

THIRD DIVISION

[G.R. No. 128567, September 01, 2000]

**HUERTA ALBA RESORT, INC., PETITIONER, VS. COURT OF
APPEALS AND SYNDICATED MANAGEMENT GROUP, INC.,
RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

Litigation must at some time be terminated, even at the risk of occasional errors. Public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.

The Case

At bar is a petition assailing the Decision, dated November 14, 1996, and Resolution, dated March 11, 1997, of the Court of Appeals in CA-G.R. No. 38747, which set aside the Order, dated July 21, 1995, and Order, dated September 4, 1997, of the Regional Trial Court of Makati City, in Civil Case No. 89-5424. The aforesaid orders of the trial court held that petitioner had the right to redeem subject pieces of property within the one-year period prescribed by Section 78 of Republic Act No. 337 otherwise known as the General Banking Act.

Section 78 of R.A. No. 337 provides that "in case of a foreclosure of a mortgage in favor of a bank, banking or credit institution, whether judicially or extrajudicially, the mortgagor shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property."

The Facts

The facts that matter are undisputed:

In a complaint for judicial foreclosure of mortgage with preliminary injunction filed on October 19, 1989, docketed as Civil Case No. 89-5424 before the Regional Trial Court of Makati City, the herein private respondent sought the foreclosure of four (4) parcels of land mortgaged by petitioner to Intercon Fund Resource, Inc. ("Intercon").

Private respondent instituted Civil Case No. 89-5424 as mortgagee-assignee of a loan amounting to P8.5 million obtained by petitioner from Intercon, in whose favor petitioner mortgaged the aforesaid parcels of land as security for the said loan.

In its answer below, petitioner questioned the assignment by Intercon of its mortgage right thereover to the private respondent, on the ground that the same was *ultra vires*. Petitioner also questioned during the trial the correctness of the charges and interest on the mortgage debt in question.

On April 30, 1992, the trial court, through the then Judge now Court of Appeals Justice Buenaventura J. Guerrero, came out with its decision "granting herein private respondent SMGI's complaint for judicial foreclosure of mortgage", disposing as follows:

"WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff the following:

- (1) P8,500,000.00 representing the principal of the amount due;
- (2) P850,000.00 as penalty charges with interest at 6% per annum, until fully paid;
- (3) 22% per annum interest on the above principal from September 6, 1998, until fully paid;
- (4) 5% of the sum total of the above amounts, as reasonable attorney's fees; and,
- (5) Costs.

All the above must be paid within a period of not less than 150 days from receipt hereof by the defendant. In default of such payment, the four parcels of land subject matter of the suit including its improvements shall be sold to realize the mortgage debt and costs, in the manner and under the regulations that govern sales of real estate under execution."^[1]

Petitioner appealed the decision of the trial court to the Court of Appeals, the appeal docketed as CA-G.R. CV No. 39243 before the Sixth Division of the appellate court, which dismissed the case on June 29, 1993 on the ground of late payment of docket fees.

Dissatisfied with the dismissal of CA-G.R. No. 39243, petitioner came to this Court via a petition for certiorari, docketed as G.R. No. 112044, which this court resolved to dismiss on December 13, 1993, on the finding that the Court of Appeals erred not in dismissing the appeal of petitioner.

Petitioner's motion for reconsideration of the dismissal of its petition in G.R. No. 112044 was denied with finality in this Court's Resolution promulgated on February 16, 1994. On March 10, 1994, leave to present a second motion for reconsideration in G.R. No. 112044 or to submit the case for hearing by the Court en banc was filed, but to no avail. The Court resolved to deny the same on May 11, 1994.

On March 14, 1994, the Resolution dated December 13, 1993, in G.R. No. 112044 became final and executory and was entered in the Book of Entries of Judgment.

On July 4, 1994, private respondent filed with the trial court of origin a motion for

execution of the Decision promulgated on April 30, 1992 in Civil Case No. 89-5424. The said motion was granted on July 13, 1994.

Accordingly, on July 15, 1994 a writ of execution issued and, on July 20, 1994, a Notice of Levy and Execution was issued by the Sheriff concerned, who issued on August 1, 1994 a Notice of Sheriff's Sale for the auction of subject properties on September 6, 1994.

On August 23, 1994, petitioner filed with the same trial court an Urgent Motion to Quash and Set Aside Writ of Execution ascribing to it grave abuse of discretion in issuing the questioned Writ of Execution. To support its motion, petitioner invited attention and argued that the records of the case were still with the Court of Appeals and therefore, issuance of the writ of execution was premature since the 150-day period for petitioner to pay the judgment obligation had not yet lapsed and petitioner had not yet defaulted in the payment thereof since no demand for its payment was made by the private respondent. In petitioner's own words, the dispute between the parties was "principally on the issue as to when the 150-day period within which Huerta Alba may exercise its equity of redemption should be counted."

In its Order of September 2, 1994, the lower court denied petitioner's urgent motion to quash the writ of execution in Civil Case No. 89-5424, opining that subject judgment had become final and executory and consequently, execution thereof was a matter of right and the issuance of the corresponding writ of execution became its ministerial duty.

Challenging the said order granting execution, petitioner filed once more with the Court of Appeals another petition for certiorari and prohibition with preliminary injunction, docketed as C.A.-G.R. SP No. 35086, predicated on the same grounds invoked for its Motion to Quash Writ of Execution.

On September 6, 1994, the scheduled auction sale of subject pieces of properties proceeded and the private respondent was declared the highest bidder. Thus, private respondent was awarded subject bidded pieces of property. The covering Certificate of Sale issued in its favor was registered with the Registry of Deeds on October 21, 1994.

On September 7, 1994, petitioner presented an Ex-Parte Motion for Clarification asking the trial court to "clarify" whether or not the twelve (12) month period of redemption for ordinary execution applied in the case.

On September 26, 1994, the trial court ruled that the period of redemption of subject property should be governed by the rule on the sale of judicially foreclosed property under Rule 68 of the Rules of Court.

Thereafter, petitioner then filed an Exception to the Order dated September 26, 1994 and Motion to Set Aside Said Order, contending that the said Order materially altered the Decision dated April 30, 1992 "which declared that the satisfaction of the judgment shall be in the manner and under the regulation that govern sale of real estate under execution."

Meanwhile, in its Decision of September 30, 1994, the Court of Appeals resolved the

issues raised by the petitioner in C.A.-G.R. SP No. 35086, holding that the one hundred-fifty day period within which petitioner may redeem subject properties should be computed from the date petitioner was notified of the Entry of Judgment in G.R. No. 112044; and that the 150-day period within which petitioner may exercise its equity of redemption expired on September 11, 1994. Thus:

“Petitioner must have received the resolution of the Supreme Court dated February 16, 1994 denying with finality its motion for reconsideration in G.R. No. 112044 before March 14, 1994, otherwise the Supreme Court would not have made an entry of judgment on March 14, 1994. While, computing the 150-day period, petitioner may have until September 11, 1994, within which to pay the amounts covered by the judgment, such period has already expired by this time, and therefore, this Court has no more reason to pass upon the parties’ opposing contentions, the same having become moot and academic.”^[2] (Underscoring supplied).

Petitioner moved for reconsideration of the Decision of the Court of Appeals in C.A.-G.R. SP No. 35086. In its Motion for Reconsideration dated October 18, 1994, petitioner theorized that the period of one hundred fifty (150) days should not be reckoned with from Entry of Judgment but from receipt on or before July 29, 1994 by the trial court of the records of Civil Case No. 89-5424 from the Court of Appeals. So also, petitioner maintained that it may not be considered in default, even after the expiration of 150 days from July 29, 1994, because prior demand to pay was never made on it by the private respondent. According to petitioner, it was therefore, premature for the trial court to issue a writ of execution to enforce the judgment.

The trial court deferred action on the Motion for Confirmation of the Certificate of Sale in view of the pendency of petitioner’s Motion for Reconsideration in CA-G.R. SP No. 35086.

On December 23, 1994, the Court of Appeals denied petitioner’s motion for reconsideration in CA-G.R. SP No. 35086. Absent any further action with respect to the denial of the subject motion for reconsideration, private respondent presented a Second Motion for Confirmation of Certificate of Sale before the trial court.

As regards the Decision rendered on September 30, 1994 by the Court of Appeals in CA G.R. SP No. 35086 it became final and executory on January 25, 1995.

On February 10, 1995, the lower court confirmed the sale of subject properties to the private respondent. The pertinent Order declared that all pending incidents relating to the Order dated September 26, 1994 had become moot and academic. Conformably, the Transfer Certificates of Title to subject pieces of property were then issued to the private respondent.

On February 27, 1995, petitioner filed with the Court of Appeals a Motion for Clarification seeking “clarification” of the date of commencement of the one (1) year period for the redemption of the properties in question.

In its Resolution dated March 20, 1995, the Court of Appeals merely noted such Motion for Clarification since its Decision promulgated on September 30, 1994 had already become final and executory; ratiocinating thus:

"We view the motion for clarification filed by petitioner, purportedly signed by its proprietor, but which we believe was prepared by a lawyer who wishes to hide under the cloak of anonymity, as a veiled attempt to buy time and to delay further the disposition of this case.

Our decision of September 30, 1994 never dealt on the right and period of redemption of petitioner, but was merely circumscribed to the question of whether respondent judge could issue a writ of execution in its Civil Case No. 89-5424 xxx.

We further ruled that the one-hundred fifty day period within which petitioner may exercise its equity of redemption should be counted, not from the receipt of respondent court of the records of Civil Case No. 89-5424 but from the date petitioner was notified of the entry of judgment made by the appellate court.

But we never made any pronouncement on the one- year right of redemption of petitioner because, in the first place, the foreclosure in this case is judicial, and as such, the mortgagor has only the equity, not the right of redemption xxx. While it may be true that under Section 78 of R.A. 337 as amended, otherwise known as the General Banking Act, a mortgagor of a bank, banking or credit institution, whether the foreclosure was done judicially or extrajudicially, has a period of one year from the auction sale within which to redeem the foreclosed property, the question of whether the Syndicated Management Group, Inc., is a bank or credit institution was never brought before us squarely, and it is indeed odd and strange that petitioner would now sarcastically ask a rhetorical question in its motion for clarification."^[3] (Underscoring supplied).

Indeed, if petitioner did really act in good faith, it would have ventilated before the Court of Appeals in CA-G.R. No. 35086 its pretended right under Section 78 of R.A. No. 337 but it never did so.

At the earliest opportunity, when it filed its answer to the complaint for judicial foreclosure, petitioner should have averred in its pleading that it was entitled to the beneficial provisions of Section 78 of R.A. No. 337; but again, petitioner did not make any such allegation in its answer.

From the said Resolution, petitioner took no further step such that on March 31, 1995, the private respondent filed a Motion for Issuance of Writ of Possession with the trial court.

During the hearing called on April 21, 1995, the counsel of record of petitioner entered appearance and asked for time to interpose opposition to the Motion for Issuance of /Writ of Possession.

On May 2, 1995, in opposition to private respondent's Motion for Issuance of /writ of Possession, petitioner filed a "Motion to Compel Private Respondent to Accept Redemption." It was the first time petitioner ever asserted the right to redeem subject properties under Section 78 of R.A. No. 337, the General Banking Act; theorizing that the original mortgagee, being a credit institution, its assignment of