

SECOND DIVISION

[G.R. NO. 149696, July 14, 2006]

**CARDINAL BUILDING OWNERS ASSOCIATION, INC.,
PETITIONER, VS. ASSET RECOVERY AND MANAGEMENT
CORPORATION, RESPONDENT.**

DECISION

SANDOVAL-GUTIERREZ, J.:

[1] assailing the Decision [2] dated August 31, 2001 of the Court of Appeals in CA-G.R. SP No. 53216, entitled "ASSET RECOVERY & MANAGEMENT CORPORATION, *petitioner*, versus HON. ANTONIO I. DE CASTRO, as Pairing Judge of the Regional Trial Court, Branch 4, Manila, and CARDINAL BUILDING OWNERS ASSOCIATION, INC., *respondents*."

The facts of this case are:

Cardinal Building Owners Association, Inc., petitioner, is a corporation organized and existing under Republic Act (R.A.) No. 4726 (The Condominium Act) with office located at 999 Stanisco Towers, Pedro Gil corner Agoncillo Streets, Malate, Manila.

Benjamin Marual is a member of petitioner association being the owner of two condominium units at the Cardinal Office Condominium, covered by Condominium Certificates of Title No. 14335 (1st floor) and No. 17730 (2nd floor). Due to his failure to pay assessment dues in the amount of P530,554.00, petitioner association filed with the Regional Trial Court (RTC), Branch 4, Manila, a complaint for sum of money against him, docketed as Civil Case No. 95-74919.

During the course of the proceedings, or on September 13, 1996, petitioner and Marual filed with the RTC a Compromise Agreement, [3] declaring that they have amicably settled their controversy under the following terms and conditions:

1. Defendant (Benjamin Marual) binds himself to settle all his outstanding dues and/or assessments to plaintiff (Cardinal Building Owners Association, Inc.) totaling, as of July 1, 1996, the sum of P381,152.52 in the following manner:
 - a) P75,000.00 – upon signing of this agreement as and by way of initial settlement of dues and/or assessments in the amount of P25,000.00, and attorney's fees in the amount of P50,000.00;
 - b) P21,739.52 – every fifth day of each and every succeeding month until his account is fully paid.

To this end, defendant agrees to issue two (2) checks in payment of the

amount mentioned in par. 1(a), and one (1) check in the amount of P21,739.52 dated August 5, 1996, and one (1) check in the same amount every month thereafter;

2. The parties hereby waive their respective claims and counterclaims with respect to the case at bar;

3. Should defendant fail to make good any of the postdated checks given to the plaintiff in payment of his obligation, the plaintiff shall be entitled to execute the judgment of this court, for the full amount of plaintiff's claim of P381,152.52, plus accruing amounts due in months subsequent to July 1, 1996 and interest and charges. Should the foregoing be not complied with, the parties further agree that plaintiff may, at his option, proceed with the extrajudicial enforcement of its lien under the provisions of the Condominium Act and the condominium's master deed, and pertinent provisions of documents covering defendant's condominium units at Stanisco Towers (formerly Cardinal Bldg. Condominium).

x x x

On October 9, 1996, the RTC rendered a Decision^[4] approving the Compromise Agreement and enjoining the parties to strictly comply with its terms.

However, Marual failed to comply with his obligation, prompting petitioner to file with the RTC a motion for the execution of the compromise judgment. Accordingly, on February 25, 1997, the RTC issued a writ of execution.^[5] On March 7, 1997, the court sheriff served a "Notice of Levy/Attachment upon Realty"^[6] on the Registry of Deeds of Manila. It was only at this time when petitioner learned^[7] that there were prior annotations on the same titles, thus:

(a) On October 7, 1993, Marual mortgaged his two condominium units to Planters Development Bank. The mortgage was foreclosed and the said units were sold to the bank at a public auction. On March 27, 1996, the certificate of sale was annotated on the two Condominium Certificates of Title.

(b) On November 11, 1996, before the expiration of the period for redemption of the foreclosed realties, Marual sold the same units to Asset Recovery and Management Corporation,^[8] **herein respondent**. On February 26, 1997, the deed of sale was registered in the Registry of Deeds of Manila.^[9]

(c) On March 4, 1997, respondent filed with the RTC, Branch 55, Manila, an action for *mandamus* to redeem the condominium units against the bank, docketed as Civil Case No. 97-82366. On April 1, 1997, the RTC issued a writ of preliminary injunction^[10] enjoining the bank from consolidating in its name the titles or taking possession of the units, or otherwise disposing of them until further orders from the court.

After learning of the above circumstances, petitioner filed with the RTC, Branch 4, in the same Civil Case No. 95-74919 for sum of money, a Motion for Possession^[11] of

the units. On June 8, 1999, the RTC, Branch 4 issued an Order^[12] granting the motion and directing the issuance of the writ of possession, as prayed for by petitioner, thus:

x x x. Accordingly:

- (a) plaintiff (now petitioner Cardinal Building Owners Association, Inc.) is allowed to repossess subject condo units for four (4) years to enable it to recover the aforesaid account of defendant (Benjamin Marual) plus reasonable interest thereon, under proper accounting procedure and periodic reports thereon to the Court;
- (b) plaintiff is allowed to lease, as it may deem necessary, but not to mortgage or sell, said condo units to achieve the foregoing objective; and
- (c) defendant and/or his agents or assigns are enjoined from interfering in any manner the aforesaid possession by plaintiff until the foregoing objective is achieved.

Further, upon the filing of an indemnity bond of P2 million, let a writ of possession issue directing a sheriff of the Regional Trial Court of Manila or his authorized representative to place plaintiff herein in actual, physical possession of the two condominium units located in the Cardinal Office Condominium at 999 Pedro Gil St., Malate, Manila and covered by CCTs No. 14335 (1st floor) and No. 17730 (2nd floor) and to eject therefrom defendant Benjamin Marual and all other persons claiming rights under him.

SO ORDERED.

On July 30, 1999, upon petitioner's filing of the required bond, a writ of possession^[13] was issued.

Aggrieved, respondent filed with the Court of Appeals a Petition for Certiorari, docketed as CA-G.R. SP No. 53216. Respondent alleged mainly that the RTC Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Order dated June 8, 1999 and the writ of possession which are in variance with the compromise judgment and the corresponding writ of execution in Civil Case No. 95-74919.

On August 31, 2001, the Court of Appeals rendered a Decision^[14] granting respondent's petition and nullifying the assailed RTC Order of June 8, 1999, thus:

There are four instances when a writ of possession may be issued, to wit:

- 1) in a land registration proceeding, which is a proceeding *in rem* (Sec. 17, Act No. 496; *Estipona v. Navarro*, L-41825, Jan. 30, 1976, 69 SCRA 285, 291);
- 2) in an extra-judicial foreclosure of a realty mortgage (Sec. 7, Act No. 3135);

3) in a judicial foreclosure of mortgage, a quasi in rem proceeding, provided that the mortgagor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened (*Rivera v. Court of First Instance of Nueva Ecija and Rupac*, 61 Phil. 201; *Ramos v. Manalac and Lopez*, 89 Phil. 270, 275); and

4) in execution sales (last par. Of Sec. 35, Rule 39, Rules of Court).^[15]

Since the case at bar does not fall under any of these four instances and, in any event, since it is not claimed that the judgment based on a compromise contemplated the issuance of a writ of possession to private respondent of the condominium units in case Marual, from whom petitioner claims to have purchased the same, failed to comply with his obligation under said judgment based on a compromise, then public respondent's assailed Order directing the issuance of a writ of possession was issued with grave abuse of discretion.

Hence, the instant Petition for Review on Certiorari. Petitioner contends that the Court of Appeals Decision "is not based upon, and militates against, the applicable law, R.A. No. 4726."

In its Comment,^[16] respondent avers that the petition should be denied for being unmeritorious.

The petition must fail.

Section 20 of R.A. No. 4726, otherwise known as the Condominium Act, provides:

Sec. 20. An assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, **shall be and become a lien upon the condominium assessed when the management body causes a notice of assessment to be registered with the Register of Deeds** of the city or province where such condominium project is located. The notice shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of the condominium unit against which the same has been assessed, and the name of the registered owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Upon payment of said assessment and charges or other satisfaction thereof, the management body shall cause to be registered a release of the lien.

Such lien shall be superior to all other liens registered **subsequent** to the **registration of said notice of assessment** except real property tax liens and except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances. Such liens may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgage or real property. Unless