

## THIRD DIVISION

[ G.R. No. 163196, July 04, 2008 ]

**FIRST MARBELLA CONDOMINIUM ASSOCIATION, INC.,  
PETITIONER, VS. AUGUSTO GATMAYTAN, RESPONDENT.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

From the January 7, 2004 Order<sup>[1]</sup> of the Regional Trial Court (RTC), Pasay City, denying the request of First Marbella Condominium Association, Inc. (petitioner) for extrajudicial foreclosure against Augusto Gatmaytan (respondent); and the March 31, 2004 RTC Order,<sup>[2]</sup> denying petitioner's Motion for Reconsideration, the latter filed directly with this Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court on this sole ground:

The Executive Judge of the Regional Trial Court of Pasay City gravely erred in dismissing the petition in view of the fact that:

(A) Section. 20 of Rep. Act No. 4726, as amended, otherwise known as the "Condominium Act", expressly grant the petitioner, being the acknowledged association of unit owners at Marbella I Condominium, the right to enforce its liens of unpaid dues and other assessments in the same manner provided for by law for judicial or extra-judicial foreclosure of mortgage of real property; and

(B) Such practice of auctioning the delinquent condominium unit through a petition for extra-judicial foreclosure of mortgage, as aforestated is permitted in other jurisdictions, such as in the City of Manila.<sup>[3]</sup>

The factual antecedents are as follows.

Respondent is the registered owner of Fontavilla No. 501 (condominium unit), Marbella I Condominium, Roxas Boulevard, Pasay City, under Condominium Certificate of Title No. 1972 (CCT No. 1972).<sup>[4]</sup> Inscribed on his title is a Declaration of Restrictions, to wit:

Entry No. 65370/T-20065 - DECLARATIONS OF RESTRICTIONS - executed by the herein registered owner, is hereon annotated restrictions shall be deemed to run with the land, the bldg. other improvements making up the project, shall constitute lien upon the project, and each unit and shall inure to the benefit of, and be binding upon all units owners, purchasers, interchangeably or sometimes referred to in this Master of Deed with Dec. of Restrictions as occupant, [sic] or holding any w/o [sic] or any right or interest therein or in the project, pursuant to the prov. of the condominium act or other pertinent laws. See restrictions and conditions

imposed on Doc. No. 114, Page 24, Bk. I, s. of 1974 of the Not. Pub. for Rizal, M. Perez, Cardenas ***among w/c are those dealing on scope coverage; Management Body; repair, alteration et [sic] assessment real property of restrictions bldg. rules waivers rights and assignee, tenants occupants of unit validity***,[sic] amendment of declaration dated March 19, 1974.

Date of inscription May 9, 1979 - 3:02 p.m.<sup>[5]</sup> (Emphasis supplied.)

Also inscribed is a Notice of Assessment, which states:

Entry No. 96-2466/CCT No. 1972 -NOTICE OF ASSESSMENT - Executed by MILAGROS D. CUBACUB in her capacity as Vice-President/Administrator of FIRST MARBELLA CONDOMINIUM ASSOCIATION, INC. (FMCAI) [herein petitioner], stating among other things that the condominium unit, described herein has an outstanding dues with the FMCAI in the sum of P775,786.17, inclusive of interests, penalties and attorney's fees, which aforementioned liabilities constitute as first lien against this condominium unit pursuant to the Master Deed of Restrictions. (Doc. No. 34; Page No. 7; Book No. III; Series of 1996 before Notary Public Jose A. Suing, Notary Public for Quezon City).

Date of Instrument - March 27, 1996.

Date of Inscription - May 3, 1996 - 2:10 p.m.<sup>[6]</sup>

On November 11, 2003, petitioner filed with the RTC, through the Office of the Clerk of Court Ex-Oficio Sheriff, a Petition<sup>[7]</sup> for extrajudicial foreclosure of the condominium unit of respondent, alleging that it (petitioner) is a duly organized association of the tenants and homeowners of Marbella I Condominium; that respondent is a member thereof but has unpaid association dues amounting to P3,229,104.89, as of June 30, 2003; and that the latter refused to pay his dues despite demand. The petition is docketed as File Case No. 03-033. Attached to it are the June 30, 2003 Statement of Account<sup>[8]</sup> and July 22, 2000 demand letter<sup>[9]</sup> issued to respondent.

In a letter dated November 21, 2003, the Clerk of Court, as Ex-Oficio Sheriff, recommended to the RTC Executive Judge that the petition be dismissed for the following reasons:

Under the facts given, no mortgage exists between the petitioner and respondent. Evidently, it is not one of those contemplated under Act 3135 as amended by Act 4118. The allegation simply does not show a mortgagor-mortgagee relationship since respondent liability arises from his failure to pay dues, assessments and charges due to the petitioner.

As clearly stated, the authority of the Executive Judge under Administrative Matter No. 99-10-05-0, as amended dated March 1, 2001, covers extra-judicial foreclosure of real estate mortgages under R.A. No. 3135 and chattel mortgages under P.D. No. 1508. There is nothing in the above mentioned Circular which authorizes the Executive Judge and/or the Ex-Oficio Sheriff to extra judicially foreclose properties covered by

obligations other than the said mortgages. Hence, the subject petition is not proper for extra-judicial foreclosure under the supervision of the Executive Judge. Dismissal of the subject petition is recommended.<sup>[10]</sup>

Agreeing with the Clerk of Court, the RTC Executive Judge issued on January 7, 2004 the following Order:

Upon perusal of the pertinent laws and Supreme Court Resolutions, this Court concurs with the position taken by the Ex-Oficio Sheriff that herein petition is not within the coverage of Administrative Matter No. 99-10-05-0 as amended, dated March 1, 2001 re: Procedure in Extra Judicial Foreclosure of Mortgage, paragraph 1 thereof is hereby quoted as follows:

"1. All applications for extra-judicial foreclosure of mortgage whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court who is also the Ex-Oficio Sheriff."

Hence, it is not within the authority of the Executive Judge to supervise and approve extra judicial foreclosures of mortgages.

WHEREFORE, the request for extra-judicial foreclosure of the subject condominium unit is DENIED. Consequently, the petition is DISMISSED.

SO ORDERED.<sup>[11]</sup> (Emphasis added.)

Petitioner filed a Motion for Reconsideration,<sup>[12]</sup> but the RTC Executive Judge denied it in an Order<sup>[13]</sup> dated March 31, 2004.

Hence, the present petition.

Petitioner asserts that it is expressly provided under Section 20 of Republic Act (R.A.) No. 4726 that it has the right to cause the extrajudicial foreclosure of its annotated lien on the condominium unit. Its petition then is cognizable by the RTC under Administrative Matter No. 99-10-05.<sup>[14]</sup>

In his Comment,<sup>[15]</sup> Supplemental Comment<sup>[16]</sup> and Memorandum,<sup>[17]</sup> respondent objects to petitioner's direct appeal to this Court from an Order issued by the RTC on a mere administrative matter.<sup>[18]</sup> Respondent also impugns petitioner's right to file the petition for extra-judicial foreclosure, pointing out that the latter does not hold a real estate mortgage on the condominium unit or a special power of attorney to cause the extra-judicial foreclosure sale of said unit.<sup>[19]</sup> Respondent claims that there is even a pending litigation regarding the validity of petitioner's constitution as a homeowners association and its authority to assess association dues, annotate unpaid assessments on condominium titles and enforce the same through extrajudicial foreclosure sale.<sup>[20]</sup> In sum, respondent contends that petitioner has no factual or legal basis to file the petition for extrajudicial foreclosure.

The petition lacks merit.