

SECOND DIVISION

[G.R. NO. 167998, April 27, 2007]

**LZK HOLDINGS AND DEVELOPMENT CORP., PETITIONER, VS.
PLANTERS DEVELOPMENT BANK, RESPONDENT.**

DECISION

QUISUMBING, J.:

Before us is a petition for review assailing the Decision^[1] dated March 15, 2005 of the Court of Appeals in CA-G.R. SP No. 60944 and its Resolution^[2] dated May 5, 2005 denying the motion for reconsideration. The appellate court had reversed the Order^[3] dated May 11, 2000 of the Regional Trial Court (RTC) of San Fernando City, La Union, Branch 66 which held in abeyance the resolution of the *ex parte* petition for issuance of a writ of possession.

The antecedent facts in this case are as follows.

Petitioner LZK Holdings and Development Corporation (LZK) obtained a loan of P40,000,000 from respondent Planters Development Bank (Planters Bank), secured by a mortgage on a land situated in Catbangan, San Fernando City, La Union, with Transfer Certificate of Title No. T-45337.

When LZK failed to pay the loan, extrajudicial foreclosure proceedings against the mortgaged property were initiated by Planters Bank. At the auction sale of September 21, 1998, Planters Bank was the highest bidder of the foreclosed property. The sale was registered on March 16, 1999.

Thereafter, LZK filed a complaint for annulment of extrajudicial foreclosure, mortgage contract, promissory notes and damages, docketed as Civil Case No. 6215 with the RTC of San Fernando City, La Union, Branch 29. But in an Order dated June 23, 1998, it was dismissed for improper venue. On December 27, 1999, Planters Bank filed an *ex parte* petition for the issuance of a writ of possession with the RTC of San Fernando City, La Union, Branch 66.

In the meantime, LZK filed another complaint for annulment of extrajudicial foreclosure, mortgage contract, promissory notes, and damages, this time docketed as Civil Case No. 99-741 with the RTC of Makati City, Branch 150. LZK also filed an urgent motion for the issuance of a writ of preliminary injunction. Three days before the one-year redemption period expired, the Makati RTC issued a temporary restraining order dated March 13, 2000, effective for twenty days from said date, enjoining Planters Bank from consolidating title over the property. On April 3, 2000, the trial court ordered the issuance of the writ of preliminary injunction upon posting of a bond of P40,000,000, and suspended the consolidation of title. However, LZK failed to post the required bond. Planters Bank filed a petition for certiorari docketed as CA-G.R. SP No. 59327 with the Court of Appeals assailing the said order. The

Court of Appeals affirmed the order of the Makati RTC. Planters Bank thereafter filed a petition for review docketed as G.R. No. 164536 with the Supreme Court but was denied for failure to show reversible error. It became final and executory on January 19, 2005.

Meanwhile, Planters Bank, through its authorized officers, executed a final deed of sale^[4] and an affidavit of consolidation of ownership^[5] on April 24, 2000. On May 11, 2000, the San Fernando RTC held in abeyance the resolution of the *ex parte* petition for the issuance of the writ of possession in view of the order of the Makati RTC suspending the consolidation of title. Planters Bank moved for reconsideration but it was denied in an order dated September 1, 2000.

In an Order dated June 20, 2000, the Makati RTC issued the writ of preliminary injunction upon LZK's posting of a bond.

Planters Bank filed a petition for certiorari before the Court of Appeals assailing the order of the San Fernando RTC. The appellate court granted the petition and annulled and set aside said orders. It ratiocinated that the writ of possession issues as a matter of course upon motion and approval of the corresponding bond. It also ruled that the order of the Makati RTC was not directed to the San Fernando RTC and merely enjoined the consolidation of title.^[6]

Hence the instant petition where petitioner assigns the following as errors:

- I. THE COMPLAINT FOR ANNULMENT OF THE MORTGAGE CONTRACT, PROMISSORY NOTES AND EXTRAJUDICIAL FORECLOSURE WAS FILED WAY AHEAD OF THE *EX-PARTE* PETITION FOR ISSUANCE OF WRIT OF POSSESSION.
- II. THE WRIT OF PRELIMINARY INJUNCTION ENJOINING THE BANK FROM EFFECTING THE CONSOLIDATION OF TITLE TO THE FORECLOSED PROPERTY WAS ISSUED BY THE RTC-MAKATI CITY, BEFORE THE RTC-[SAN FERNANDO CITY] COULD ACT ON THE APPLICATION FOR A WRIT OF POSSESSION.
- III. THE APPELLATE COURT...MISAPPLIED THE DOCTRINE OF NON-INTERFERENCE WITH THE ORDERS, DECREES OR JUDGMENTS OF COURTS OF COORDINATE AND CONCURRENT JURISDICTION.
- IV. THE HONORABLE [COURT OF APPEALS] FAILED TO TAKE INTO ACCOUNT THE PREVIOUS STAND OF THE BANK AS TO THE PROPER VENUE OF ANY DISPUTE BETWEEN THE PARTIES.
- V. THE APPELLATE COURT LIKEWISE FAILED TO CONSIDER THE FINAL AND EXECUTORY RULING OF THE TRIAL COURT DECLARING THE CONSOLIDATED TITLE OF THE BANK TO BE NULL AND VOID, AND CONSEQUENTLY, THE BANK IS NOT ENTITLED TO A WRIT OF POSSESSION.
- VI. THE BANK AND ITS LAWYERS HAVE GLARINGLY VIOLATED THE RULE AGAINST FORUM-SHOPPING, WHEN IT RAISED IDENTICAL

OR CLOSELY RELATED ISSUES IN SEPARATE PETITIONS FILED
WITH THE APPELLATE COURT.^[7]

Simply stated, the issue in this case is whether respondent bank is entitled to the possession of the foreclosed property?

Petitioner contends that the appellate court's decision was in error when it disregarded the writ of preliminary injunction issued by the Makati RTC which was already upheld by the Supreme Court.^[8] Moreover, said petitioner, in issuing the writ of preliminary injunction, the Makati RTC did not interfere with the judgments or decrees of a court of concurrent jurisdiction considering that the San Fernando RTC had yet to resolve the *ex parte* petition for the issuance of the writ of possession.^[9]

Petitioner also contends that the ministerial duty of the court to issue the writ of possession only arises when title to the property has been consolidated in the name of the applicant. It adds that the consolidated title of respondent bank had been declared null and void since the consolidation was in violation of the order of injunction previously issued by the Makati RTC. Consequently, according to petitioner, respondent bank has no right to seek the issuance of the writ of possession.^[10]

Further, petitioner claims that the various petitions for certiorari filed with the Court of Appeals, docketed as CA-G.R. SP No. 59327,^[11] CA-G.R. SP No. 61262,^[12] CA-G.R. SP No. 67410,^[13] and CA-G.R. SP No. 60944, constitute forum shopping.

Respondent bank for its part maintains that the appellate court did not commit reversible error. It argues that: (1) the earlier filing and pendency of an action for annulment of extrajudicial foreclosure, mortgage contract, promissory notes, and damages will not affect the right to possess an extra-judicially foreclosed property;^[14] (2) it is the ministerial duty of the court to grant the petition for the issuance of writ of possession based on Act No. 3135, as amended;^[15] (3) petitioner lost its right over the mortgaged property when it failed to redeem the same within one year from registration of the sale;^[16] (4) the writ of injunction issued by the Makati RTC cannot be used to interfere in or suspend the proceedings in the San Fernando RTC;^[17] (5) the filing of the four petitions before the Court of Appeals did not constitute forum shopping considering the main case has not yet reached the pre-trial stage and only the preliminary matters had been resolved;^[18] and (6) it can still take possession of the subject property even if title to it was not yet consolidated.^[19]

Essential to note, the injunction granted by the Makati RTC and upheld by this Court mainly enjoined respondent from consolidating its title over the foreclosed property. It is not correct for petitioner to assume that the injunction also prohibits respondent from taking possession of the property.

A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment.^[20] It may be issued in