

FIRST DIVISION

[G.R. No. 175768, December 11, 2013]

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS.
SPOUSES EDGARDO M. CRISTOBAL AND MA. TERESITA S.
CRISTOBAL, RESPONDENTS.**

DECISION

SERENO, C.J.:

This is a Rule 45 appeal^[1] dated 26 December 2006 assailing the Decision^[2] and Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 80874, which affirmed the Decision^[4] of the Regional Trial Court (RTC), Branch 13, Malolos, Bulacan in LRC Case No. P-65-2003, denying the Petition for Issuance of a Writ of Possession filed by the Metropolitan Bank & Trust Company (petitioner).

The antecedent facts are as follows:

On 14 September 1998, respondents Spouses Edgardo M. Cristobal and Ma. Teresita S. Cristobal obtained a loan from petitioner Metropolitan Bank and Trust Company in the amount of P4,500,000.00. The loan was secured by two real estate mortgages and its three amendments, which respondents executed in favor of petitioner.^[5]

Despite demand, respondents failed to pay their loan, resulting in the extrajudicial foreclosure and auction sale of their mortgaged properties (subject properties). In the auction sale, petitioner emerged as the highest bidder, so a Certificate of Sale was issued in its name. This certificate was duly registered in the Registry of Deeds of Bulacan on 11 September 2002.^[6]

Consequently, petitioner demanded that respondents vacate the properties covered by the mortgage. However, this went unheeded, forcing petitioner to file with the trial court a petition seeking a Writ of Possession over the foreclosed properties.^[7]

On 30 June 2003, the RTC issued an Order^[8] to wit:

It is uncontroverted that the 12 month redemption period has not yet expired hence it is incumbent upon the petitioner bank to post bond in an amount equivalent to the use of the property for a period of twelve months. However, petitioner did not proffer any evidence from whence the Court could base the bond required under Section 7 of Act 3135.

WHEREFORE, in view of the foregoing, the application is **DENIED**.

SO ORDERED. (Emphasis in the original)

In disposing of the application, the lower court ruled that petitioner did not submit sufficient evidence from which it could base the amount of bond required in an application for a writ of possession done within the 12 month redemption period.^[9]

Petitioner seasonably moved to reconsider the judgment,^[10] but this was also denied in an Order^[11] dated 22 September 2003, herein quoted as follows:

Acting on the "Ex-Parte Motion for Reconsideration (to the Decision dated June 30, 2003) with Motion for Leave of Court to Recall Petitioner's Witness" and taking note that the 12-month period for redemption in this case has already expired as of September 11, 2003, the Court finds no useful purpose nor compelling reason to reconsider its decision dated June 30, 2003, the motion is DENIED.

SO ORDERED.

Aggrieved, petitioner appealed via a Petition for Certiorari on 4 December 2003.^[12] Petition argued that "granting *arguendo* that petitioner should have presented evidence for the purpose of fixing the bond, the redemption period already expired on September 11, 2003; hence, posting of a bond is no longer necessary."^[13] This appeal was however dismissed by the CA in a Decision dated 10 August 2006, the relevant portion of which is herein quoted as follows:^[14]

Indeed, while the posting of a bond is no longer necessary upon the expiration of the redemption period, it is however required that ownership over the property be consolidated with the purchaser of the foreclosed property. Verily, the presentation of a transfer certificate of title in the name of the purchaser is a condition *sine qua non* for the issuance of a writ of possession.

We have examined the record *vis-à-vis* petitioner's insistence on its entitlement to the writ and found that the claim is premature. The record is bereft of any indication that petitioner bank has consolidated its ownership over the subject parcels of land. x x x.

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.

In affirming the RTC, the CA explained that in accordance with Section 7 of Act 3135, the trial court has the duty to issue a writ of possession before the lapse of the 12-month redemption period; but this is qualified by the receipt of an ex-parte application and the posting of the required bond.^[15] In this case, the trial court denied the application because petitioner failed to discharge its burden of providing ample information upon which the amount of the bond could be based.^[16]

Moreover, even if the 12-month redemption period had already expired and the need for a bond already dispensed with, possession could not yet be given to petitioner until the ownership is consolidated and a new transfer certificate of title issued in its name.^[17]

On 24 August 2006, petitioner filed a Motion for Reconsideration,^[18] arguing that “the grounds upon which We [the CA] anchored the denial of the petition has [sic] since disappeared in light of the consolidation of titles over the subject properties by the petitioner.”^[19] In a Resolution promulgated on 6 December 2006,^[20] the CA denied petitioner’s Motion in the following wise:

x x x Anent the claims of a supervening event, petitioner should be minded that it is not precluded from re-filing the petition for a writ of possession in the Court *a quo* especially so since it now meets the grounds for the issuance of the said writ.

ACCORDINGLY, the motion for reconsideration is **DENIED**.

SO ORDERED. (Emphasis in the original)

Hence, the instant Petition.

This Court noted the following pleadings: (a) respondent’s Comment dated 21 March 2007;^[21] (b) petitioner’s Reply dated 10 July 2007;^[22] (c) respondent’s Memorandum dated 20 November 2007;^[23] and (d) petitioner’s Memorandum dated 24 November 2007.^[24]

Issue

Considering that the 12-month redemption period has already lapsed and the need for a bond already dispensed with, we reduce the issue to whether or not consolidation of title is necessary before possession may be automatically given to petitioner.

The Court’s Ruling

Petitioner insists that a review of Act 3135 will reveal that there is “absolutely nothing therein which provides that consolidation of ownership over the foreclosed property is required before a writ of possession may be issued.”^[25] Moreover, even assuming that consolidation is indeed required, petitioner faults the CA for refusing to recognize the fact that it had already consolidated its ownership over the subject properties, resulting in the issuance of Transfer Certificate of Title Nos. T-432045 (M) and T-432046 (M) in its name on 6 April 2004.^[26]

On the other hand, respondent alleges that the consolidated titles under petitioner’s name were not submitted in the trial court. As such, petitioner cannot raise it as an issue for the first time in appeal.^[27]

We rule that a remand of this case to the trial court is necessary for the reception of evidence to determine if consolidation has taken place, this being a necessary requisite to the issuance of a writ of possession.

Petitioner can only demand possession after the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title.

Jurisprudence articulates that “[t]he purchaser can demand possession at any time