

THIRD DIVISION

[G.R. No. 157660, August 29, 2008]

ELIGIO P. MALLARI, PETITIONER, BANCO FILIPINO SAVINGS & MORTGAGE BANK, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the Court of Appeals (CA) Decision^[1] dated March 14, 2003, dismissing the petition for *certiorari* filed by Eligio P. Mallari (petitioner).

The antecedent facts are as follows.

Petitioner obtained a loan from Banco Filipino Savings and Mortgage Bank (respondent) and as security therefor, he executed a Deed of Mortgage over a parcel of land located in Pampanga. Due to his failure to pay the loan, respondent extra-judicially foreclosed the mortgaged property. Respondent was the highest bidder at the public auction sale, and the Certificate of Sale issued in its favor was annotated on the title of the subject property on May 20, 1999. Petitioner failed to redeem said property within the redemption period which expired on May 20, 2000. Respondent then consolidated its title to the foreclosed property. **Petitioner's certificate of title to the property was cancelled and a new one was issued in the name of respondent on August 30, 2000.**

Thereafter, on January 18, 2001, respondent filed with the Regional Trial Court (RTC) an *Ex-Parte Petition for the Issuance of Writ of Possession Under Act No. 3135*. On March 22, 2001, petitioner filed a *Motion to Dismiss/Opposition to Petition*, alleging that there was still a pending action between the parties for declaration of nullity of the extra-judicial foreclosure proceedings which was filed as early as May 16, 2000. Nevertheless, on May 18, 2001, the RTC issued an Order granting respondent's petition for issuance of a writ of possession. Petitioner's motion for reconsideration thereof was denied.

Aggrieved, petitioner filed a petition for *certiorari* with the CA. On March 14, 2003, the CA promulgated the herein assailed Decision dismissing the petition for lack of merit, ruling that under the law, the purchaser in the foreclosure sale should be placed in possession of the property without delay, and that it was the ministerial duty of the courts to uphold the mortgagee's right to possession even during the redemption period.^[2] The CA added that an appeal, which was available to petitioner, was the appropriate remedy, and therefore, he could not avail himself of the writ of *certiorari*.

Petitioner then filed the present petition for review on *certiorari* alleging that:

1. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN UPHOLDING THE GRANT OF WRIT OF POSSESSION IN FAVOR OF RESPONDENT BANCO FILIPINO AGAINST THE SPOUSES ELIGIO AND MARCELINA MALLARI ON THE PROPERTY SUBJECT MATTER OF THIS CASE.
2. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN UPHOLDING THE DENIAL ORDER OF THE TRIAL COURT TO RECONSIDER THE ORDER DATED MAY 18, 2001, AND ORDERING THE DEPUTY SHERIFF TO IMPLEMENT THE WRIT OF POSSESSION DATED MAY 18, 2001.
3. THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR WHEN IT RULED THAT CERTIORARI WILL NOT LIE AS APPEAL IS THE APPROPRIATE REMEDY WHICH IS STILL AVAILABLE IN THE CASE.^[3]

The petition fails for lack of merit. The CA committed no error.

First to be resolved is the issue of whether the remedy of *certiorari* may be availed of by petitioner in assailing the RTC Orders granting the issuance of a writ of possession. The well-trenched rule provided for in Section 1, Rule 65 of the Rules of Court and elucidated in *Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission*,^[4] is that:

Certiorari as a special civil action is available only if the following essential requisites concur: (1) it must be directed against the tribunal, board or any officer exercising judicial or quasi-judicial functions; (2) the tribunal, board or officer must have acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) **there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.**

x x x x

x x x A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment or rule, order or resolution of the lower court or agency.^[5] (Emphasis supplied)

Indeed, the Court in some instances has allowed a petition for *certiorari* to prosper notwithstanding the availability of an appeal, such as, (a) when public welfare and the advancement of public policy dictate it; (b) when the broader interest of justice so requires; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority."^[6]

However, in the present case, the Court finds no cogent reason to sustain petitioner's claim that the CA erred when it ruled that *certiorari* would not lie, as appeal is the appropriate remedy. There is no issue here that involves public welfare or policy. The broader interest of justice would, in fact, be better served by following the procedural steps set forth in Section 8, Act No. 3135, as amended, to wit:

SEC. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; **but the order of possession shall continue in effect during the pendency of the appeal.** (Emphasis supplied)

The above procedure affords both parties the most expeditious way to resolve any conflict regarding the writ of possession alone.

Jose v. Zulueta,^[7] *Matute v. Court of Appeals*,^[8] *Romero, Sr. v. Court of Appeals*^[9] and *Belfront Surety and Insurance Co. v. People of the Philippines*^[10] cited by petitioner are not applicable to the present case. Those cases involved writs of possession issued in the course of the execution of judgment, totally unlike this case in which the writ of possession was issued by reason of an extra-judicial foreclosure.

In *Green Asia Construction & Development Corp. v. Court of Appeals*,^[11] the Court categorically ruled that under Section 8, Act No. 3135, the remedy of a party from the trial court's order granting the issuance of a writ of possession is to file a petition to set aside the sale and cancel the writ of possession, and the aggrieved party may then appeal from the order denying or granting said petition. This is the plain, speedy and adequate remedy envisioned in Rule 65 of the Rules of Court, and since petitioner could have availed himself of such procedure, he is not entitled to the remedy of *certiorari*. On this point alone, the CA acted properly in dismissing the subject petition for *certiorari*.

However, just to put petitioner's mind at ease that the dismissal of his petition for *certiorari* was not grounded solely on technicalities, the Court will discuss the issue of the propriety of the issuance of the writ of possession by the trial court.

The writ of possession was issued in accordance with law and jurisprudence. The writ of possession granted by the RTC was not a nullity; neither was its issuance an oppressive exercise of judicial authority.

In *Espiridion v. Court of Appeals*,^[12] a case that is closely akin to the present petition, the Court expounded thus:

x x x The issuance of a writ of possession to a purchaser in a public auction is a ministerial act. **After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function.** The trial court has no discretion on this matter. Hence, **any talk of discretion in connection with such issuance is**