

## SECOND DIVISION

**[ G.R. NO. 165142, December 10, 2007 ]**

**EDUARDO L. RAYO, PETITIONER, VS. METROPOLITAN BANK AND TRUST COMPANY AND BRANCH 223 OF THE REGIONAL TRIAL COURT OF QUEZON CITY, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

Before us is a petition for review assailing the Resolutions dated June 15, 2004<sup>[1]</sup> and August 23, 2004<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 83895 for annulment of judgment.

The pertinent facts are undisputed.

Midas Diversified Export Corp. (Midas), thru its president, Mr. Samuel U. Lee, obtained six (6) loans from private respondent Metropolitan Bank and Trust Company (Metrobank), amounting to P588,870,000 as evidenced by promissory notes. To secure the payment of an P8,000,000 loan, Louisville Realty & Development Corporation (Louisville), thru its president, Mr. Samuel U. Lee, executed in favor of Metrobank, a real estate mortgage over three parcels of land situated at No. 40 Timog Ave., Brgy. Laging Handa, Quezon City, with all the buildings and improvements thereon. The properties are covered by Transfer Certificates of Title (TCT) Nos. N-163455, N-166349 and N-166350 issued by the Registry of Deeds of Quezon City.

When the debtor-mortgagor failed to pay, Metrobank extra-judicially foreclosed the real estate mortgage in accordance with Act No. 3135,<sup>[3]</sup> as amended. Thereafter, in a public auction, Metrobank was the highest bidder. A Certificate of Sale<sup>[4]</sup> dated December 11, 2000 was duly registered with the Registry of Deeds of Quezon City on December 13, 2000. When Louisville refused to turn over the real properties, on March 17, 2001, Metrobank filed before the Regional Trial Court (RTC), Branch 223, Quezon City, an ex parte petition<sup>[5]</sup> for the issuance of a writ of possession docketed as LRC Case No. Q-13915(01). After presentation of evidence *ex parte*, the RTC granted the petition in an Order<sup>[6]</sup> dated July 5, 2001, the dispositive portion of which reads as follows:

WHEREFORE, in consideration of the foregoing premises, the instant petition is hereby GRANTED. Upon the filing of a bond in the amount of ONE HUNDRED THOUSAND PESOS ([P]100,000.00), let a Writ of Possession over the properties covered by Transfer Certificates of Title Nos. N-163455, N-166349 & N-166350 issue in favor of the petitioner METROPOLITAN BANK & TRUST COMPANY to be implemented by the Deputy Sheriff of Branch 223, Regional Trial Court of Quezon City by

placing the petitioner in possession over the parcels of land with all its improvements.

SO ORDERED.<sup>[7]</sup>

On September 24, 2001, Metrobank posted the required bond. Consequently, a writ of possession was issued on October 9, 2001. This was partially implemented as to TCT No. N-163455, as evidenced by the Turn-Over Receipt<sup>[8]</sup> dated December 13, 2002. The writ over the two remaining properties, under TCT Nos. N-166349 and N-166350, were subsequently implemented as evidenced by the Turn-Over Receipt<sup>[9]</sup> dated December 3, 2003.

Meanwhile, on April 3, 2002, petitioner Eduardo L. Rayo filed a complaint<sup>[10]</sup> docketed as Civil Case No. Q02-46514 against Metrobank for Nullification of Real Estate Mortgage Contract(s) and Extrajudicial Foreclosure Sale, in the RTC, Branch 99, Quezon City.

On May 13, 2004, petitioner Rayo filed with the Court of Appeals a Petition<sup>[11]</sup> for Annulment of Judgment on the ground of "absolute lack of due process." Petitioner alleged that his predecessor, Louisville, was not notified of the proceedings and that Section 7<sup>[12]</sup> (*ex parte* motion or petition for the issuance of a writ of possession) of Act No. 3135 is unconstitutional.

On June 15, 2004, the Court of Appeals denied the petition for lack of merit. The Court of Appeals ruled that petitioner is neither the registered owner nor the successor-in-interest of the registered owner; hence, not a real party-in-interest. It also ruled that there is no basis to challenge the constitutionality of Section 7 of Act No. 3135, as amended as it constitutes a collateral attack against said provision. Further, petitioner availed of the wrong remedy in filing Civil Case No. Q02-46514. Petitioner sought reconsideration, but was likewise denied.

Petitioner now comes before us raising the following as primary issue:

**WHETHER OR NOT SECTION 7 OF ACT NO. 3135 IS CONTRARY TO THE DUE PROCESS PROVISION OF THE PHILIPPINE CONSTITUTION CONSIDERING THAT SUCH SECTION 7 OF THE LAW PROVIDES OR ALLOWS, ACCORDING TO THIS HONORABLE COURT, FOR AN EX-PARTE PROCEEDING WHICH IS A "JUDICIAL PROCEEDING BROUGHT FOR THE BENEFIT OF ONE PARTY ONLY, AND WITHOUT NOTICE TO, OR CONSENT BY ANY PERSON ADVERSELY INTERESTED" "OR A PROCEEDING WHEREIN RELIEF IS GRANTED WITHOUT AN OPPORTUNITY FOR THE PERSON AGAINST WHOM THE RELIEF IS SOUGHT TO BE HEARD," AS HELD IN THE CASE OF GOVERNMENT SERVICE INSURANCE SYSTEM VS. COURT OF APPEALS, 169 SCRA 244 @ 255, JANUARY 20, 1989.**<sup>[13]</sup>

He also raises the following as secondary issues:

I.

WHETHER OR NOT THE PETITIONER HAS THE LEGAL PERSONALITY TO SEEK THE ANNULMENT OF JUDGMENT IN [THE] SUBJECT LRC CASE NO.

II.

WHETHER OR NOT PRIVATE RESPONDENT VIOLATED THE RULE AGAINST FORUM-SHOPPING WHEN IT DID NOT INFORM THE HONORABLE BRANCH 223 OF THE REGIONAL TRIAL COURT OF QUEZON CITY REGARDING THE FILING OF CIVIL CASE NO. Q-02-46514 FOR NULLIFICATION OF REAL ESTATE MORTGAGE CONTRACT AND THE EXTRA-JUDICIAL FORECLOSURE SALE OF THE SAME SUBJECT REAL PROPERTIES AND THE PENDENCY OF THE SAME BEFORE THE HONORABLE BRANCH 99 OF THE SAME REGIONAL TRIAL COURT.<sup>[14]</sup>

Stated simply, the issues raised are: (1) Does petitioner have the legal personality in the annulment of judgment proceedings? (2) Is Section 7 of Act No. 3135, as amended, unconstitutional? (3) Is respondent guilty of forum-shopping?

Petitioner insists that contrary to the ruling of the Court of Appeals, he has the legal personality to institute the annulment of judgment case against Metrobank, considering that the March 25, 2002 deed of assignment he entered into with Louisville and Winston Linwy L. Chua makes him a co-assignee over the subject real properties.

For its part, Metrobank claims that it was not a party to the deed of assignment among Louisville, Chua and petitioner, hence, it has no privity of contract with petitioner Rayo. Moreover, Metrobank points out that the real properties had already been extrajudicially foreclosed when petitioner and his assignors executed the deed of assignment.

Under Section 2,<sup>[15]</sup> Rule 3 of the Rules of Court, every action must be prosecuted or defended in the name of the real party-in-interest, or one "who stands to be benefited or injured by the judgment in the suit."<sup>[16]</sup> A real party-in-interest is one with "a present substantial interest" which means such interest of a party in the subject matter of the action as will entitle him, under the substantive law, to recover if the evidence is sufficient, or that he has the legal title to demand.<sup>[17]</sup>

Now, is petitioner Rayo a real party-in-interest? Initially, we recognized herein petitioner as the co-assignee of the subject real properties as shown in the March 25, 2002 deed of assignment. However, while petitioner would be injured by the judgment in this suit, we find that petitioner has no present substantial interest to institute the annulment of judgment proceedings and nullify the order granting the writ of possession.

First, there was no violation of petitioner's right to constitutional due process. In a long line of cases,<sup>[18]</sup> we have consistently ruled that the issuance of a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged property under Section 7 of Act No. 3135, as amended is a ministerial duty of the court. The purchaser of the foreclosed property, upon *ex parte* application and the posting of the required bond, has the right to acquire possession of the foreclosed property during the 12-month redemption period and with more reason, after the expiration of the redemption period.