

## SECOND DIVISION

[ G.R. No. 169190, February 11, 2010 ]

**CUA LAI CHU, CLARO G. CASTRO, AND JUANITA CASTRO,  
PETITIONERS, VS. HON. HILARIO L. LAQUI, PRESIDING JUDGE,  
REGIONAL TRIAL COURT, BRANCH 218, QUEZON CITY AND  
PHILIPPINE BANK OF COMMUNICATION, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> of the 29 April 2005 and 4 August 2005 Resolutions<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 88963. In its 29 April 2005 Resolution, the Court of Appeals dismissed the petition for certiorari<sup>[3]</sup> of petitioner spouses Claro G. Castro and Juanita Castro and petitioner Cua Lai Chu (petitioners). In its 4 August 2005 Resolution, the Court of Appeals denied petitioners' motion for reconsideration.

#### The Facts

In November 1994, petitioners obtained a loan in the amount of P3,200,000 from private respondent Philippine Bank of Communication. To secure the loan, petitioners executed in favor of private respondent a Deed of Real Estate Mortgage<sup>[4]</sup> over the property of petitioner spouses covered by Transfer Certificate of Title No. 22990. In August 1997, petitioners executed an Amendment to the Deed of Real Estate Mortgage<sup>[5]</sup> increasing the amount of the loan by P1,800,000, bringing the total loan amount to P5,000,000.

For failure of petitioners to pay the full amount of the outstanding loan upon demand,<sup>[6]</sup> private respondent applied for the extrajudicial foreclosure of the real estate mortgage.<sup>[7]</sup> Upon receipt of a notice<sup>[8]</sup> of the extrajudicial foreclosure sale, petitioners filed a petition to annul the extrajudicial foreclosure sale with a prayer for temporary restraining order (TRO). The petition for annulment was filed in the Regional Trial Court of Quezon City and docketed as Q-02-46184.<sup>[9]</sup>

The extrajudicial foreclosure sale did not push through as originally scheduled because the trial court granted petitioners' prayer for TRO. The trial court subsequently lifted the TRO and reset the extrajudicial foreclosure sale on 29 May 2002. At the foreclosure sale, private respondent emerged as the highest bidder. A certificate of sale<sup>[10]</sup> was executed on 4 June 2002 in favor of private respondent. On 7 June 2002, the certificate of sale was annotated as Entry No. 1855<sup>[11]</sup> on TCT No. 22990 covering the foreclosed property.

After the lapse of the one-year redemption period, private respondent filed in the Registry of Deeds of Quezon City an affidavit of consolidation to consolidate its ownership and title to the foreclosed property. Forthwith, on 8 July 2003, the Register of Deeds cancelled TCT No. 22990 and issued in its stead TCT No. 251835<sup>[12]</sup> in the name of private respondent.

On 18 August 2004, private respondent applied for the issuance of a writ of possession of the foreclosed property.<sup>[13]</sup> Petitioners filed an opposition.<sup>[14]</sup> The trial court granted private respondent's motion for a declaration of general default and allowed private respondent to present evidence *ex parte*. The trial court denied petitioners' notice of appeal.

Undeterred, petitioners filed in the Court of Appeals a petition for certiorari. The appellate court dismissed the petition. It also denied petitioners' motion for reconsideration.

### **The Orders of the Trial Court**

The 8 October 2004 Order<sup>[15]</sup> granted private respondent's motion for a declaration of general default and allowed private respondent to present evidence *ex parte*. The 6 January 2005 Order<sup>[16]</sup> denied petitioners' motion for reconsideration of the prior order. The 24 February 2005 Order<sup>[17]</sup> denied petitioners' notice of appeal.

### **The Ruling of the Court of Appeals**

The Court of Appeals dismissed on both procedural and substantive grounds the petition for certiorari filed by petitioners. The appellate court noted that the counsel for petitioners failed to indicate in the petition the updated PTR Number, a ground for outright dismissal of the petition under Bar Matter No. 1132. Ruling on the merits, the appellate court held that a proceeding for the issuance of a writ of possession is *ex parte* in nature. As such, petitioners' right to due process was not violated even if they were not given a chance to file their opposition. The appellate court also ruled that there was no violation of the rule against forum shopping since the application for the issuance of a writ of possession is not affected by a pending case questioning the validity of the extrajudicial foreclosure sale.

### **The Issue**

Petitioners raise the question of whether the writ of possession was properly issued despite the pendency of a case questioning the validity of the extrajudicial foreclosure sale and despite the fact that petitioners were declared in default in the proceeding for the issuance of a writ of possession.

### **The Court's Ruling**

The petition has no merit.

Petitioners contend they were denied due process of law when they were declared in default despite the fact that they had filed their opposition to private respondent's application for the issuance of a writ of possession. Further, petitioners point out

that the issuance of a writ of possession will deprive them not only of the use and possession of their property, but also of its ownership. Petitioners cite *Bustos v. Court of Appeals*<sup>[18]</sup> and *Vda. De Legaspi v. Avendaño*<sup>[19]</sup> in asserting that physical possession of the property should not be disturbed pending the final determination of the more substantial issue of ownership. Petitioners also allege forum shopping on the ground that the application for the issuance of a writ of possession was filed during the pendency of a case questioning the validity of the extrajudicial foreclosure sale.

Private respondent, on the other hand, maintains that the application for the issuance of a writ of possession in a foreclosure proceeding is *ex parte* in nature. Hence, petitioners' right to due process was not violated even if they were not given a chance to file their opposition. Private respondent argues that the issuance of a writ of possession may not be stayed by a pending case questioning the validity of the extrajudicial foreclosure sale. It contends that the former has no bearing on the latter; hence, there is no violation of the rule against forum shopping. Private respondent asserts that there is no judicial determination involved in the issuance of a writ of possession; thus, the same cannot be the subject of an appeal.

At the outset, we must point out that the authorities relied upon by petitioners are not in point and have no application here. In *Bustos v. Court of Appeals*,<sup>[20]</sup> the Court simply ruled that the issue of possession was intertwined with the issue of ownership in the consolidated cases of unlawful detainer and *accion reivindicatoria*. In *Vda. De Legaspi v. Avendaño*,<sup>[21]</sup> the Court merely stated that in a case of unlawful detainer, physical possession should not be disturbed pending the resolution of the issue of ownership. Neither case involved the right to possession of a purchaser at an extrajudicial foreclosure of a mortgage.

*Banco Filipino Savings and Mortgage Bank v. Pardo*<sup>[22]</sup> squarely ruled on the right to possession of a purchaser at an extrajudicial foreclosure of a mortgage. This case involved a real estate mortgage as security for a loan obtained from a bank. Upon the mortgagor's default, the bank extrajudicially foreclosed the mortgage. At the auction sale, the bank was the highest bidder. A certificate of sale was duly issued and registered. The bank then applied for the issuance of a writ of possession, which the lower court dismissed. The Court reversed the lower court and held that the purchaser at the auction sale was entitled to a writ of possession pending the lapse of the redemption period upon a simple motion and upon the posting of a bond.

In *Navarra v. Court of Appeals*,<sup>[23]</sup> the purchaser at an extrajudicial foreclosure sale applied for a writ of possession after the lapse of the one-year redemption period. The Court ruled that the purchaser at an extrajudicial foreclosure sale has a right to the possession of the property even during the one-year redemption period provided the purchaser files an indemnity bond. After the lapse of the said period with no redemption having been made, that right becomes absolute and may be demanded by the purchaser even without the posting of a bond. Possession may then be obtained under a writ which may be applied for *ex parte* pursuant to Section 7 of Act No. 3135,<sup>[24]</sup> as amended by Act No. 4118,<sup>[25]</sup> thus:

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