

SPECIAL THIRD DIVISION

[G.R. No. 178330, July 23, 2009]

**MARTIN T. SAGARBARRIA, PETITIONER, VS. PHILIPPINE
BUSINESS BANK, RESPONDENT.**

R E S O L U T I O N

NACHURA, J.:

For resolution is petitioner's motion for reconsideration urging this Court to reconsider its Decision promulgated on January 21, 2008, viz.:

Considering the petition for review on certiorari, as well as the comment thereon, the Court resolves to DENY the petition for failure to sufficiently show that the appellate court committed reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction.^[1]

The antecedents.

Petitioner Martin Sagarbarria (petitioner) executed a deed of real estate mortgage over his property in San Lorenzo Village, Makati City, in favor of the respondent Philippine Business Bank (PBB) to secure the P11,500,000.00 loan of Key Commodities Inc. (Key Commodities).

When the loan became due and demandable, Key Commodities failed to pay the same. Consequently, on February 28, 2003, PBB filed an application for foreclosure with the Office of the Clerk of Court and Ex-Officio Sheriff of Makati. The auction sale was then set on March 28, 2003 and a notice of sale was issued.

To enjoin the PBB from proceeding with the foreclosure, petitioner filed a complaint for the *Annulment of Real Estate Mortgage, Nullification of Application for Extrajudicial Foreclosure of Real Estate Mortgage and Damages, with prayer for the immediate issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction*^[2] with the Regional Trial Court (RTC) of Makati City. It was docketed as Civil Case No. 03-312 and was raffled to Branch 64. Petitioner succeeded in pre-empting the auction sale as PBB withdrew its application for extra-judicial foreclosure.

On October 30, 2003, PBB filed an Answer^[3] in Civil Case No. 03-312. Traversing petitioner's complaint, PBB contended that there was no factual and legal basis for the annulment of the mortgage. By way of counterclaim, PBB prayed for the payment of the mortgage loan which had already reached P18,000,000.00.

On February 24, 2005, while the annulment case remained pending, PBB revived the remedy of foreclosure. It filed a petition^[4] for extrajudicial foreclosure, supplementing the facts stated in its first application, as follows: (i) as of February 2005, the obligation had ballooned to P30,000,000.00; (ii) the offer of *dacion en pago* was rejected and another demand to pay was served on the petitioner; and (iii) the petitioner's address was already 22 Joaquin Street, San Lorenzo Village Makati.

The petition was granted and a notice of sale was issued setting the auction sale on March 28, 2005. The sale proceeded and the property was awarded to the PBB as the sole bidder for P13,000,000.00. A certificate of sale was issued in favor of the PBB and was registered with the Registry of Deeds on March 29, 2005.

In April 2005, respondent filed a petition for the issuance of a writ of possession with the RTC of Makati, docketed as LRC Case No. M-4676 and raffled to Branch 145. Despite the *ex parte* nature of the proceeding, the RTC was able to give due course to the petition only after a year or on April 27, 2006. The RTC granted the petition and ordered the issuance of a writ of possession in favor of PBB upon the latter's posting of a bond of P13,000,000.00.^[5] However, after being informed that the redemption period had already expired and PBB had consolidated its ownership over the subject property on April 20, 2006, the RTC amended its decision on May 29, 2006 by deleting the requirement of a bond. On the same day, a writ of possession^[6] was issued in favor of PBB.

Petitioner assailed the issuance of the writ by filing a petition for *certiorari* with the CA. It likewise sought the annulment of the extrajudicial proceedings on the ground that it was conducted and issued without notice and in violation of the rule against forum shopping. Petitioner claimed that he was effectively denied his right to participate in the foreclosure proceedings when the notice of sale was forwarded to him at a different address, despite knowledge of his actual address. He also claimed that the PBB committed forum-shopping when it filed an application for judicial foreclosure during the pendency of the civil case for annulment of mortgage. By opting to collect on its credit through a counterclaim in the case for annulment of mortgage, it had already waived the remedy of extrajudicial foreclosure.

By Decision^[7] dated November 22, 2006, the Court of Appeals (CA) affirmed PBB's entitlement to a writ of possession as a matter of right. The CA upheld the general rule that the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function of the court. It added that the right of the purchaser to the immediate possession of the property cannot be defeated by the pendency of a case for annulment of the mortgage. The CA likewise rejected the claim of forum shopping, holding that to pursue an action, which has a different cause of action, or a remedy that the law allows to be taken despite the existence of another action, is not forum shopping. Finally, it ruled that *certiorari* is not a proper remedy because Section 8 of Act No. 3135 provides for an adequate remedy against an invalid or irregular foreclosure. Hence, petitioner should have filed a petition under Section 8^[8] of Act No. 3135, and in case of an adverse ruling, an appeal from the said adverse decision. The rule is explicit that *certiorari* may only be allowed where there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Although the rule admits of several exceptions, none of them are in point in petitioner's case. Petitioner filed a motion for reconsideration,

but the CA denied the same in its June 6, 2007 Resolution.^[9]

Petitioner came to us, faulting the CA for dismissing his petition for *certiorari*. On January 21, 2008, this Court denied the petition for failure to sufficiently show that the CA had committed any reversible error in the assailed Decision and Resolution to warrant the exercise by this Court of its discretionary appellate jurisdiction.^[10]

Petitioner then filed a *Motion for Reconsideration (With Motion to Elevate the Case to the Supreme Court en Banc)*.^[11] In its June 16, 2008 Resolution,^[12] this Court required PBB to comment on the motion for reconsideration, but denied petitioner's motion to elevate the case to the Court *en banc*.

In the main, petitioner argues that the RTC committed grave abuse of discretion in granting the writ of possession despite the invalidity of the foreclosure proceedings. Thus, he posits that the CA committed reversible error in dismissing his petition for *certiorari*. Petitioner urges us to reconsider our Resolution denying the appeal.

At the outset, it must be emphasized that what is on appeal before us is only the issuance of the writ of possession over the subject property issued by the RTC, Branch 145, in LRC Case No. M-4676.

Under Sec. 7 of Act No. 3135,^[13] a writ of possession may be issued 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.^[14]

Within the one-year redemption period, a purchaser in a foreclosure sale may apply for a writ of possession by filing a petition in the form of an *ex parte* motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject property and the approval of the corresponding bond, the law, also in express terms, directs the court to issue the order for a writ of possession.^[15]

On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property. Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.^[16]

In the present case, petitioner failed to redeem the property within one (1) year from the registration of the Sheriff's Certificate of Sale with the Register of Deeds. PBB, being the purchaser of the property at public auction, thus, had the right to file an *ex parte* motion for the issuance of a writ of possession; and considering that it was its ministerial duty to do so, the trial court had to grant the motion and to