

## SECOND DIVISION

[ G.R. No. 177881, October 13, 2010 ]

**EMMANUEL C. VILLANUEVA, PETITIONER, VS. CHERDAN LENDING INVESTORS CORPORATION, RESPONDENT.**

### DECISION

**NACHURA, J.:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision<sup>[1]</sup> dated October 31, 2006 and Resolution<sup>[2]</sup> dated May 10, 2007 in CA-G.R. SP No. 89910.

The facts of the case are as follows:

Spouses Fortunato and Rachel Peñaredondo (spouses Peñaredondo) obtained from respondent Cherdan Lending Investors Corporation a loan amounting to P2.2 million, secured by a real estate mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. T-129690. Despite demand, spouses Peñaredondo failed to pay the obligation. Hence, respondent extrajudicially foreclosed the mortgage. At the auction sale, respondent was declared as the highest bidder. A Certificate of Sale was issued and was later registered. Upon the expiration of the redemption period, the title to the property was consolidated and a new title, TCT No. 143284, issued in respondent's name.<sup>[3]</sup>

On September 28, 2001, respondent filed before the Regional Trial Court (RTC) of Parañaque City, Branch 258, an Ex-Parte Petition for Issuance of Writ of Possession for Real Property Covered by Transfer Certificate of Title No. 143284 of the Registry of Deeds for Parañaque City.<sup>[4]</sup>

In an Order<sup>[5]</sup> dated January 7, 2002, the RTC granted the petition, the dispositive portion of which reads:

WHEREFORE, viewed in the light of the foregoing, let Writ of Possession issue in favor of the petitioner and against Spouses Fortunato Peñaredondo and Rachel Peñaredondo and all occupant(s), tenant(s), and/or persons claiming rights under them to immediately vacate the premises formerly covered by Transfer Certificate of Title No. 129690 and now covered by Transfer Certificate of Title No. 143284 registered in the name of the petitioner, issued by the Registry of Deeds of Parañaque City and to serve the purpose, the Sheriff of this Court is hereby ordered to put the petitioner in possession thereof or thru its duly authorized representative, with the assistance of the barangay officials or local police, if need be.

SO ORDERED.<sup>[6]</sup>

Accordingly, a writ of possession was issued. Upon service of a copy of the court order, petitioner Emmanuel C. Villanueva moved for the reconsideration of the order and the setting aside of the writ of possession on the ground that he is the owner and is in actual possession of the subject property. He notified the court that he had filed criminal and civil cases relative to the fraudulent transfer of ownership of the subject property from him to the spouses Peñaredondo.<sup>[7]</sup> For their part, spouses Peñaredondo also filed a separate Motion to Quash the Writ of Possession<sup>[8]</sup> on two grounds: 1) that there was a pending civil case for the declaration of nullity of mortgage; and 2) that a third party is in adverse possession of the property.

On September 30, 2002, the RTC issued an Order<sup>[9]</sup> in favor of petitioner, disposing, as follows:

WHEREFORE, premises considered, the Motion for Reconsideration as well as Motion to Set Aside Writ of Possession are GRANTED and the movant is allowed to be in possession of the subject property until after the pending case/s has/have been resolved with finality and the Writ of Possession dated February 11, 2002 is hereby recalled and set aside.

As to The Motion to Quash filed by the respondents/mortgagors, the same is hereby DENIED.

SO ORDERED.<sup>[10]</sup>

On August 27, 2004, the RTC of Parañaque City, Branch 257, dismissed Civil Case No. 98-0378 for Declaration of Nullity of Real Estate Mortgage filed by Fortunato Peñaredondo against respondent.<sup>[11]</sup> Respondent thereafter filed a Motion for Alias Writ of Possession,<sup>[12]</sup> which was denied<sup>[13]</sup> on December 20, 2004. On March 8, 2005, respondent's motion for reconsideration was denied for lack of merit.<sup>[14]</sup>

Aggrieved, respondent instituted a special civil action for *certiorari* before the CA, praying that the RTC Order denying its motion for alias writ of possession be reversed and set aside, and that the RTC be directed to issue a writ of possession in favor of respondent against petitioner.<sup>[15]</sup>

In the assailed Decision dated October 31, 2006, the CA granted respondent's petition, the pertinent portion of which reads:

**WHEREFORE,** the petition is **GRANTED**. The assailed *Orders* dated December 20, 2004 and March 8, 2005, both of the Regional Trial Court, Branch 258, Parañaque City are hereby **ANNULLED** and **SET ASIDE**. The trial court is hereby directed to issue an alias writ of possession against all those who claim adverse title and rights against petitioner, which should be placed in actual possession of the subject property but

without prejudice to the eventual outcome of the cases anent the validity of title thereto.

**SO ORDERED.**<sup>[16]</sup>

Citing *PNB v. Sanao Marketing Corporation*<sup>[17]</sup> and *Ancheta v. Metropolitan Bank and Trust Company, Inc.*,<sup>[18]</sup> the CA held that the pendency of the case for annulment of the foreclosure proceedings was not a bar to the issuance of the writ of possession. The CA refused to apply Section 33, Rule 39 of the Rules of Court, which authorizes the giving of possession of the property to the purchaser or last redemptioner unless a third party is actually holding the property adverse to the judgment obligor, ratiocinating that the provision applies only to execution sales and not to extrajudicial foreclosures of real estate mortgage under Act 3135.<sup>[19]</sup>

Hence, the present petition raising the following issues:

- (1) Can the Honorable Court of Appeals require Villanueva to comment on a petition for certiorari wherein he is not even pleaded as a party?
- (2) Is the petition of Cherdan barred by Court order dated 30 September 2002?
- (3) Is Cherdan's petition for certiorari filed in the Court of Appeals proper?
- (4) Is there a legal obstacle/impediment to place Cherdan in possession of the property? And
- (5) Is the decision (Annex "A") and resolution (Annex "B") of the Honorable Court of Appeals in accord with the decisions of the Supreme Court in *Capital Credit Dimension, Inc. v. Chua*, 428 SCRA 259, 263 (Apr. 28, 2004); *Penson v. Maranan*, 491 SCRA 396, 405-406 (June 20, 2006); and *Dayot v. Shell Chemical Co. (Phils.), Inc.*, 525 SCRA 535, 548 (June 26, 2007)?<sup>[20]</sup>

The petition is meritorious.

The core issue for resolution is the propriety of the issuance of the writ of possession over the property subject of the foreclosure of the real estate mortgage.

A writ of possession is an order of the court commanding the sheriff to place a person in possession of a real or personal property.<sup>[21]</sup> It may be issued in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118, either 1) within the one-year redemption period, upon the filing of a bond, or 2) after the lapse of the redemption period, without need of a bond or of a separate and independent action.<sup>[22]</sup>

It is settled that the buyer in a foreclosure sale becomes the absolute owner of the

property purchased if it is not redeemed within one year after the registration of the sale. As such, he is entitled to the possession of the property and can demand that he be placed in possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT.<sup>[23]</sup> Time and again, we have held that it is ministerial upon the court to issue a writ of possession after the foreclosure sale and during the period of redemption. Upon the filing of an *ex parte* motion and the approval of the corresponding bond, the court issues the order for a writ of possession. The writ of possession issues as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.<sup>[24]</sup>

This rule, however, is not without exception. Under Section 33, Rule 39 of the Rules of Court, which is made to apply suppletorily to the extrajudicial foreclosure of real estate mortgages by Section 6, Act 3135, as amended, the possession of the mortgaged property may be awarded to a purchaser in the extrajudicial foreclosure unless a third party is actually holding the property adversely to the judgment debtor.<sup>[25]</sup> Section 33 provides:

*Sec. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given.*

If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

The same issue had been raised in *Bank of the Philippine Islands v. Icot*,<sup>[26]</sup> *Development Bank of the Philippines v. Prime Neighborhood Association*,<sup>[27]</sup> *Dayot v. Shell Chemical Company (Phils.), Inc.*,<sup>[28]</sup> and *Philippine National Bank v. Court of Appeals*,<sup>[29]</sup> and we uniformly held that the obligation of the court to issue an *ex parte* writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor.

The purchaser's right of possession is recognized only as against the judgment