

## FIRST DIVISION

[ G.R. No. 161882, July 08, 2005 ]

### **BUKIDNON DOCTORS' HOSPITAL, INC., PETITIONER, VS. METROPOLITAN BANK & TRUST CO., RESPONDENT.**

#### **DECISION**

##### **DAVIDE, JR., C.J.:**

At issue in this petition for review on *certiorari* is whether a writ of possession is the proper remedy for evicting a mortgagor who became a lessee of the mortgaged properties after the mortgagee has consolidated ownership over the properties and was issued new certificates of title.

The facts are as follows:

Sometime in 1995, petitioner Bukidnon Doctors' Hospital, Inc., obtained a loan of P25 million from respondent Metropolitan Bank and Trust Company to be used for the construction of its hospital. To secure this loan, the petitioner mortgaged six parcels of land located in Valencia, Bukidnon, covered by TCT Nos. T-52197, T-52198, T-52199, T-52200, T-52201, and T-52202 and registered in the name of Dr. Rene Sison and Rory P. Roque, President and Administrator, respectively, of the petitioner. Upon petitioner's default in the payment of the loan, the mortgage was extrajudicially foreclosed and the mortgaged lots were sold in a public auction to respondent bank, being the sole and highest bidder. The petitioner failed to redeem the properties within the period of redemption. Forthwith, the respondent consolidated its ownership over the properties and was issued new certificates of title on 1 October 2001.<sup>[1]</sup>

Earlier, in a letter received by the respondent on 7 July 2001, the petitioner expressed its desire to continue staying in the subject premises so that the operation of the hospital erected thereon would not be disrupted. For that purpose, the petitioner proposed to pay rent in the amount of P100,000 per month for a period of, but not limited to, three years.<sup>[2]</sup> On 17 December 2001, the respondent agreed to lease the properties but subject to the following terms: (1) the monthly rental would be P200,000 with a one month advance rental and a deposit equivalent to three months rental; (2) the effectivity of the lease contract would be from June 2001; and (3) the contract would be subject to review every six months.<sup>[3]</sup> The terms finally agreed upon by the parties, as culled from respondent's letter to the petitioner of 30 May 2002, were (1) a monthly rental of P150,000, and (2) the effectivity of the lease contract in November 2001.<sup>[4]</sup>

In its letter of 16 July 2003, or approximately a year and eight months after the agreed effectivity date of the lease contract, the respondent asked the petitioner to vacate the leased premises within fifteen days. The petitioner refused, invoking the subsisting lease agreement.

On 21 August 2003, the respondent filed with the Regional Trial Court (RTC) of Malaybalay City, Bukidnon, an *Ex Parte* Motion for a Writ of Possession. The case was docketed as Misc. Case No. 735-03 and raffled to Branch 9 of that court.

On 17 November 2003, the trial court issued an order granting respondent's *ex parte* motion for a writ of possession. The pertinent portion of the order reads as follows:

Since all the requirements or requisites for the issuance are present in this case, the court finds that it has no choice or other alternative but to issue the same, the duty of the Court being ministerial in character. The respondent can ventilate all its defenses in a separate case that the respondent may file for that purpose'.

. . .

After the expiration of the period of redemption, a writ of possession can be demanded by a purchaser of the foreclosed property as a matter of right. Even during the period of redemption, possession can be demanded provided a bond is posted in accordance with Section 7, Act No. 3135 (*Vda. De Zaballero vs. CA*, 229 SCRA 810).<sup>[5]</sup>

Its motion for reconsideration having been denied by the trial court in the Order of 23 January 2004,<sup>[6]</sup> the petitioner filed on 29 January 2004 (the day it received the denial order) a Notice of Appeal stating that it was appealing to the Court of Appeals on both questions of fact and law.<sup>[7]</sup> Earlier, or on 27 November 2003, the petitioner filed with the trial court an action for specific performance, injunction, and damages, docketed as Civil Case No. 3312-03.<sup>[8]</sup> Also, on 30 January 2004, the petitioner filed a petition for rehabilitation before the RTC of Cagayan de Oro City, Branch 18, docketed as Spec. Pro. Case No. 2004-019.

On 11 February 2004, before its Notice of Appeal could be acted upon by the trial court, the petitioner filed a Manifestation and Motion stating that due to the nature of the appeal that it intended to file, it was withdrawing the Notice of Appeal.<sup>[9]</sup> Two days thereafter, or on 13 February 2004, which was the last day within which to appeal the 29 January 2004 Order, it filed with us a motion for extension of thirty days from the expiration of the reglementary period to file a petition for review on *certiorari* or until 14 March 2004. We granted this motion for extension in our Resolution of 3 March 2004. Then, on 4 March 2004, the petitioner instituted the instant petition for review on *certiorari* under Rule 45, in relation to Section 2(c) of Rule 41, of the Rules of Court, raising a single issue for our consideration, to wit:

WHETHER [OR] NOT THE COURT A *QUO* CORRECTLY RULED THAT RESPONDENT, A FORMER MORTGAGEE-BUYER, WAS STILL ENTITLED TO A WRIT OF POSSESSION AS A MATTER OF RIGHT AS PROVIDED UNDER ACT 3135, AS AMENDED, DESPITE A LEASE AGREEMENT BETWEEN ITSELF AND THE FORMER MORTGAGOR-SELLER EXECUTED AFTER RESPONDENT BECAME THE ABSOLUTE OWNER OF THE FORECLOSED PROPERTIES.<sup>[10]</sup>

In its Comment,<sup>[11]</sup> the respondent asserts that the petitioner is guilty of forum-shopping for having "gone to four different courts for the same relief." Besides, by filing an ordinary appeal under Rule 41 of the Rules of Court, the petitioner had already waived its right to file a petition for review on *certiorari* under Rule 45, since the two modes of appeal are mutually exclusive and governed by different rules. Pursuant to the principle of hierarchy of courts, the petitioner should have first filed the instant petition with the Court of Appeals, which has concurrent jurisdiction with the Supreme Court to resolve cases involving only questions of law. As to the main issue, the respondent argues that as a purchaser in a valid extrajudicial foreclosure sale under Act No. 3135 and as the absolute owner of the subject parcels of land, it was entitled as a matter of right to the issuance of a writ of possession. The subsequent "agreement to stay" between the parties did not negate respondent's right to take possession of the subject properties through a writ of possession. In any event, the "agreement to stay" on the subject properties was deemed to be on a month-to-month basis, since the period therefor was not fixed.

The petitioner rebuts, in its Reply, respondent's arguments, contending that it did not shop for a favorable forum, since the three cases where it is either a defendant/oppositor or plaintiff/petitioner do not involve the same subject matter, causes of action, and parties. Contrary to the claim of the respondent, it immediately withdrew by proper motion its notice of appeal in the trial court after realizing that the proper remedy was a petition for review on *certiorari* under Rule 45 of the Rules of Court, not a petition for review under Rule 42. Rule 42 is not applicable to the case at bar because it is the Supreme Court that has jurisdiction over the petition as it involves a pure question of law pursuant to Section 2(c) of Rule 41 and Section 1 of Rule 45 of the Rules of Court. Lastly, the trial court clearly erred in granting respondent's ex parte motion for a writ of possession because of the existence of a lease agreement between the parties, which was executed after the respondent consolidated its title to the subject properties.

In our Resolution of 2 August 2004, we gave due course to the petition and resolved to decide the case based on the pleadings already filed.<sup>[12]</sup>

On 17 December 2004, the respondent filed a Manifestation and Motion to Dismiss Petition.<sup>[13]</sup> It brings to our attention petitioner's letter dated 3 November 2004 informing it that the petitioner had decided to close its hospital operations and to turn over the premises to the respondent on 30 November 2004 in view of the expiration of the lease agreement. According to the respondent, petitioner's express and unequivocal recognition of the expiration of the alleged lease agreement and its act of turning over the possession of the subject property to the respondent had rendered the instant petition moot and academic. The petitioner countered that the legal issue of whether a writ of possession may be issued despite the existence of a lease agreement must be resolved by this Court, since this issue may again arise as "banks continue to foreclose, seek possession and/or lease out the foreclosed premises to previous mortgagors."

Indeed, because of petitioner's act of surrendering the possession of the subject properties owing to the expiration of the lease agreement, the instant petition praying (1) for the reversal of the order for the issuance of a writ of possession and (2) for full possession by the petitioner of the subject properties was rendered moot and academic. Nonetheless, for the guidance of the bench and the bar, we shall

proceed to resolve the important issue of whether a writ of possession will lie to recover the material possession of previously mortgaged properties that have been leased to the mortgagor after the mortgagee consolidated its ownership over the properties.

However, we shall first take up the procedural issues raised by the respondent.

We are not convinced that the petitioner is guilty of forum- shopping.

Forum-shopping is an act of a party against whom an adverse judgment or order has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The elements are as follows: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment in the other action, regardless of which party is successful, will amount to *res judicata* in the action under consideration.<sup>[14]</sup>

Before filing on 4 March 2004 the petition in this case, the petitioner had filed two other cases, namely, (1) an Action for Specific Performance, Injunction, and Damages with the RTC of Malaybalay City, docketed as Civil Case No. 3312-03 and (2) a Petition for Corporate Rehabilitation with the RTC of Cagayan de Oro City, docketed therein as S.P. Case No. 2004-019. However, these two cases involve causes of action different from the one at bar. In Civil Case No. 3312-03, the petitioner sought the enforcement of the lease contract between it and the respondent, with prayer for damages for the latter's breach of its contractual obligation. In S.P. Case No. 2004-019, the petitioner prayed for rehabilitation pursuant to the Interim Rules on Corporation Rehabilitation.

Upon the other hand, in this case, the *ex parte* motion for a writ of possession was filed at the instance of the respondent. When the motion was granted, the petitioner filed a notice of appeal to the Court of Appeals, which it later withdrew. Thereafter, it appealed to us via Rule 45 of the Rules of Court questioning the propriety of the issuance of a writ of possession for the purpose of evicting the petitioner despite the lease agreement subsequently entered into by the parties after the expiration of the redemption period. As can be clearly seen, the two cases and the appeal filed by the petitioner involved different causes of action. Thus, the petitioner cannot be said to have engaged in forum-shopping.

Neither can the petitioner be deemed to have waived its right to file this petition. Realizing that the remaining issue was a pure question of law, it withdrew its Notice of Appeal stating that it was appealing the 28 January 2002 Order on both questions of law and fact. Section 9 of Rule 41 of the Rules of Court provides that prior to the transmittal of the original record, the court may allow withdrawal of the appeal.

Nothing in the Rules prevents a party from filing a petition under Rule 45 of the Rules of Court after seasonably withdrawing the Notice of Appeal as long as it is done within the reglementary period and the issue involved is purely one of law. In this case it was before the lapse of the reglementary period to appeal that the

petitioner withdrew its Notice of Appeal to the Court of Appeals and filed with us a motion for extension of time to file a petition under Rule 45 of the Rules of Court. And the petition was filed within the extended period we granted, raising only one question of law.

Nor is there a violation of the doctrine of hierarchy of courts. Section 2(c), Rule 41 of the Rules of Court categorically provides that in all cases where only questions of law are raised, the appeal from a decision or order of the Regional Trial Court shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45. Section 2(c) of Rule 41 of the Rules of Court reads:

*SEC. 2. Modes of appeal. —*

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari.* — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45.

Section 1 of Rule 45 provides:

*SECTION 1. Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.<sup>[15]</sup>

As earlier stated, the only issue raised in this petition is "whether [or] not the court *a quo* correctly ruled that respondent, a former mortgagee-buyer, was still entitled to a writ of possession as a matter of right as provided under act 3135, as amended, despite a lease agreement between itself and the former mortgagor-seller executed after respondent became the absolute owner of the foreclosed properties."