

SECOND DIVISION

[G.R. No. 224225, August 14, 2017]

NORMA I. BARING, PETITIONER, VS. ELENA LOAN AND CREDIT COMPANY, INC., RESPONDENT.

D E C I S I O N

PERALTA, J.:

Assailed in this petition for review on *certiorari* are the Decision^[1] dated September 18, 2015 and the Resolution^[2] dated March 22, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 95956.

The antecedent facts, as found by the Court of Appeals, are as follows:

Herein defendants-appellants Norma Baring (now petitioner Baring), Esmeraldo Hernaez (*Hernaez*) and the Spouses Virgilio and Rosario Bernardino (*Spouses Bernardino*) obtained a series of loans and other credit accommodations in the initial amount of three hundred thousand pesos (P300,000.00) from herein petitioner-appellee Elena Loan and Credit Company, Inc. (herein respondent Elena Loan), a duly organized lending investor. As a security for the said loan, Baring executed a Deed of Real Estate Mortgage over a parcel of land, with improvements, located at Blk 4, Lot 20, Adelfa Street, San Antonio Valley 17, Talon, Las Piñas City (*subject property*). The subject property was covered by Transfer Certificate of Title No. T-95109 (TCT No. T-95109) of the Register of Deeds of Las Piñas City and was registered in the name of Baring. In the Real Estate Mortgage, the parties agreed that Elena Loan, as the mortgagee, may foreclose the mortgage extrajudicially in accordance with Act No. 3135 should Baring, the mortgagor, default in the payment of her obligation. The Real Estate Mortgage was duly registered with the Register of Deeds on March 4, 2005.

Subsequently, the debtors failed to pay their obligations under the promissory notes despite repeated demands. As of August 6, 2007, their outstanding obligation had ballooned to six hundred ninety-eight thousand forty pesos and seventy-one centavos (P698,040.71), inclusive of interest, penalties and charges.

Consequently, on August 28, 2007, Elena Loan filed a Petition for Foreclosure under Act No. 3135, as amended, before the Office of the Clerk of Court and *Ex-Officio* Sheriff of Las Piñas City. Acting on the application, the *Ex-Officio* Sheriff issued a Notice of Extrajudicial Sale on September 5, 2007, scheduling the public auction on October 9, 2007 at 10:00 o'clock in the morning. Thereafter, Elena Loan complied with all the formalities prescribed by law, such as the posting of the required Notice

of Extrajudicial Sale and the publication thereof in a newspaper of general circulation. Later on, Elena Loan participated in the public auction and emerged as the highest bidder. Shortly thereafter, a Certificate of Sale was issued in favor of Elena Loan on November 14, 2007. The Certificate of Sale was registered in the Office of the Register of Deeds of Las Piñas City and was inscribed on TCT No. T-95109 on November 27, 2007 as Entry No. 8204-29.

Eventually, the period of redemption expired without Baring exercising her right of redemption. Thus, on November 28, 2008, Elena Loan filed an Affidavit of Consolidation of Ownership. Thereafter, TCT No. T-95109 was canceled and in lieu thereof, Transfer Certificate of Title No. T-117238 (TCT No. 117238) was issued in the name of Elena Loan on April 24, 2009 by the Register of Deeds of Las Piñas City. Accordingly, as the new owner of the subject property, Elena Loan sent a demand letter to Baring and Hernaez on September 16, 2009 requesting them to vacate the subject property. However, the demand remained unheeded.

Meanwhile on December 4, 2009, Elena Loan filed an *Ex-Parte* Petition for the Issuance of a Writ of Possession. In its Petition, Elena Loan prayed for the issuance of a writ of possession directing the sheriff to eject the mortgagor Baring and place it in complete possession of the subject property, free from any adverse occupants. The Petition was docketed as LRC Case No. L.P. 09-0116 and raffled to Branch 201 presided over by Judge Navarro-Domingo.^[3]

On April 20, 2010, the Regional Trial Court (RTC) rendered a Decision,^[4] the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is hereby GRANTED. As prayed for, let a writ of possession be issued addressed to the Clerk of Court of the Regional Trial Court of Las Piñas City as Ex-Officio Sheriff or her duly authorized representative for her to place petitioner Elena Loan and Credit Company, Inc. in possession of the parcel of land covered by Transfer Certificate of Title No. T-11723 8 of the Register of Deeds of Las Piñas City formerly Transfer Certificate of Title No. T-95109 of the Register of Deeds of Las Piñas City.

SO ORDERED.^[5]

Petitioner filed an appeal with the CA which in a Decision dated September 18, 2015 denied petitioner's appeal for lack of merit and affirmed the RTC decision *in toto*.

Petitioner filed a Manifestation with motion for reconsideration where she claimed that respondent is not authorized by the Securities and Exchange Commission (SEC) to act as a lending company and, accordingly, it is devoid of any authority and personality to file the petition for foreclosure of the real estate mortgage and to request for the issuance of an *ex-parte* writ of possession in its favor.

On March 22, 2016, the CA issued a Resolution denying the motion for reconsideration saying that the question laid by petitioner regarding the legal personality and authority of respondent to file the petition for issuance of a writ of

possession is clearly misplaced and cannot work to defeat the latter's right to the issuance of the writ of possession as the absolute owner of the subject property.

Hence, this petition for review filed by petitioner raising the following issues:

THE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION OF THEIR DECISION UPHOLDING THE DECISION OF THE LOWER COURT.

I.
AUTHORITY AND CAPACITY;

ELENA LOAN IS NOT AUTHORIZED TO CONDUCT ITS BUSINESS AS A LENDING COMPANY UNDER REPUBLIC ACT NO. 9474;

THEY CANNOT PURSUE THEIR OBJECTIVE AS A LENDING COMPANY IF THERE IS NO AUTHORIZATION FROM THE SECURITIES AND EXCHANGE COMMISSION.^[6]

II
EXORBITANT AND USURIOUS INTEREST RATES;

3.75% MONTHLY INTEREST RATE IS CONTRA BONUS MORES, IT IS UNCONSCIONABLE, INIQUITOUS AND EXORBITANT.^[7]

Petitioner reiterates her contention that per the Certification issued by the SEC, respondent has not been issued a secondary franchise to operate as a lending company pursuant to Republic Act (RA) No. 9474, otherwise known as the *Lending Company Regulation Act of 2007*; that at the time the petition for foreclosure was filed on August 28, 2007, as well as the extrajudicial foreclosure of property, the public auction and the *ex-parte* petition for the issuance of a writ of possession on December 4, 2009, respondent had not been granted any authorization by the SEC to operate and conduct business as a lending company; and, that it cannot be a party to a civil action, therefore, it is not entitled to the issuance of a writ of possession. Petitioner also assails the interest rates charged on her loans for being unconscionable, exorbitant, excessive and contrary to morals which made it impossible for her to extinguish and pay those loans.

We find no merit in the petition.

The CA correctly affirmed the RTC's issuance of the writ of possession over the subject property.

Section 7 of Act No. 3135, as amended by Act 4118,^[8] governs the issuance of a writ of possession in cases of extrajudicial foreclosure sales of real estate mortgage, to wit:

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