

SECOND DIVISION

[G.R. No. 119247, February 17, 1997]

**CESAR SULIT, PETITIONER, VS. COURT OF APPEALS AND
ILUMINADA CAYCO, RESPONDENTS.
D E C I S I O N**

REGALADO, J.:

The primary issue posed before the Court, in this appeal by certiorari from a decision^[1] of the Court of Appeals, is whether or not the mortgagee or purchaser in an extrajudicial foreclosure sale is entitled to the issuance of a writ of possession over the mortgaged property despite his failure to pay the surplus proceeds of the sale to the mortgagor or the person entitled thereto. Secondly, it calls for a resolution of the further consequences of such non-payment of the full amount for which the property was sold to him pursuant to his bid.

The material facts, as found by respondent court, are not disputed:

"It appears from the record that on 9 June 1992 petitioner (herein private respondent) Iluminada Cayco executed a Real Estate Mortgage (REM) over Lot 2630 which is located in Caloocan City and covered by TCT No. (23211) 11591 in favor of private respondent (herein petitioner) Cesar Sulit, to secure a loan of P4 Million. Upon petitioner's failure to pay said loan within the stipulated period, private respondent resorted to extrajudicial foreclosure of the mortgage as authorized in the contract. Hence, in a public auction conducted by Notary Public Felizardo M. Mercado on 28 September 1993 the lot was sold to the mortgagee, herein private respondent, who submitted a winning bid of P7 Million. As stated in the Certificate of Sale executed by the notary public (Annex B, petition), the mortgaged property was sold at public auction to satisfy the mortgage indebtedness of P4 Million. The Certificate further states as follows:

IT IS FURTHER CERTIFIED, that the aforementioned highest bidder/buyer, CESAR SULIT, being the petitioner/mortgagee thereupon did not pay to the undersigned Notary Public of Kalookan City the said sum of SEVEN MILLION PESOS (P7,000,000.00), Philippine Currency, the sale price of the above-described real estate property together with all improvements existing thereon, which amount was properly credited to the PARTIAL satisfaction of the mortgage debt mentioned in the said real estate mortgage, plus interests, attorney's fees and all other incidental expenses of foreclosure and sale (par. 2, Annex B, petition).

On 13 December 1993 private respondent petitioned the Regional Trial Court of Kalookan City for the issuance of a writ of possession in his favor. The petition was docketed as LRC Case No. C-3462 and assigned to

Branch 131, presided over by public respondent.

On 17 January 1994 respondent Judge issued a decision (should have been denominated as order), the dispositive part of which reads:

WHEREFORE, finding the subject petition to be meritorious, the same is hereby GRANTED. As prayed for, let a Writ of Possession be issued in favor of herein petitioner, Cesar Sulit, upon his posting of an indemnity bond in the amount of One Hundred Twenty Thousand (P120,000.00) Pesos (Annex C, petition).

On 28 March 1994 petitioner filed a Motion to have the auction sale of the mortgaged property set aside and to defer the issuance of the writ of possession. She invited the attention of the court a quo to some procedural infirmities in the said proceeding and further questioned the sufficiency of the amount of bond. In the same Motion petitioner prayed as an alternative relief that private respondent be directed to pay the sum of P3 Million which represents the balance of his winning bid of P7 Million less the mortgage indebtedness of P4 Million (Annex D, petition). This Motion was opposed by private respondent who contended that the issuance of a writ of possession upon his filing of a bond was a ministerial duty on the part of respondent Judge (Annex E), to which Opposition petitioner submitted a Reply (Annex F, petition).

On 11 May 1994 respondent Judge denied petitioner's Motion and directed the issuance of a writ of possession and its immediate enforcement by deputy sheriff Danilo Norberte (Annex G, petition)."^[2]
(Italicized words supplied for clarity).

From the aforesaid orders of the court a quo, herein private respondent Iluminada Cayco filed on May 26, 1994 a petition for certiorari with preliminary injunction and/or temporary restraining order before respondent Court of Appeals, which immediately issued a status quo order restraining the respondent judge therein from implementing his order of January 17, 1994 and the writ of possession issued pursuant thereto. Subsequently, respondent court rendered judgment on November 11, 1994, as follows:

"IN JUDGMENT, We grant the writ of certiorari and the disputed order of 17 January 1994 which precipitately directed the issuance of a writ of possession in favor of private respondent and the subsequent order of 11 May 1994 which denied petitioner's Motion for Reconsideration are hereby SET ASIDE.

Accordingly, private respondent is ordered to pay unto petitioner, through the notary public, the balance or excess of his bid of P7 Million after deducting therefrom the sum of P4,365,280 which represents the mortgage debt and interest up to the date of the auction sale (September 23, 1993), as well as expenses of foreclosure based on receipts which must be presented to the notary public.

In the event that private respondent fails or refuses to pay such excess or balance, then the auction sale of 28 September 1993 is deemed CANCELLED and private respondent may foreclose the mortgage anew

either in a judicial or extrajudicial proceeding as stipulated in the mortgage contract.”

Corollary to the principal issue earlier stated, petitioner asserts that respondent Court of Appeals gravely erred when it failed to appreciate and consider the supposed legal significance of the bouncing checks which private respondent issued and delivered to petitioner as payment for the agreed or stipulated interest on the mortgage obligation. He likewise avers that a motion for reconsideration or an appeal, and not certiorari, is the proper remedy available to herein private respondent from an order denying her motion to defer issuance of the writ of possession. Moreover, it is claimed that any question regarding the propriety of the sale and the issuance of the writ of possession must be threshed out in a summary proceeding provided for in Section 8 of Act 3135.

There is no merit in petitioner’s contention that the dishonored checks amounting to a total of P1,250,000.00, allegedly representing interest of 5% per month from June 9, 1992 to December 9, 1992, were correctly considered by the trial court as the written agreement between the parties. Instead, we find the explanation of respondent court in rejecting such postulate, on the basis of Article 1956 of the Civil Code,^[3] to be more logical and plausible, to wit:

“It is noteworthy that the Deed of Real Estate Mortgage executed by the parties on 9 June 1992 (Annex A, Petition) does not contain any stipulation for payment of interest. Private respondent who maintains that he had an agreement with petitioner for the payment of 5% monthly interest did not produce any other writing or instrument embodying such a stipulation on interest. It appears then that if any such agreement was reached by the parties, it was merely a verbal one which does not conform to the aforequoted statutory provision. Certainly, the dishonored checks claimed to have been issued by petitioner in payment of interest could not have been the written stipulation contemplated in Article 1956 of the Code. Consequently, in the absence of a written stipulation for the imposition of interest on the loan obtained by petitioner, private respondent’s assessment thereof has no legal basis.”^[4]

It is elementary that in the absence of a stipulation as to interest, the loan due will now earn interest at the legal rate of 12% per annum^[5] which, according to respondent court, is equivalent to P365,280.00 computed from December 10, 1992, after private respondent’s obligation became due, until September 23, 1993, the date of the auction sale. It is this amount which should further be deducted from the purchase price of P7,000,000.00, together with any other expenses incurred in connection with the sale, such as the posting and publication of notices, notarial and documentary fees, and assessments or taxes due on the disputed property.

It baffles this Court, therefore, why petitioner has continually failed up to the present to submit documentary evidence of the alleged expenses of the foreclosure sale, and this in spite of the express requirement therefor in the certificate of sale^[6] issued by the notary public for the purpose of computing the actual amount payable by the mortgagor or redemptioner in the event of redemption. It may thus be safely presumed that such evidence having been willfully suppressed, it would be adverse if produced.^[7]

Coming now to the main issue in this case, petitioner argues that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption, invoking in support thereof Sections 7 and 8 of Act 3135 which conjointly provide:

"Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance 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 and 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 the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of 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.

"Sec. 8. 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 Number 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."

The governing law thus explicitly authorizes the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title. Upon the filing of such motion 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.

No discretion appears to be left to the court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be

determined in a subsequent proceeding as outlined in Section 8, and it cannot be raised as a justification for opposing the issuance of the writ of possession since, under the Act, the proceeding for this is ex parte.^[8] Such recourse is available to a mortgagee, who effects the extrajudicial foreclosure of the mortgage, even before the expiration of the period of redemption provided by law and the Rules of Court.^[9]

The rule is, however, not without exception. Under Section 35, Rule 39 of the Rules of Court, which is made applicable to the extrajudicial foreclosure of real estate mortgages by Section 6 of Act 3135, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure "unless a third party is actually holding the property adversely to the judgment debtor."^[10]

Thus, in the case of *Barican, et al. vs. Intermediate Appellate Court, et al.*,^[11] this Court took into account the circumstances that long before the mortgagee bank had sold the disputed property to the respondent therein, it was no longer the judgment debtor who was in possession but the petitioner spouses who had assumed the mortgage, and that there was a pending civil case involving the rights of third parties. Hence, it was ruled therein that under the circumstances, the obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be ministerial.

Now, in forced sales low prices are generally offered and the mere inadequacy of the price obtained at the sheriff's sale, unless shocking to the conscience, has been held insufficient to set aside a sale. This is because no disadvantage is caused to the mortgagor. On the contrary, a mortgagor stands to gain with a reduced price because he possesses the right of redemption. When there is the right to redeem, inadequacy of price becomes immaterial since the judgment debtor may reacquire the property or sell his right to redeem, and thus recover the loss he claims to have suffered by reason of the price obtained at the auction sale.^[12]

However, also by way of an exception, in *Cometa, et al. vs. Intermediate Appellate Court, et al.*^[13] where the properties in question were found to have been sold at an unusually lower price than their true value, that is, properties worth at least P500,000.00 were sold for only P57,396.85, this Court, taking into consideration the factual milieu obtaining therein as well as the peculiar circumstances attendant thereto, decided to withhold the issuance of the writ of possession on the ground that it could work injustice because the petitioner might not be entitled to the same.

The case at bar is quite the reverse, in the sense that instead of an inadequacy in price, there is due in favor of private respondent, as mortgagor, a surplus from the proceeds of the sale equivalent to approximately 40% of the total mortgage debt, which excess is indisputably a substantial amount. Nevertheless, it is our considered opinion, and we so hold, that equitable considerations demand that a writ of possession should also not issue in this case.

Rule 68 of the Rules of Court provides:

Sec. 4. Disposition of proceeds of sale. - The money realized from the sale of mortgaged property under the regulations hereinbefore prescribed shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or