

SECOND DIVISION

[G.R. NO. 163410, September 16, 2005]

**CONCEPCION R. ANCHETA, PETITIONER, VS. METROPOLITAN
BANK & TRUST COMPANY, INC. AND COURT OF APPEALS,
RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

This is a petition for review on *certiorari* assailing the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 78744, as well as its Resolution^[2] denying the motion for reconsideration thereof.

The Antecedents

On March 7, 2001, the Metropolitan Bank and Trust Company, Inc. (Metrobank) filed a petition with the Regional Trial Court (RTC) for the issuance of a writ of possession over seven (7) parcels of land located in the City of Manila, covered by Transfer Certificates of Title (TCT) Nos. 249617 to 249623.

In its petition, Metrobank alleged that the Maglalang Construction and Development Corporation (Maglalang Corporation, for brevity) submitted a Real Estate Mortgage executed by Ariel N. Reyes (as attorney-in-fact of the registered owners of the property), to secure the payment of its loans in the aggregate amount of P86,915,385.31. The mortgaged properties were located in Manila and covered by TCT Nos. 229431 to 229437. Upon the corporation's failure to pay their loan accounts, Metrobank filed on October 3, 1997 a petition for extrajudicial foreclosure of the real estate mortgage. On November 26, 1997, the property was sold at a public auction, with Metrobank as the highest bidder for P83,575,590.69. On September 7, 1998, the *ex-officio* sheriff executed a Certificate of Sale^[3] over the property in favor of Metrobank, and the mortgagors failed to redeem the property within the period therefor. Accordingly, Metrobank executed an Affidavit of Consolidation of Ownership^[4] on September 20, 2000. On September 25, 2000, TCT Nos. 229431 to 229437 were cancelled, and on the basis of a certificate of sale executed by the *ex-officio* sheriff, the Register of Deeds issued TCT Nos. 249617 to 249623 in favor of and under the name of Metrobank. Thus, in a Letter^[5] dated January 31, 2001, Metrobank demanded that the mortgagors vacate the property within 10 days therefrom, otherwise, it would be impelled to file a petition for a writ of possession in the RTC of Manila. The mortgagors refused to vacate the property.

The petition for the issuance of a writ of possession was docketed as LRC No. N-133, LRC No. N-36, LRC No. N-9938 and raffled to Branch 4 of the court. It contained a Verification with Certificate of Non-Forum Shopping executed by Atty. Ramon S. Miranda, the Legal Officer of Metrobank's Legal Division.^[6]

During the hearing of the petition, Metrobank adduced testimonial and documentary evidence in support of its petition.

On July 27, 2001, the RTC issued an Order granting the petition, the dispositive portion of which reads:

WHEREFORE, let the corresponding writ of possession be issued directing the Sheriff of this Branch to place the herein petitioner in actual physical possession of the foreclosed properties situated in the District of Sta. Cruz, City of Manila, and covered by Transfer Certificates of Title Nos. 229431, 229432, 229433, 229434, 229435, 229436 and 229437 (now Transfer Certificates of Title Nos. 249617, 249618, 249619, 249620, 249621, 249622 and 249623) and to eject therefrom respondent Maglalang Construction & Development Corporation, its agents and such other persons claiming rights under it.^[7]

On November 8, 2001, the RTC issued a Writ of Possession directing the Sheriff of the RTC of Manila to place Metrobank in possession of the property described therein.^[8] The Sheriff complied with the order and placed Metrobank in possession of the property.

On March 1, 2002, Concepcion R. Ancheta, one of the mortgagors under the Real Estate Mortgage executed in favor of Metrobank, filed an "Urgent Motion for Intervention" in LRC No. N-133, praying that in the interest of substantial justice, fair play and equity, she be allowed to intervene, and that her opposition-in-intervention appended thereto be admitted.

In her opposition, Ancheta alleged that she was one of the co-owners of the property. On April 17, 1998, she and some of her co-owners, Dr. Ambrocio M. Reyes, Lorenzo M. Reyes, Jr. and Julita Reyes Maylad, filed a Complaint^[9] for the nullification of the real estate mortgage executed in favor of Metrobank with the RTC of Manila, docketed as Civil Case No. 98-88370 and raffled to Branch 32 of the court, impleading Godofredo Cruz and Rodrigo Maglalang, through their attorney-in-fact, Ariel N. Reyes; as well as the extrajudicial foreclosure and the sale of the subject property at public auction. After due proceedings, the court rendered a summary judgment on November 17, 1999 in their favor, declaring null and void the real estate mortgage, the extrajudicial foreclosure of the said mortgage and the sale of the property at public auction.^[10] Ancheta further alleged that the defendants therein appealed the decision to the CA, docketed as CA-G.R. CV No. 69922, and that the appeal was still pending thereat. Ancheta posited that until the appealed decision was set aside, any petition for a writ of possession would have no factual and legal basis, and as such, prayed that the writ of possession already issued by the RTC be set aside.

Metrobank opposed the intervention on the ground that it had become moot and academic because the court had already granted its petition for a writ of possession. Metrobank averred that under Section 2, Rule 19 of the 1997 Revised Rules of Civil Procedure, intervention is proscribed after the trial court has issued its judgment.^[11]

In its rejoinder, Metrobank alleged that intervention is proscribed in a petition for a writ of possession under Section 7 of Act No. 3135, as amended, because as provided therein, the proceeding is *ex-parte* in nature. Moreover, a petition for a writ of possession can legally and properly proceed independently and regardless of the pendency of a complaint for annulment of the real estate mortgage, the extrajudicial foreclosure thereof and the sale of the subject property. Besides, Metrobank averred that, under Section 8 of Act No. 3135, as amended by Act No. 4118, the mortgagor may file a petition in the trial court which issued the writ of possession to set aside the sale within 30 days after the purchaser-mortgagee was given possession of the property.

Ancheta filed a motion to strike-out Metrobank's opposition to the intervention, claiming that Atty. Miranda had no authority to execute the verification and certificate of non-forum shopping embodied in its petition for a writ of possession; hence, the petition for a writ of possession must be expunged from the records.

On January 17, 2003, the RTC issued an Order^[12] denying the motion for intervention. The RTC ruled that such motion was filed long after its order granting the petition for a writ of possession had been issued. It held that the petition for a writ of possession under Act No. 3135, as amended, is by nature, *ex parte*, that is, the judicial proceedings was brought for the benefit of one party only and without notice to, or consent of, any other person adversely affected. The court also ruled that it was not barred from taking cognizance of or granting the petition for a writ of possession, notwithstanding the pendency of CA-G.R. CV No. 69922 before the appellate court. The RTC, thereafter, ruled that Ancheta's motion to strike-out the petition on the ground that the certification against forum shopping was defective was without merit. Ancheta filed a motion for reconsideration of the order, which the court denied.^[13]

Ancheta, the movant-in-intervention, forthwith filed a petition for *certiorari* and Prohibition with the CA, alleging that the order of the court denying her motion to intervene was issued with grave abuse of discretion amounting to excess or lack of jurisdiction.

On November 24, 2003, the CA rendered judgment dismissing the petition, on the ground that the proceedings in a petition for writ of possession is summary in nature, it being *ex parte*. Furthermore, the matter of whether or not the petition is defective may be dealt with in a proceeding as outlined in Section 8 of Act No. 3135. It further held that Metrobank had already consolidated its title over the property and had become its registered owner.^[14] The CA also ruled that Atty. Miranda was authorized to execute the certificate of non-forum shopping, and, likewise, denied Ancheta's motion for reconsideration.

Ancheta, now the petitioner, filed the instant petition for review on *certiorari* against Metrobank, assailing the decision of the CA. She insists that the certificate of non-forum shopping incorporated in the petition for a writ of possession filed by respondent Metrobank is defective because Atty. Miranda, the Legal Officer who signed the certification, had no authority to do so. She posits that the board resolution authorizing Atty. Miranda to file the petition was approved only on July 9, 2003, long after the petition for a writ of possession was filed, and as such, did not cure the defect. The petitioner argues that although a petition for a writ of

possession is *ex parte* in nature, such rule would apply only if the purchaser at public auction is an innocent purchaser for value; a purchaser in bad faith (such as the respondent) is not entitled to the protection under Act No. 3135. The petitioner insists that in view of the decision of Branch 32 in Civil Case No. 98-88370 and the pendency of Metrobank's appeal in CA-G.R. CV No. 69922, the RTC was barred from issuing a writ of possession. The petitioner posits that by granting the petition for the writ of possession, the RTC thereby interfered with and disregarded the summary judgment rendered by Branch 32 of the RTC, a violation of the doctrine of judicial non-interference.

The petition has no merit.

Central to the first issue is Section 5, Rule 7 of the 1997 Rules of Civil Procedure, which provides:

SEC. 5. *Certification against forum shopping.* – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

A certificate of non-forum shopping is required only in complaints or other initiatory pleadings, and *a petition for a writ of possession under Section 7 of Act No. 3135 is not a complaint or an initiatory pleading.* Indeed, this Court in *Spouses Arquiza v. Court of Appeals*,^[15] held that:

... The certification against forum shopping is required only in a complaint or other *initiatory pleading*. The *ex parte* petition for the issuance of a writ of possession filed by the respondent is not an initiatory pleading. Although the private respondent denominated its pleading as a petition, it is, nonetheless, a motion. What distinguishes a motion from a petition or other pleading is not its form or the title given by the party executing it, but rather its purpose. The office of a motion