

## FIRST DIVISION

[ G.R. No. 124658, December 15, 1999 ]

**PHILIPPINE TRUST COMPANY, PETITIONER, VS. HONORABLE COURT OF APPEALS AND SIMEON POLICARPIO SHIPYARD AND SHIPBUILDING COMPANY, RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

The petition before us has its origins in a decision rendered by this Court on August 25, 1969 entitled "Philippine Trust Company vs. Simeon Policarpio, Modesta Reyes and Iluminada ("Lumen") R. Policarpio."<sup>[1]</sup>

Sometime in 1958, Iluminada "Lumen" Policarpio, obtained a loan from Philippine Trust Company (Philtrust, for short) in the sum of P300,000.00. As security for the loan, Lumen's parents, as sureties, executed a deed of mortgage to the bank over some parcels of land, including all the improvements thereon, covered by Transfer Certificate of Title No. 4144 (now 51668) of the Register of Deeds of the City of Manila and Transfer Certificate of Title No. 24182 of the Register of Deeds of Rizal. Upon failure of Lumen Policarpio to pay the loan when it fell due, Philtrust initiated foreclosure proceedings before the Court of First Instance (CFI) of Manila. The trial court rendered judgment for foreclosure on October 14, 1963, which this Court affirmed on August 25, 1969.<sup>[2]</sup>

On October 15, 1970, Philtrust purchased the properties at the auction sale. The sale was confirmed by the trial court in 1971. That same year, the bank was able to consolidate ownership over the property. On March 13, 1972, a Transfer Certificate of Title was issued in the name of the bank. Lumen Policarpio filed a complaint in the Court of First Instance of Rizal on March 23, 1972 to declare the auction sale void for lack of merit, however, the trial court decided in favor of Philtrust. Lumen Policarpio elevated the case to this Court on *certiorari* but the petition was dismissed on July 23, 1973 for lack of merit.

In February 1974, the ancestral house of the Policarpios situated in the same property already owned by the bank was destroyed by a typhoon. Lumen Policarpio sent letters to the bank officers informing them of the destruction and her plan to rebuild the house. Philtrust, however, never acted on any of the letters. Thus, Lumen Policarpio proceeded to construct the house, purportedly to provide shelter for her ailing mother. Meanwhile, on October 10, 1976, Philtrust filed a motion for the issuance of a writ of possession of said properties. On February 28, 1977, the trial court issued an order declaring that the bank was entitled to the possession of the properties but allowed the previous owners, the Policarpios, to adduce evidence showing that they built the house in good faith. Despite having been given several opportunities to do so, the Policarpios failed to introduce any evidence in their behalf, prompting the trial court to issue on May 29, 1979 the writ of possession.

Upon the denial of a subsequent motion for reconsideration, Lumen Policarpio filed a petition for *certiorari* with the Court of Appeals, asking for leave to present evidence that she was a builder in good faith. The case was consolidated with CA-G.R. S.P. No. 10129, entitled "*Ricardo Policarpio, Petitioner versus Hon. Elvirio Peralta, Respondent*," since the two cases arose from the same facts. On August 29, 1980, the Court of Appeals dismissed the two petitions and upheld the writ of possession issued by the trial court. Lumen Policarpio filed a petition for review with this Court but the same was denied for lack of merit. On motion for reconsideration, however, this Court set aside its earlier resolution and remanded the case to the Court of Appeals to allow Lumen Policarpio to adduce evidence showing that she was a builder in good faith. Meanwhile, on December 29, 1980, the bank sold the properties to the present owner, Alto Industrial Enterprises, Inc. which, on September 17, 1984, was allowed to intervene by the court *a quo*. In a resolution dated January 11, 1985, the Court of Appeals granted Philtrusts' motion for issuance of a writ of partial possession of the properties involved except the portion of 1,000 square meters wherein Lumen Policarpio's house stood. On August 31, 1987, the Court of Appeals rendered a decision, the dispositive portion of which reads as follows:

*WHEREFORE, in consequence of our conclusion that petitioner was not a builder in good faith entitled to the right of reimbursement with the right of retention, the submission and prayer that the writ of possession issued in this case be annulled and set aside, should in view of the facts disclosed after hearing of this appellate court, be as it is hereby, rejected and denied. It follows that the court a quo may now proceed without further delay to implement the questioned writ of possession and take such other steps and proceedings consistent with this judgment.*

**SO ORDERED.**<sup>[3]</sup>

The decision of the Court of Appeals was affirmed by the Supreme Court on September 2, 1988, and the subsequent motion for reconsideration was denied with finality on February 15, 1989 for lack of merit. Pursuant to the affirmed decision of the Court of Appeals, the trial court issued an alias writ of execution and possession on August 8, 1989. The writ was served on Lumen Policarpio on September 22, 1989. Meanwhile, she filed a motion for reconsideration on September 13, 1989 which was subsequently denied. In February 1990, the implementation of the first alias writ of possession was ordered. When the life of the first alias writ of possession expired, Philtrust moved for the issuance of a second alias writ of possession. On October 30, 1990, the second alias writ of possession was received by Jose Policarpio, brother of the private respondent, at her residence on 1064 M. Naval Street, Navotas, Metro Manila.

It was only on November 14, 1990, or after eleven (11) years and six (6) months, that Philtrust was finally placed in possession of the foreclosed properties, and thirty-one (31) years and two (2) months from the time the case for foreclosure proceeding was instituted in the Court of First Instance on September 29, 1959.

Thereafter, Simeon Policarpio, Modesta Reyes and Iluminada "Lumen" Policarpio filed a petition for prohibition with preliminary mandatory injunction with the Court of Appeals alleging grave abuse of discretion on the part of the trial court in ordering the premature implementation of the second alias writ of possession dated October

15, 1990 alleging that when the writ of possession was issued, the motion for reconsideration of the order of October 15, 1990 had not yet been resolved. A motion for intervention was filed by third party claimants Concordia Ysmael, Gladys Ysmael, and Leonila Policarpio. Another motion for intervention had been filed by Simeon Policarpio Shipyard and Shipbuilding Corporation and R.M. Dried Fish Product. The Court of Appeals, however, dismissed the petition saying that the Policarpios had been fully heard on the issues involved. As to the motions for intervention filed by third party claimants, the court ruled that the supposed intervenors are not really third party claimants but successors-in-interest of spouses Policarpio against whom the writ is likewise enforceable since the sale of the property to Simeon Policarpio Shipyard and Shipbuilding Corporation and the new house built on a portion of the subject property by the Ysmaels, as well as the other transactions entered into by the Policarpios, were made after title to the land had been consolidated in the name of the bank. On appeal to this Court, the aforesaid decision was affirmed and declared to be immediately executory on August 26, 1991.<sup>[4]</sup>

On November 11, 1992, herein private respondent Simeon Policarpio Shipyard and Shipbuilding Corporation (SPSSC for short) filed a complaint for Damages, Injunction, and Mandamus against petitioner Philtrust and RTC Malabon Sheriff Augusto Castro and Deputy Gallardo C. Tolentino, alleging that on November 14, 1990, by virtue of an alias writ of execution and possession issued by Branch 12, Regional Trial Court (RTC) of Manila on October 15, 1990, the defendant Sheriff, together with Philtrust counsel Atty. Antonio Sikat, Justice Guillermo Santos and Maria C. Noche, with the use of trickery and fraudulent machination, in the absence of the owner of the shipyard shipbuilding corporation, opened the gates of the shipyard without notice to the owners and took possession of it despite the fact that it was not one of the properties mortgaged to the bank.<sup>[5]</sup>

Petitioner Philtrust filed a motion to dismiss on the grounds of *res judicata* and failure on the part of private respondent SPSSC to state a cause of action. Petitioner alleged that the issues raised by private respondent involved the same parties and the same properties which have already been passed upon by the courts including the Supreme Court. Petitioner further alleged that the complaint states no cause of action since the property covered by OCT-R-165 is no longer owned by private respondent but by the Land Bank of the Philippines. It appears that the property has been mortgaged by private respondent to the said bank in an instrument dated April 30, 1982 to guarantee payment of a loan in the sum of Four Million Five Hundred Twenty Nine Thousand Pesos (P4,529,000.00).<sup>[6]</sup>

The trial court denied the motion to dismiss filed by petitioner Philtrust on the ground that the doctrine of *res judicata* is inapplicable as to OCT-R-165.<sup>[7]</sup> On motion for reconsideration filed by petitioner Philtrust, the trial court ruled that the case was one for damages anchored on the alleged improper implementation by the defendant Sheriff of the alias writ of possession subjecting thereto the property covered by OCT-R-165, which is entirely separate and distinct from the property subject of the writ. Since the corporation was the one in possession of the property at the time of the implementation of the writ, it is the real party in interest as it was the one prejudiced by the alleged improper implementation of the writ of possession.<sup>[8]</sup>