

## SECOND DIVISION

[ G.R. No. 183027, July 26, 2010 ]

**SPOUSES EDMUNDO AND LOURDES SARROSA, PETITIONERS, VS.  
WILLY O. DIZON, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> of the Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 100730, dated March 27, 2008, and its Resolution<sup>[3]</sup> dated May 20, 2008, denying petitioners', the spouses Edmundo and Lourdes Sarrosa's, motion for reconsideration. The Court of Appeals dismissed the petition for *certiorari* filed by petitioners for failure to state material dates and for lack of merit.

The facts are as follows:

On March 31, 2001, petitioners spouses Edmundo and Lourdes Sarrosa obtained a loan from respondent Willy Dizon in the amount of Two Million Pesos (P2,000,000.00). The loan was secured by a real estate mortgage<sup>[4]</sup> of petitioners' property located in San Dionisio, Paraxiaque City, covered by Transfer Certificate of Title (TCT) No. S-92903 (104540).<sup>[5]</sup>

On June 30, 2001, the loan became due and demandable, but petitioners failed to pay their obligation.

On March 23, 2002, respondent, through counsel, sent petitioners a letter<sup>[6]</sup> demanding payment of their obligation within five days from receipt thereof; otherwise, the mortgaged property would be foreclosed extrajudicially. Petitioners, however, failed to pay their obligation.

Hence, on July 17, 2002, respondent filed a Petition to Sell in Extra-judicial Foreclosure of Mortgage under Act 3135, as amended, with the Office of the Clerk of Court and *Ex-Officio* Sheriff, Regional Trial Court, Paraxiaque City.

On August 16, 2002, petitioners filed with the RTC of Paraxiaque City a civil case for Breach of Contract, Damages, Detailed Accounting, with Temporary Restraining Order (TRO)/Injunction,<sup>[7]</sup> praying for the issuance of a TRO/injunction to restrain respondent from proceeding with the scheduled extrajudicial foreclosure of the mortgaged property. The case was docketed as Civil Case No. 02-0335.

On October 15, 2003, the public auction proceeded as scheduled. The mortgaged property was sold to respondent as the highest bidder, and a certificate of sale<sup>[8]</sup> was issued in favor of respondent, who registered the same with the Register of Deeds of Paraxiaque City.

Petitioners failed to redeem the property within the one-year period provided under Section 28, Rule 39 of the Rules of Court. Hence, respondent consolidated ownership over the subject property. Thereafter, the Office of the Register of Deeds of Paraxiaque City cancelled TCT No. S-92903 (104540) in the name of petitioners, and a new title, TCT No. 162999,<sup>[9]</sup> covering the subject property, was issued in the name of respondent.

On March 14, 2005, respondent, through counsel, sent petitioners a letter<sup>[10]</sup> demanding that they vacate the subject property within five days from receipt thereof, since respondent was already the registered owner of the property. Petitioners did not heed the demand.

On April 26, 2005, respondent filed with the RTC of Paraxiaque City an *Ex-Parte* Petition for the Issuance of a Writ of Possession<sup>[11]</sup> over the subject property, docketed as LRC Case No. 05-0047.

On June 29, 2007, the RTC of Paraxiaque City, Branch 257 issued an Order<sup>[12]</sup> in LRC Case No. 05-0047, ruling that the matter of consolidation of LRC Case No. 05-0047 (*Ex-Parte* Petition for the Issuance of a Writ of Possession) with Civil Case No. 02-0335 (Breach of Contract, Damages, Detailed Accounting, with TRO/Injunction) was procedurally improper. The RTC directed the parties to file their respective memoranda within 30 days, and stated that the case would be considered submitted for decision after the expiration of the period.

On August 22, 2007, the RTC of Paraxiaque City, Branch 257 rendered a Decision<sup>[13]</sup> in LRC Case No. 05-0047, granting the issuance of a writ of possession in favor of respondent. The dispositive portion of the Decision reads:

WHEREFORE, let a Writ of Possession issue in favor of petitioner Willy O. Dizon, ordering the spouses Edmundo G. Sarrosa and Lourdes Z. Sarrosa and all occupants, tenants and other persons claiming rights under them to vacate the premises and place petitioner in possession of the property and all its improvements covered by Transfer Certificate of Title No. 162999 of the Register of Deeds of Paraxiaque City.

IT IS SO ORDERED.<sup>[14]</sup>

The RTC held that respondent is entitled to a writ of possession based on the rule that after the redemption period has expired, the purchaser of the foreclosed property has the right to be placed in possession thereof.<sup>[15]</sup> Possession of the property becomes an absolute right of the purchaser as owner; and, upon proper application and proof of title, the issuance of a writ of possession in his favor becomes a ministerial duty of the court.<sup>[16]</sup>

Petitioners filed with the Court of Appeals a special civil action for *certiorari* and prohibition,<sup>[17]</sup> alleging that the RTC Judge of Paraxiaque City, Branch 257 acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Decision dated August 22, 2007; and there is no appeal, or any plain, speedy

and adequate remedy in the ordinary course of law to prevent further irreparable damage and injury to petitioners.

The Court of Appeals found that in the arguments and prayer of the petition, petitioners also sought to annul the RTC Order dated June 29, 2007, which denied petitioner's attempt to consolidate LRC Case No. 05-0047 with Civil Case No. 02-0335.

Petitioners prayed that judgment be rendered annulling the RTC Order dated June 29, 2007 and the RTC Decision dated August 22, 2007, and restraining the Clerk of Court *Ex-Officio* Sheriff of the RTC of Paraxiaque City from implementing the writ of possession issued in the Decision dated August 22, 2007 until further orders from the Court of appeals.

In a Decision dated March 27, 2008, the Court of Appeals dismissed the petition for failure of petitioners to state material dates and for lack of merit.<sup>[18]</sup>

The Court of Appeals stated that petitioners failed to state when they received the RTC Order dated June 29, 2007; hence, it cannot be determined whether the petition was filed on time. Under Section 3, Rule 46 of the Rules on Civil Procedure, failure to comply with such requirement is sufficient ground for the dismissal of the petition.

The Court of Appeals also stated that even if it were to take cognizance of the petition, it found that the RTC Judge of Paraxiaque City, Branch 257 did not gravely abuse his discretion in denying petitioners' prayer that LRC Case No. 05-0047 and Civil Case No. 02-0335 be consolidated, because consolidation is a matter of discretion of the court.

Moreover, the Court of Appeals declared that no grave abuse of discretion may be attributed to the RTC Judge in granting the writ of possession in favor of respondent. It held, thus:

x x x Verily, it is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. Possession of the land then becomes an absolute right of the purchaser as confirmed owner and upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court. If the grant of a writ of possession becomes ministerial at this point, there is in fact and in law, hardly any discretion left to court but to issue the same upon the consolidation of title by the herein private respondent. x x x<sup>[19]</sup>

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution<sup>[20]</sup> dated May 20, 2008.

Hence, petitioners filed this petition for review on *certiorari*<sup>[21]</sup> raising the following