, 100.

[26] *De Vera v. Agloro*, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 215; *Mamerto Maniquiz Foundation, Inc. v. Pizarro*, A.M. No. RTJ-03-1750, January 14, 2005, 448 SCRA 140, 151; *Vaca v. Court of Appeals*, G.R. No. 109672, July 14, 1994, 234 SCRA 146, 148; *Vda. de Jacob v. Court of Appeals*, G.R. Nos. 88602 and 89544, April 6, 1990, 184 SCRA 294, 302.

The second concerns the CA's reversing and undoing the RTC's denial of the respondents' application for the injunctive writ, and enjoining the RTC from implementing the writ of possession against the respondents "pending the final disposition of the petition for its cancellation and the annulment of the foreclosure sale."[27] The CA effectively thereby granted the respondents' application for the injunctive writ. In so doing, however, the CA ignored the essential requirements for the grant of the injunctive writ, and disregarded the patent fact that the respondents held no right *in esse* that the injunctive writ they were seeking would protect. Thus, the CA committed another serious error.

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular a particular act or acts. It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory injunction. Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.

Under Section 3, Rule 58 of the *Rules of Court*, the issuance of a writ of preliminary injunction may be justified under any of the following circumstances, namely:

> *(a)* The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
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> *(b)* The commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
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> *(c)* A party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

A right is *in esse* if it exists in fact. In the case of injunction, the right sought to be protected should at least be shown to exist *prima facie*. Unless such a showing is made, the applicant is not entitled to an injunctive relief. In *City Government of Butuan v. Consolidated Broadcasting System (CBS),*

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[27] *Rollo*, p. 64.

Inc.,[28] the Court has stressed the essential significance of the applicant for injunction holding a right *in esse* to be protected, stating:

> As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. **It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought. Accordingly, the conditions for the issuance of the injunctive writ are: (*a*) that the right to be protected exists *prima facie*; (*b*) that the act sought to be enjoined is violative of that right; and (*c*) that there is an urgent and paramount necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute. Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law**. (Bold underscoring supplied for emphasis)

However, the respondents made no such showing of their holding a right *in esse*. They could not do so simply because their non-redemption within the period of redemption had lost for them any right in the property, including its possession. The absence of a right *in esse* on their part furnishes a compelling reason to undo the CA's reversal of the RTC's denial of their application for injunction as well as to strike down the injunctive relief the CA afforded to the respondents. It cannot be otherwise, for they had no "right clearly founded on or granted by law or is enforceable as a matter of law".

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** the decision promulgated on November 27, 2003 and the resolution promulgated on March 8, 2004 in C.A.-G.R. SP. No. 70261; **DISMISSES** the petition in C.A.-G.R. SP. No. 70261 for lack of factual and legal merits; **DECLARES** that there is now no obstacle to the implementation of the writ of possession issued in favor of the petitioner; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

[28] G.R. No. 157315, December 1, 2010, 636 SCRA 320, 336-337.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been 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