

SECOND DIVISION

[G.R. No. 167280, April 30, 2008]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.
SPS. ELMOR V. BANCE AND ROSARIO J. BANCE, RESPONDENTS.**

DECISION

QUISUMBING, J.:

Challenged in this petition for review are the Decision [1] and Resolution [2] dated October 29, 2004 and March 3, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 78162, which had annulled the Order [3] dated September 11, 2000 of the Regional Trial Court (RTC) of Manila, Branch 4, in LRC Cad. Record No. 278.

The antecedent facts, as culled from the records, are as follows:

Respondents Elmor and Rosario Bance obtained several loans in the amount of P24,150,954.84 from petitioner Metropolitan Bank and Trust Company, Tutuban Branch.[4] As security for the loans, respondents mortgaged their properties in Binondo and Tondo, Manila, covered by Condominium Certificate of Title No. 20040 and Transfer Certificates of Title Nos. 179657 and 179711.[5] Respondents failed to pay their obligations, prompting petitioner to institute extrajudicial foreclosure proceedings over the mortgage.

During the public auction held on October 2, 1998, petitioner emerged as the highest and winning bidder. It was issued a Certificate of Sale [6] which was registered in the Registry of Deeds of Manila on May 3, 1999. [7] On April 5, 2000, petitioner demanded from respondents the surrender and possession of the properties, [8] but the latter failed and refused to do so.

In the meantime, respondents, on May 2, 2000, instituted Civil Case No. 00-97252 in the RTC of Manila, Branch 32, and sought the declaration of nullity of promissory notes, real estate mortgages, agreements, continuing surety agreement, extrajudicial foreclosure proceedings, notices, publications, certificates of sales and the corresponding entries on titles to the subject properties with prayer for temporary restraining order (TRO) and issuance of writs of preliminary injunction and damages. [9] RTC Branch 32 immediately issued a TRO [10] dated May 15, 2000 enjoining petitioner from consolidating the titles of the subject properties; from committing acts giving effect to the subject certificates of sales and all documents thereto; and from committing acts of dispossession of the subject properties against respondents.

On June 23, 2000, petitioner filed with Branch 4 of the RTC of Manila a petition [11] for the issuance of a writ of possession, docketed as LRC Cad. Record No. 278. RTC Branch 4, on September 11, 2000, granted the petition and ordered the issuance of

the writ. [12] The writ was implemented in March 2001, 2002, and July 2003. [13]

Meanwhile, RTC Branch 32, on October 20, 2000, issued a preliminary prohibitory and mandatory injunctive order [14] against petitioner. But for failure of respondents to post a bond, RTC Branch 32 recalled and set aside the order, [15] and accordingly dismissed the case. [16] Upon reconsideration, however, RTC Branch 32 ordered the issuance of the writ. [17] Petitioner sought reconsideration, but it was denied.

On July 22, 2003, respondents filed a petition [18] with the Court of Appeals seeking to annul the September 11, 2000 Order of RTC Branch 4 on the ground of extrinsic fraud. On October 29, 2004, the Court of Appeals ruled that petitioner employed extrinsic fraud when it deliberately withheld the true nature of its claims against respondents in foreclosing the mortgage and securing the writ. It also added that petitioner failed to state in the certification of non-forum shopping attached to the petition for the issuance of the writ, the pendency of Civil Case No. 00-97252 in RTC Branch 32. In conclusion, it declared the foreclosure of mortgage null and void and annulled the September 11, 2000 Order of RTC Branch 4. [19] The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the petition is hereby **GRANTED**. The Order of respondent court dated September 11, 2000 is hereby **ANNULLED**.

SO ORDERED. [20]

Petitioner sought reconsideration, but it was denied. Hence, this petition, ascribing the following errors to the Court of Appeals:

I.

...THE COURT OF APPEALS ERRED IN GIVING DUE COURSE TO RESPONDENTS SPOUSES BANCE'S PETITION FOR ANNULMENT OF THE SEPTEMBER 11, 2000 ORDER OF THE REGIONAL TRIAL COURT OF MANILA BRANCH IV (04) INSTITUTED UNDER RULE 47 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE CONSIDERING THAT A WRIT OF POSSESSION CASE FILED UNDER ACT NO. 3135, AS AMENDED, IS NOT AN ORDINARY ACTION.

II.

...THE COURT OF APPEALS ERRED IN ANNULING THE SEPTEMBER 11, 2000 ORDER OF THE REGIONAL TRIAL COURT OF MANILA BRANCH IV (04) GRANTING THE WRIT OF POSSESSION TO PETITIONER METROBANK ON THE GROUND THAT PETITIONER METROBANK COMMITTED EXTRINSIC OR COLLATERAL FRAUD UNDER SECTION 2, RULE 47 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE.

III.

...THE COURT OF APPEALS ERRED IN NOT DISMISSING RESPONDENTS SPOUSES BANCE'S PETITION FOR ANNULMENT OF THE ORDER DATED SEPTEMBER 11, 2000 OF THE REGIONAL TRIAL COURT OF MANILA

BRANCH IV (04) GRANTING THE WRIT OF POSSESSION (LRC CAD. RECORD NO. 278) CONSIDERING THAT IT IS AN *EX PARTE* PROCEEDING AND ITS ISSUANCE IS MINISTERIAL UNDER ACT NO. 3135, AS AMENDED, AND THERE IS A PENDING CIVIL CASE NO. 00-97252 FILED BY RESPONDENTS SPOUSES BANCE AGAINST PETITIONER METROBANK BEFORE THE REGIONAL TRIAL COURT OF MANILA BRANCH XXXII (32) FOR "DECLARATION OF NULLITY OF PROMISSORY NOTES, REAL ESTATE MORTGAGES, AGREEMENTS, CONTINUING SURETY AGREEMENT, EXTRAJUDICIAL FORECLOSURE PROCEEDINGS, ETC." [21]

IV.

...THE COURT OF APPEALS ERRED IN FINDING PETITIONER BANK GUILTY OF FORUM SHOPPING WHEN IT FILED A PETITION FOR ISSUANCE OF A WRIT OF POSSESSION BEFORE [THE] REGIONAL TRIAL COURT OF MANILA BRANCH IV WHEN THERE WAS A PENDING ACTION ON THE SAME SUBJECT MATTER BEFORE REGIONAL TRIAL COURT OF MANILA, BRANCH XXXII. [22]

Simply, the issues are: (1) Did the Court of Appeals err in annulling the writ of possession issued by RTC Branch 4? (2) Is petitioner guilty of forum shopping?

The petition has merit.

Anent the first issue, petitioner contends that the Court of Appeals erred in annulling the writ of possession on the ground of extrinsic fraud. It avers that a petition for the issuance of the writ is *ex parte* in nature; hence, respondents need not be notified of the proceedings therein. It further argues that since there is already a pending civil case for declaration of nullity of mortgage, etc., the Court of Appeals should not have ruled on the validity of the loan documents and foreclosure proceedings. It adds that respondents, in instituting the annulment of judgment case, failed to pursue the proper remedy provided under Section 8 [23] of Act No. 3135, [24] as amended.

Respondents counter that petitioner employed extrinsic fraud when it secured the writ because it deliberately withheld from them the foreclosure of the mortgage and institution of the petition for the issuance of the writ. They add that a petition for the issuance of the writ is an ordinary action, hence, they must be notified of the true nature of petitioner's claims against them. They also contend that the writ was irregularly issued because petitioner was not required to post the bond mandated in Section 7 [25] of Act No. 3135, as amended.

First, no extrinsic fraud was employed by petitioner in not informing respondents of the institution of the writ of possession case. A petition for the issuance of the writ, under Section 7 of Act No. 3135, as amended, is not an ordinary action filed in court, by which one party "sues another for the enforcement or protection of a right, or prevention or redress of a wrong." [26] It is in the nature of an *ex parte* motion which the court hears only one side. It is taken or granted at the instance and for the benefit of one party, and without notice to or consent by any party adversely affected. [27] Accordingly, upon the filing of a proper motion by the purchaser in a foreclosure sale, and the approval of the corresponding bond, the writ of possession

issues as a matter of course and the trial court has no discretion on this matter. [28]

Second, the writ of possession was not irregular despite the fact that petitioner did not post a bond. The posting of a bond as a condition for the issuance of the writ of possession becomes necessary only if it is applied for within one year from the registration of the sale with the register of deeds, *i.e.*, during the redemption period inasmuch as ownership has not yet vested on the creditor-mortgagee. After the one-year period, and no redemption was made, the mortgagor loses all interest over it. [29] In this case, respondents were already stripped of their rights over the properties when they failed to redeem the same within one year from May 3, 1999, the date of registration of the sale. [30] Hence, when petitioner applied for the writ after the expiration of the redemption period there was even more reason to issue the writ.

Third, the Court of Appeals, in CA-G.R. SP No. 78162, need not delve on any alleged defect or irregularity in the foreclosure, inasmuch as the only issue therein was the propriety of the issuance of the writ. [31] Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of the writ. [32] If only to stress the writ's ministerial character, we have, in several cases, [33] disallowed injunctions prohibiting its issuance, just as we have held that the issuance of the writ may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

Fourth, respondents failed to pursue the proper remedy. Under Section 8 of Act No. 3135, as amended, in case it is disputed that the writ of possession was irregularly issued, the mortgagor may file with the trial court that issued the writ a petition to set aside the sale and to cancel the writ of possession within 30 days *after* the purchaser-mortgagee was given possession. [34] Based on the records, the subject properties were turned over to petitioner on March 19, 2001, sometime in 2002 and July 2003. Respondents should have assailed the writ within 30 days therefrom, but they failed to do so.

On the issue of forum shopping, respondents contend that petitioner's filing of the petition for the issuance of a writ of possession constitutes forum shopping because there is already a pending case in RTC Branch 32 involving the subject properties. Petitioner, on the other hand, avers that it was not duty bound to disclose to respondents the pendency of the writ of possession case and a certificate of non-forum shopping is not required in a petition for the issuance of the writ under Section 7 of Act No. 3135, as amended because it is not a complaint or initiatory pleading.

Petitioner is correct. Insofar as LRC Cad. Record No. 278 and Civil Case No. 00-97252 are concerned, there is no forum shopping. The essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. Since the issuance of a writ of possession is a ministerial function and summary in nature, it cannot be said to be a judgment on the merits but simply an incident in the transfer of title. [35] Hence, regardless of whether or not there is a pending suit for annulment of the