

FIRST DIVISION

[G.R. No. 159934, June 26, 2008]

METROPOLITAN BANK AND TRUST COMPANY AND ROGELIO T. UY, PETITIONERS, VS. JOSE B. TAN AND REY JOHN TAN, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review on certiorari^[1] assailing the Decision dated 21 March 2003 ^[2] and the Resolution dated 1 September 2003^[3] of the Court of Appeals (appellate court) in CA-G.R. SP No. 68523. The appellate court reversed the Decision dated 2 April 2001 ^[4] of the Regional Trial Court of Cagayan de Oro City (trial court) in Miscellaneous Case (MC) No. 2000-117.

The trial court granted Metropolitan Bank and Trust Company (Metrobank) a Writ of Possession over the properties covered by TCT No. T-134333, TCT No. 134331, and TCT No. 134332.

The Facts

The appellate court stated the facts as follows:

Petitioner Rey John Tan is the owner and actual possessor of a parcel of land situated at Carmen, Cagayan de Oro City, specifically described under Transfer Certificate of Title (TCT) No. T-37311 and registered with the Registry of Deeds of Cagayan de Oro City.

On the other hand, petitioner Jose B. Tan is also an owner of a parcel of commercial land situated at Lapasan, Cagayan de Oro City, duly registered under Transfer Certificate of Title (TCT) No. T-53267 of the Registry of Deeds of Cagayan de Oro City.

Private respondent Metropolitan Bank and Trust Company alleges that petitioner Jose B. Tan had been duly authorized, pursuant to a special power of attorney given by a [sic] Ariel Tan, to mortgage the commercial properties of the latter covered by Transfer Certificate of Title (TCT) Nos. T-42033 and T-42032, both registered with the Register of Deeds of Cagayan de Oro City, in favor of private respondent bank.

Subsequently, a petition for the extra-judicial foreclosure of Transfer Certificate of Title (TCT) Nos. T-37311, T-53267, T-42033, and T-42032, was filed by Metropolitan Bank and Trust Company and Rogelio T. Uy with

the Office of the Provincial Sheriff of Misamis Oriental. The said petition was acted upon by public respondent Sheriff Albano Cuarto who then undertook to schedule the public auction sale of the aforementioned parcels of land on April 17, 1998. The said public auction was to be conducted in order to satisfy an alleged obligation of P48,311,003.39 that were all secured by real estate mortgages over the aforementioned lots. The subject parcels of land were auctioned off by public respondent Albano Cuarto, as scheduled.

Prior to the date of the auction sale, or on April 16, 1998 to be exact, petitioners Jose B. Tan and his wife, Eliza Go Tan, filed an action to "Remove Cloud of Doubt on Title, Injunction with prayer for issuance of a writ of preliminary injunction or temporary restraining order," before the Regional Trial Court of Misamis Oriental, Branch 38, docketed as Civil Case No. 98-225, entitled "JOSE B. TAN AND ELIZA GO TAN, plaintiffs, versus METROPOLITAN BANK AND TRUST COMPANY, ROGELIO T. UY and ALBANO L. CUARTO, as Sheriff IV, Office of the Provincial Sheriff of Misamis Oriental, defendants."

In a Decision, dated March 5, 2001, the court *a quo* rendered the following pronouncement, the dispositive portion of which is hereby quoted as follows:

- a) Declaring that, because of the fact that plaintiff Eliza G. Tan did not give her consent to all the real estate mortgages annotated at the back of her title, TCT No. T-53267, of the Registry of Deeds for Cagayan de Oro, all said mortgages are null and void ab initio;
- b) Declaring that, because plaintiff Jose B. Tan did not execute the real estate mortgages annotated at the back of his title, TCT No. T-53267, of the Registry of Deeds of Cagayan de Oro, all said mortgages are null and void;
- c) Declaring that extra-judicial foreclosure proceedings taken by the defendant-sheriff, including the sheriff's certificate of sale, as null and void;
- d) Making permanent the writ of preliminary injunction against the defendant sheriff, and the office of the provincial Sheriff of Misamis Oriental, enjoining and restraining them, their agents, and their representatives from issuing a final certificate of sale in favor of defendant METROBANK covering the parcel of land covered by TCT No. T-53267;
- e) Ordering the removal of the cloud on the title, TCT No. T-53267, of the Registry of Deeds of Cagayan de Oro, and the cancellation of all the entries of the real estate mortgages and amendment of mortgages annotated at the back of TCT No. T-53267 of the Registry of Deeds for Cagayan de Oro City;
- f) Absolving the plaintiffs spouses from financial liability for

the null and void
real estate mortgages;

g) Declaring the principal obligations obtained by Rey John Tan through the annulled real estate mortgages as FULLY PAID by him;

xxx xxx xxx

SO ORDERED.

Notwithstanding the aforementioned pronouncement of the Regional Trial Court of Misamis Oriental, Branch 38, private respondents METROBANK and Rogelio T. Uy filed, on January 20, 2001, an Ex Parte Petition for a writ of possession docketed under Miscellaneous Case No. 2000-117 before Branch 21, of the same Regional Trial Court concerning three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-42033, T-42032, T-37311 which had been incidentally cancelled by Transfer Certificates of Title (TCT) Nos. T-13432 [sic], T-13431 [sic], and T-13433 [sic].

Since herein petitioners were not notified of the hearing set by the court in Miscellaneous Case No. 2000-117, private respondent METROBANK was allowed to present its evidence *ex parte* on February 8, 2001, before the Branch Clerk of Court of Branch 21.

On April 2, 2001, the Regional Trial Court of Misamis Oriental, Branch 21, rendered its Decision in Miscellaneous Case No. 2000-117, the dispositive portion of which reads:

WHEREFORE, petitioner having sufficiently established to the satisfaction of this Court all the allegations in its petition and finding the petition to be deserving of merit, the same is hereby granted. Accordingly, a Writ of Possession over the properties covered by TCT No. T-134333, TCT No. T-134331 and TCT No. T-134332 is hereby ordered issued in favor of the petitioner against any and all occupants/possessor of the aforementioned properties.

SO ORDERED.

On July 10, 2001, a writ of possession, in Miscellaneous Case No. 2000-117 involving the three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-13432 [sic], T-13431 [sic], and T-13433 [sic], was issued by the Branch Clerk of Court, to wit:

Pursuant to the Decision of the Honorable Court, dated April 2, 2001, you are hereby commanded to place in possession the herein petitioner METROPOLITAN BANK TRUST CO. over a parcel of land including all improvements thereon, covered by Transfer Certificates of Title Nos. T-13433 [sic], T-13431 [sic], and TCT No. T-13432 [sic] and cause REY JOHN TAN and/or any other person thereof to vacate from the premises of the

said property.

The Chief of Police of Cagayan de Oro City or any of his duly authorized representatives are hereby directed to assist the Sheriff to enforce this Writ of Possession.

Witness the Hon. ARCADIO D. FABRIA presiding Judge of this Court, this 10th day of July.

On even date, or on July 10, 2001, to be exact, public respondent Sheriff IV Albano L. Cuarto issued a "NOTICE TO VACATE" to petitioner Rey John Tan regarding the three (3) lots now covered by TCT Nos. T-13433 [sic], T-134331, and T-13432 [sic].

In an attempt to forestall the implementation of the assailed writ of possession, petitioner Rey John Tan, and Ariel Tan, moved for the reconsideration of the Decision dated April 2, 2001 granting the writ prayed for, and to quash the writ of possession as well as the notice to vacate. Respondent judge granted herein petitioners time to consolidate their exhibits. Among the five (5) exhibits presented by the herein petitioners, is a copy of the Decision, dated March 5, 2001, of the Regional Trial Court of Misamis Oriental, Branch 38, declaring the alleged real estate mortgages and extra-judicial foreclosure proceedings as null and void ab initio and/or null and void.

The said Motion was denied in an Order, dated November 21, 2001, of the Regional Trial Court of Misamis Oriental, Branch 21, the dispositive portion of which reads:

WHEREFORE, premises considered, oppositors' motion for reconsideration and motion to quash writ of possession and notice to vacate are hereby denied for want of merit. Consequently, petitioner's motion to break open is granted. Petitioner is thus allowed to break open the foreclosed property in order for the latter to be placed in complete control and possession thereof.

SO ORDERED.

The motion for the reconsideration of the Order, dated November 21, 2001, was likewise denied in another Order of the said Court on December 13, 2001.^[5]

Rey John Tan and Jose B. Tan (respondents) filed an appeal before the appellate court. They questioned the ruling of the trial court because in Civil Case No. 98-225, a co-equal court declared all the real estate mortgages void. They stated that a writ of possession should not issue from a void mortgage.

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The Appellate Court's Ruling