

## THIRD DIVISION

[ G.R. No. 147074, July 15, 2005 ]

**SPOUSES RODRIGO PADERES AND SONIA PADERES,  
PETITIONERS, VS. THE HON. COURT OF APPEALS,<sup>[1]</sup> HON.  
CARLOTA P. VALENZUELA, IN HER CAPACITY AS THE  
LIQUIDATOR OF BANCO FILIPINO SAVINGS AND MORTGAGE  
BANK,<sup>[2]</sup> RESPONDENTS.**

[G.R. No. 147075]

**SPOUSES ISABELO BERGARDO AND JUANA HERMINIA  
BERGARDO, PETITIONERS, VS. THE HON. COURT OF APPEALS,<sup>[1]</sup>  
HON. CARLOTA P. VALENZUELA, IN HER CAPACITY AS THE  
LIQUIDATOR OF BANCO FILIPINO SAVINGS AND MORTGAGE  
BANK,<sup>[2]</sup> RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

By their Petition for review on certiorari under Rule 45 of the Rules of Court, petitioners spouses Rodrigo and Sonia Paderes and spouses Isabelo and Juana Bergado seek the reversal of the September 20, 2000 Decision<sup>[3]</sup> and February 16, 2001 Resolution of the Court of Appeals, which dismissed their original Petition and denied their Motion for Reconsideration, respectively.

On September 14, 1982, Manila International Construction Corporation (MICC) executed a real estate mortgage<sup>[4]</sup> over 21 registered parcels of land including the improvements thereon in favor of Banco Filipino Savings and Mortgage Bank (Banco Filipino) in order to secure a loan of P1,885,000.00. The mortgage was registered with the Registry of Deeds of Pasay City and annotated on the corresponding transfer certificates of title (TCTs) covering the properties on December 17, 1982.<sup>[5]</sup>

The 21 mortgaged properties included two lots, one with an area of 264 square meters, and the other with an area of 263, both located in the then Municipality of Parañaque (now Parañaque City) covered by TCT Nos. 61062<sup>[6]</sup> and 61078,<sup>[7]</sup> respectively.

Subsequently or in August 1983, MICC sold the lot<sup>[8]</sup> covered by TCT No. 61078, together with the house<sup>[9]</sup> thereon, to the petitioners in the first case, the Paderes spouses. And on January 9, 1984, MICC sold the house<sup>[10]</sup> built on the lot covered by TCT No. 61062 to the petitioners in the second case, the Bergado spouses. Neither sale was registered, however.<sup>[11]</sup>

On January 25, 1985, for failure of MICC to settle its obligations, Banco Filipino filed a verified Petition<sup>[12]</sup> for the extrajudicial foreclosure of MICC's mortgage. At the auction sale of the foreclosed properties on March 25, 1985, Banco Filipino submitted a bid of P3,092,547.82 and was declared the highest bidder. A Certificate of Sale<sup>[13]</sup> was issued in its favor which was registered with the Registry of Deeds and annotated on the corresponding TCTs covering the mortgaged properties on July 29, 1985.

No redemption of the foreclosed mortgage having been made within the reglementary period, Carlota P. Valenzuela, the then Liquidator of Banco Filipino, filed on October 16, 1987 an *ex parte* Petition<sup>[14]</sup> for the issuance of a Writ of Possession of the foreclosed properties with the Regional Trial Court (RTC) of Makati. After hearing, the Petition was granted by Order dated September 8, 1988<sup>[15]</sup> of Branch 59 of the RTC.

On November 7, 1996, copies of the Writ of Possession dated November 5, 1996, together with a notice addressed to MICC "and/or All persons claiming rights under them" to voluntarily vacate the premises within 7 days from receipt thereof, were served on petitioners.<sup>[16]</sup>

Instead of vacating the two lots, however, petitioners filed separate petitions before the Court of Appeals, docketed as C.A. G.R. Numbers 42470 and 42471 which were later consolidated,<sup>[17]</sup> assailing the validity of the Writ of Possession.

On September 20, 2000, the Court of Appeals promulgated its questioned Decision<sup>[18]</sup> dismissing the consolidated petitions for lack of merit and upholding the validity of the Writ of Possession.

Petitioners' Motion for Reconsideration of the appellate court's decision having been denied by Resolution of February 16, 2001, they jointly come before this Court arguing that: (1) having purchased their respective properties in good faith from MICC, they are third parties whose right thereto are superior to that of Banco Filipino; (2) they are still entitled to redeem the properties and in fact a binding agreement between them and the bank had been reached; (3) their respective houses should not have been included in the auction sale of the mortgaged properties; (4) on the contrary, as builders in good faith, they are entitled to the benefits of Article 448 of the Civil Code; and (5) the writ of possession issued by the RTC in 1996 had already lost its validity and efficacy.

The petition must be denied.

In extra-judicial foreclosures of real estate mortgages, the issuance of a writ of possession, which is an order commanding the sheriff to place a person in possession of the foreclosed property,<sup>[19]</sup> is governed by Section 7 of Act No. 3135 (an act to regulate the sale of property under special powers inserted in or annexed to real estate mortgages), as amended:

Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession

thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

That petitioners purchased their properties from MICC in good faith is of no moment. The purchases took place after MICC's mortgage to Banco Filipino had been registered in accordance with Article 2125<sup>[20]</sup> of the Civil Code and the provisions of P.D. 1529 (property registry decree).<sup>[21]</sup> As such, under Articles 1312<sup>[22]</sup> and 2126<sup>[23]</sup> of the Civil Code, a real right or lien in favor of Banco Filipino had already been established, subsisting over the properties until the discharge of the principal obligation, whoever the possessor(s) of the land might be.

In rejecting a similar argument, this Court, in *Philippine National Bank v. Mallorca*,<sup>[24]</sup> ratiocinated:

1. Appellant's stand is that her undivided interest consisting of 20,000 square meters of the mortgaged lot, remained unaffected by the foreclosure and subsequent sale to PNB, and she "neither secured nor contracted a loan" with said bank. What PNB foreclosed, she maintains, "was that portion belonging to Ruperta Lavilles only," not the part belonging to her.

Appellant's position clashes with precepts well-entrenched in law. By Article 2126 of the Civil Code, a "mortgage directly and immediately subjects the property on which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted." **Sale or transfer cannot affect or release the mortgage. A purchaser is necessarily bound to acknowledge and respect the encumbrance to which is subjected the purchased thing and which is at the disposal of the creditor "in order that he, under the terms of the contract, may recover the amount of his credit therefrom."** For, a recorded real estate mortgage is a right in rem, a lien on the property whoever its owner may be. Because the personality of the owner is disregarded; the mortgage subsists notwithstanding changes of ownership; the last transferee is just as much of a debtor as the first one; and this, independent of whether the transferee knows or not the

person of the mortgagee. So it is, that a mortgage lien is *inseparable* from the property mortgaged. All subsequent purchasers thereof must respect the mortgage, whether the transfer to them be *with or without the consent of the mortgagee*. For, the mortgage, until discharge, follows the property.<sup>[25]</sup> (Emphasis and underscoring supplied; italics in the original; citations omitted)

And in *Roxas v. Buan*<sup>[26]</sup> this Court held:

Contending that petitioner Roxas is a party actually holding the property adversely to the debtor, Arcadio Valentin, petitioners argue that under the provisions of Act No. 3135 they cannot be ordered to vacate the property. Hence, the question of whether, under the circumstances, petitioner Roxas indeed is a party actually holding the property adversely to Valentin.

**It will be recalled that Roxas' possession of the property was premised on its alleged sale to him by Valentin for the amount of P100,000.00. Assuming this to be true, it is readily apparent that Roxas holds title to and possesses the property as Valentin's transferee. Any right he has to the property is necessarily derived from that of Valentin. As transferee, he steps into the latter's shoes.** Thus, in the instant case, considering that the property had already been sold at public auction pursuant to an extrajudicial foreclosure, the only interest that may be transferred by Valentin to Roxas is the right to redeem it within the period prescribed by law. **Roxas is therefore the successor-in-interest of Valentin, to whom the latter had conveyed his interest in the property for the purpose of redemption** [Rule 39, Sec. 29 (a) of the Revised Rules of Court; *Magno v. Viola*, 61 Phil. 80 (1934); *Rosete v. Prov. Sheriff of Zambales*, 95 Phil. 560 (1954).] **Consequently, Roxas' occupancy of the property cannot be considered adverse to Valentin.**

Thus, in *Belleza v. Zandaga* [98 Phil. 702 (1956)], the Court held that where the purchaser in an execution sale has already received the definitive deed of sale, he becomes the owner of the property bought and, as absolute owner, he is entitled to its possession and cannot be excluded therefrom by one who merely claims to be a "successor-in-interest of the judgment debtor," unless it is adjudged that the alleged successor has a better right to the property than the purchaser at the execution sale. Stated differently, **the purchaser's right of possession is recognized only as against the judgment debtor and his successor-in-interest but not against persons whose right of possession is adverse to the latter.** The rule was reiterated in *Guevara v. Ramos* [G.R. No. L-24358, March 31, 1971, 38 SCRA 194].

The rule in *Belleza*, although relating to the possession of property sold in execution sales under what is now Sec. 35, Rule 39 of the Revised Rules of Court, is also applicable to the possession of property sold at extrajudicial foreclosure sales pursuant to Sec. 6 of Act No. 3135 [see *IFC Service Leasing and Acceptance Corp. v. Nera*, *supra*]. Thus, **as**

**petitioner Roxas is not a party holding the property adversely to Valentin, being the latter's successor-in-interest, there was no bar to the respondent trial court's issuance of a writ of possession upon private respondent Buan's application.**

It does not matter that petitioner Roxas was not specifically named in the writ of possession, as he merely stepped into the shoes of Valentin, being the latter's successor-in-interest. On the other hand, petitioner de Guia was occupying the house as Roxas' alleged tenant [Rollo, p. 24]. Moreover, respondent court's decision granting private respondent Buan's petition for the issuance of a writ of possession ordered the Provincial Sheriff of Zambales or any of his deputies to remove Valentin "or any person claiming interest under him" from the property [Rollo, p. 16]. Undeniably, petitioners fell under this category.<sup>[27]</sup> (Emphasis supplied)

As transferees of mortgagor MICC, petitioners merely stepped into its shoes and are necessarily bound to acknowledge and respect the mortgage it had earlier executed in favor of Banco Filipino.

As for petitioners' argument that they are still entitled to redeem the foreclosed properties, it must be rejected too.

The debtor in extra-judicial foreclosures under Act No. 3135, or his successor-in-interest, has, one year from the date of registration of the Certificate of Sale with the Registry of Deeds, a right to redeem the foreclosed mortgage,<sup>[28]</sup> hence, petitioners, as MICC's successors-in-interest, had one year from the registration of the Certificate of Sale on July 29, 1985 or until July 29, 1986 for the purpose.

Petitioners, however, failed to do so. Ownership of the subject properties was thus consolidated in favor of Banco Filipino,<sup>[29]</sup> and TCT Nos. 112352 (in lieu of TCT No. 61078) and 112353 (in lieu of TCT No. 61062) were issued in its name.

As this Court held in *F. David Enterprises v. Insular Bank of Asia and America*:<sup>[30]</sup>

**It is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title.** The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135 as amended. No such bond is required after the redemption period if the property is not redeemed. **Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.**<sup>[31]</sup> (Emphasis supplied)

Petitioners assert, however, that a binding agreement for the repurchase of the subject properties was reached with Banco Filipino as, so they claim, reflected in the following exchange of communications: