

SECOND DIVISION

[G.R. No. 206599, September 29, 2014]

680 HOME APPLIANCES, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE HONORABLE MARYANN E. CORPUS-MAÑALAC, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 141, ATTY. ENGRACIO ESCASINAS, JR., IN HIS CAPACITY AS THE EX-OFFICIO SHERIFF/CLERK OF COURT VII, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, MAKATI CITY, FIRST SOVEREIGN ASSET MANAGEMENT (SPV-AMC), INC. AND ALDANCO MERLMAR, INC., RESPONDENTS.

D E C I S I O N

BRION, J.:

We resolve the petition for *certiorari*^[1] filed by petitioner 680 Home Appliances, Inc. (680 Home) under Rule 65 of the Rules of Court. The petition imputes grave abuse of discretion against the Court of Appeals (CA) in light of its Decision dated February 13, 2013^[2] in CA-G.R. SP No. 124735. The CA decision affirmed the Orders dated December 20, 2011^[3] and March 23, 2012^[4] of the Regional Trial Court (RTC) of Makati City, Branch 141, in Land Registration Case (LRC) No. M-5444.

THE FACTS

The case arose from the **extrajudicial foreclosure proceedings** commenced by the creditor of 680 Home, Deutsche Bank AG London,^[5] after the former defaulted in paying a loan secured by a real estate mortgage over its commercial lot and building.

In the foreclosure sale, the respondent, First Sovereign Asset Management, Inc. (FSAMI), emerged as the highest bidder of 680 Home's mortgaged properties. A certificate of sale was issued to FSAMI on March 13, 2009, which was registered with the Registry of Deeds of Makati City on March 16, 2009 and annotated on 680 Home's Transfer Certificate of Title (TCT) No. 138570. Three months after, or in June 2009, **FSAMI consolidated its ownership after 680 Home failed to redeem the property.** A new certificate of title (TCT No. 227316) was issued in FSAMI's name.

On March 20, 2009, 680 Home commenced an action to annul the mortgage and foreclosure with the RTC of Makati City, Branch 137 (docketed as Civil Case No. 09-254).

On October 26, 2010, FSAMI commenced LRC No. M-5444 – a **petition for the ex parte issuance of a writ of possession** filed with the RTC of Makati City, Branch 141. 680 Home moved to intervene and filed an opposition to FSAMI's application,

but the RTC denied the motion in its orders dated March 3, 2011 and May 6, 2011. On July 8, 2011, **the RTC granted FSAMI's application for a writ of possession**; the writ, as well as the notice to vacate, were issued on August 31, 2011.

As the current occupant of the property, respondent Aldanco Merlmar, Inc. (*Aldanco*) filed a motion to intervene in LRC Case No. M-5444, claiming that it possessed the property as lessee of 680 Home. The RTC issued an Order dated September 15, 2011 granting Aldanco's intervention.

Undeterred, **680 Home filed a petition to cancel the writ of possession, invoking Section 8 of Act No. 3135**. It alleged the nullity of the foreclosure as well the adverse possession of Aldanco that supposedly barred the ministerial issuance of the writ of possession.

The RTC, in its order dated December 20, 2011, denied 680 Home's petition to cancel the writ; this was affirmed in its order dated March 23, 2012 denying 680 Home's motion for reconsideration. 680 Home thereafter assailed these orders *via* a *certiorari* petition with the CA.

The CA affirmed the RTC ruling and declared 680 Home's petition to cancel the writ as *prematurely filed*. **The CA ruled that under Section 8 of Act No. 3135, a judgment debtor may file a petition for cancellation of the writ of possession within 30 days only after the purchaser has obtained possession of the property**. Although a writ of possession was issued, the property remained in the possession of Aldanco as 680 Home's lessee. Since FSAMI did not obtain possession of the property, the 30-day period to file a petition to cancel the writ under Section 8 of Act No. 3135 has not yet commenced. The CA relied on the Court's ruling in *Ong v. CA*,^[6] which held that **"the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession."**

THE PARTIES' ARGUMENTS

680 Home now seeks the reversal of the CA's decision through the present *certiorari* petition. It claims that the issuance of the writ of possession in favor of FSAMI cannot be ministerial because of the adverse claim of a third party – Aldanco; FSAMI, therefore, was prevented from obtaining possession of the property. "With FSAMI having been effectively prevented from terminating [Aldanco's] possession,"^[7] 680 Home should be exempted from the possession requirement of Section 8 of Act No. 3135, and should be allowed to petition for the cancellation of the writ.

Asked to comment on 680 Home's petition, both Aldanco and FSAMI claim that the petition is procedurally defective, pointing out that 680 Home should have availed of a petition for review on *certiorari* under Rules 45, instead of petition for *certiorari* under Rule 65, both of the Rules of Court.

FSAMI rebuts 680 Home's claim that a third party's adverse possession of the property constitutes as an exception to the possession requirement imposed by Section 8 of Act No. 3135 before a writ of possession may be assailed. It argues that Aldanco's possession is not adverse to 680 Home's claim, since Aldanco is a

lessee of 680 Home.

THE COURT'S RULING

We do not find the petition meritorious.

680 Home's certiorari petition is procedurally erroneous because of the availability of the remedies of reconsideration and appeal

Procedurally, we observe that 680 Home availed of the wrong remedy to question the CA decision before this Court. A petition for *certiorari* under Rule 65 of the Rules of Court is availed of only when there is *no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law*.^[8] Unfortunately, 680 Home's resort to a *certiorari* petition could not be justified by the unavailability or insufficiency of other remedies.

A motion for reconsideration is recognized as an adequate remedy against a decision, resolution, or order of a lower court, as it provides the court opportunity to correct any error it might have committed.^[9] Hence, the filing of a motion for reconsideration was made a pre-requisite to the filing of a *certiorari* petition. The availability of the remedy of reconsideration generally precludes immediate recourse to a *certiorari* petition.^[10] 680 Home, however, never moved for the reconsideration of the CA decision, and offered no explanation for its failure to comply with the requirement.

Also, the remedy provided under the Rules of Court from a decision of the CA is an appeal by *certiorari* under its Rule 45.^[11] Instead of instituting a *certiorari* petition, 680 Home should have filed an appeal under Rule 45, especially considering that the issue raised here is primarily legal in nature.^[12]

Indeed, we find 680 Home's resort to a *certiorari* petition rather dubious. After receiving on February 25, 2013 a copy of the CA decision, 680 Home filed neither a motion for reconsideration thereof nor an appeal therefrom. Instead, it waited 58 days after receiving the assailed decision on April 24, 2013 to institute a *certiorari* proceeding. Although the petition was filed within the 60-day period to institute a *certiorari* proceeding, the long delay negates 680 Home's claimed urgency of its cause and indicates that it resorted to the present petition for *certiorari* as a substitute for its lost appeal.

Ong v. Court Appeals was based on a unique factual circumstance, i.e., the writ of possession was issued during the redemption period when purchaser has yet to consolidate its ownership over the property

Even disregarding its procedural defects, the petition still fails. The alleged erroneous interpretation of the law committed by the CA would not, by itself, amount to grave abuse of discretion that is correctible by a writ of *certiorari*. The CA

cannot be faulted for its ruling which only applied existing jurisprudence that, unfortunately, has been extended to cases whose factual circumstances significantly differ from the one originally considered by the Court in laying down the rule.

In declaring 680 Home's petition for cancellation as prematurely filed, the CA relied on *Ong*, which held that Section 8 of Act No. 3135 allows a judgment debtor to file a petition for cancellation of the writ of possession within thirty (30) days only ***after the purchaser obtained possession of the subject property***:

The law is clear that **the purchaser must first be placed in possession of the mortgaged property** pending proceedings assailing the issuance of the writ of possession.

Aldanco's continued possession of the property prevented FSAMI from taking over despite having a writ of possession issued in its favor. Since the writ was not enforced, the CA concluded that 680 Home could not avail of the remedy under Section 8 of Act No. 3135 and petition for its cancellation.

As the CA correctly pointed out, a debtor may avail of the remedy under Section 8 of Act No. 3135 only ***after the purchaser has obtained possession of the property***. What it missed, however, is that this rule is applicable only to a unique factual situation – when the writ of possession sought to be cancelled was issued **during the redemption period**. In *Ong* where this rule was laid down, the mortgagors sought the recall of the writ of possession that was issued *during* the one-year redemption period.^[13] **Section 8 of Act No. 3135 finds no application when the redemption period has expired without the debtor exercising his right, and the purchaser in the foreclosure sale has already consolidated his ownership over the property and moved for the issuance of the writ of possession.**

The provisions of Act No. 3135 applies until the period of redemption; once redemption lapses and consolidation of the purchaser's title ensues, Act No. 3135 finds no application

In a number of cases,^[14] the Court declared that Section 8 of Act No. 3135 is the available remedy to set aside a writ of possession, without considering whether the writ involved in each of these cases was issued during or after the lapse of the redemption period. Upon reevaluation, we find it necessary to make a distinction and clarify when the remedy under Section 8 of Act No. 3135 may be availed of.

In extrajudicial foreclosures, a writ of possession may be issued either (1) within the redemption period or (2) after the lapse of the redemption period.^[15] The first instance is based on a privilege provided under Section 7 of Act No. 3135; the second is based on the purchaser's right of ownership. The basis of the purchaser's right to possess the property affects the nature of the right.

Act No. 3135 governs only the manner of the sale and redemption of the mortgaged real property in an extrajudicial foreclosure; proceedings beyond these, *i.e.*, upon the lapse of the redemption period and the consolidation of the purchaser's title, are