

## **SPECIAL TWELFTH DIVISION**

**[ CA-G.R. SP. No. 97013, April 23, 2014 ]**

**LIBRADA M. AQUINO, PETITIONER, V. BANK OF THE PHILIPPINE ISLANDS, THE PRESIDING JUDGE RTC OF QUEZON CITY, BRANCH 96, AND SHERIFF RAMON P. VILLANUEVA, RESPONDENTS.**

**[CA-G.R. SP. No. 100436, April 23, 2014]**

**CHRISTIAN AQUINO, CHRISTINE AQUINO-YAP, JENNIFER LEVI AQUINO, AND BRIAN JEREMY FRANCIS AQUINO, PETITIONERS, V. HON. AFABLE E. CAJIGAL, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT (RTC) BRANCH 96 QUEZON CITY, ATTY. MARY DELA CRUZ HONRADO, IN HER CAPACITY AS BRANCH CLERK OF COURT OF RTC 96 QUEZON CITY, RAMON P. VILLANUEVA, IN HIS CAPACITY AS DEPUTY SHERIFF OF RTC 96 QUEZON CITY, AND BANK OF THE PHILIPPINE ISLANDS, RESPONDENTS.**

### **D E C I S I O N**

**ELBINIAS, J.:**

For disposition are the consolidated Petitions for Certiorari<sup>[1]</sup> filed under Rule 65 of the Rules of Court. The Petitions (CA-G.R. SP No. 97013 and CA-G.R. SP No. 100436) assail the Order<sup>[2]</sup> dated November 6, 2006 issued by the Regional Trial Court ("respondent court" for brevity) of Quezon City, Branch 96 and the Notice to Vacate<sup>[3]</sup> dated November 24, 2006 issued by respondent Clerk of Court in LRC Case No. Q-15400(02). In addition, the Petition<sup>[4]</sup> docketed as CA-G.R. SP No. 100436 questions the Order<sup>[5]</sup> dated July 23, 2007, which addressed petitioners Christian, et. al.'s "Motion for Clarificatory Order"<sup>[6]</sup>.

The antecedent facts are as follows:

Petitioner Librada M. Aquino ("petitioner Librada" for brevity) is the petitioner in CA-G.R. SP No. 97013. On the other hand, the children of petitioner Librada - petitioners Christian Aquino, Christine Aquino-Yap, Jennifer Levi Aquino, and Brian Jeremy Francis Aquino ("petitioners Christian, et. al." for brevity) - are the petitioners in CA-G.R. SP No. 100436.

The antecedent facts are as follows:

On August 7, 2002, private respondent Bank of the Philippine Islands ("private respondent BPI" for brevity) filed before respondent court an "EX-PARTE PETITION FOR WRIT OF POSSESSION"<sup>[7]</sup> ("Petition for Writ of Possession" for brevity) over

several parcels of land. The other salient facts are those as stated in respondent court's Order<sup>[8]</sup> dated January 7, 2004, to wit:

"The hearing on the petition was set on January 10, 2003 where **all interested parties were notified at their given addresses of the date and time of hearing and to show cause why the petition should not be granted.** The hearing was reset to February 6, 2003, and finally on February 13, 2003 for the presentation of petitioner's (*private respondent BPI here*) evidence. Meanwhile, the mortgagors filed a Motion to Suspend Proceedings and thereafter an Opposition to the petition and a Motion for Consolidation.

The Court, in its Order dated May 20, 2003, denied the mortgagors' Opposition or Motion for Consolidation. The Motion for Reconsideration filed by the mortgagors on June 2, 2003 was likewise denied in October 14, 2003.

During the ex-parte presentation of evidence on February 13, 2003, petitioner presented Marlene Loanzon, business manager of [Bank of Philippine Islands] xxx:

xxx she came across the records of the **mortgagors spouses Ernesto and Agnes Aure**; that said mortgagors **were granted a loan secured by real estate mortgage in favor of the petitioner over six (6) parcels of land** and all the improvements thereon, all situated in Quezon City covered by TCT Nos. N-160646, N-160645, 46609, N-167345[,], N- 156802, and N-161503; that the **mortgagors defaulted in the payment of their obligation; that the obligation remained unpaid despite demand; xxx a petition for foreclosure of mortgage was filed before the Office of the Ex-Officio Sheriff** of the Regional Trial Court of Quezon City; that after notice, posting and publication, the **mortgage was foreclosed and the properties were sold at an auction sale** held on January 5, 1998 at the Quezon City Hall of Justice wherein **the petitioner was the highest bidder; that a Certificate of Sale dated January 5, 1998 xxx was issued and the same was registered with the Registry of Deeds for Quezon City; that after the mortgagors failed to redeem the properties, the petitioner executed an affidavit of consolidation of ownership xxx and registered the same with the Registry of Deeds of Quezon City and the latter issued in favor of petitioner TCT Nos. N-201773, N-201774, N-201775, N-201776, N- 201777, and N-201778** xxx; that **demands were made on the mortgagors to turn over the properties to the petitioner but the same went unheeded** and petitioner was constrained to file this petition."<sup>[9]</sup> (Emphasis supplied)

On January 7, 2004, respondent court issued an Order<sup>[10]</sup> granting private respondent BPI's Petition for Writ of Possession<sup>[11]</sup>. The dispositive portion of the Order read as follows:

"ACCORDINGLY, therefore, the petition for issuance of Writ of Possession is hereby GRANTED. The Deputy Sheriff of this Court is hereby commanded to place petitioner in possession of the properties subject of this petition.

SO ORDERED."<sup>[12]</sup>

Petitioner Librada then filed a "MOTION FOR RECONSIDERATION [Of Order Dated January 7, 2004, Directing Issuance of Writ of Possession] [TO SERVE AS THIRD-PARTY CLAIM]"<sup>[13]</sup> ("Motion for Reconsideration" for brevity) of the Order<sup>[14]</sup> dated January 7, 2004. Petitioner Librada alleged that she was the owner and possessor<sup>[15]</sup> of the parcels of land covered by Transfer Certificates of Title (TCT) Nos. 201778 and 210776 ("subject properties" for brevity), which properties in turn were among those subject of the Writ of Possession granted to private respondent BPI.

On March 20, 2006, respondent court issued an Order<sup>[16]</sup> which granted petitioner Librada's Motion for Reconsideration<sup>[17]</sup>, and which ordered the exclusion of the subject properties from the coverage of the Writ of Possession. The dispositive portion of the Order<sup>[18]</sup> stated:

**"ACCORDINGLY, the Order dated January 7, 2004 is hereby MODIFIED, to exclude the properties alleged in possession of Librada Aquino covered by TCT Nos. N-201776 and N- 201778, xxx, subject to the outcome of their respective cases filed against the debtors/mortgagors and the petitioner herein.**

Let an Amended Writ of Possession be issued against TCT Nos. N-201774, N-201775 and N-201777. The Deputy Sheriff of this Court is hereby commanded to immediately place petitioner in possession of the said properties without further delay.

SO ORDERED."<sup>[19]</sup> (*Emphasis supplied*)

However, upon private respondent BPI's "MOTION FOR PARTIAL RECONSIDERATION"<sup>[20]</sup>, respondent court issued the assailed Order<sup>[21]</sup> dated November 6, 2006 which partially reconsidered its Order<sup>[22]</sup> of March 20, 2006, by directing, among others, the inclusion of the subject properties as subject of the Writ of Possession. The dispositive portion of the Order stated:

**"WHEREFORE, the Order dated March 20, 2006, is hereby partially reconsidered to include the properties of Librada Aquino as subject of the Writ of Possession.**

**Let therefore a Second (2nd) Amended Writ of Possession be issued commanding the Deputy Sheriff of this court to immediately place petitioner Bank of the Philippine Islands in possession of the properties covered by Transfer Certificate of title Nos. 201776 and 201778.**

SO ORDERED."<sup>[23]</sup> (*Emphasis supplied*)

Subsequently, respondent Branch Clerk of Court Atty. Mary Dela Cruz ("respondent Clerk of Court" for brevity) issued a "2nd A[M]ENDED WRIT OF POSSESSION"<sup>[24]</sup> ("*ex parte* Writ of Possession" for brevity) dated November 16, 2006 which directed respondent Deputy Sheriff Ramon Villanueva ("respondent Sheriff" for brevity) to implement such *ex parte* Writ of Possession<sup>[25]</sup> against the "occupants as well as all

persons acting in the name of the mortgagor LIBRADA AQUINO, or any persons claiming rights under [her]"[26].

Consequently, respondent Sheriff issued the assailed "NOTICE TO VACATE"[27] dated November 24, 2006 against petitioner Librada "and all persons claiming rights under [her]"[28]. Petitioner Librada then filed the Petition for Certiorari[29] docketed as CA-G.R. SP No. 97013, which prayed that "judgment be rendered setting aside the assailed Order of November 6, 2006 and the Notice to Vacate dated November 26, 2006."[30]

Meanwhile, on January 5, 2007, petitioners Christian, et al. filed before respondent court a "MOTION FOR CLARIFICATORY ORDER"[31] alleging that they were co-owners and possessors[32] of the subject properties. Petitioners Christian, et al. claimed that they should be excluded from the operation of the *ex parte* Writ of Possession[33] and of respondent Sheriff's "NOTICE TO VACATE"[34] dated November 24, 2006.

After petitioners Christian, et. al.'s "MOTION FOR CLARIFICATORY ORDER"[35] was denied by respondent court in its other assailed Order[36] dated July 23, 2007, petitioners Christian, et. al. filed their separate Petition for Certiorari[37] docketed as CA-G.R. SP No. 100436, which prayed for the following:

"WHEREFORE, premises considered, it is most respectfully prayed of this Honorable court to:

1. After hearing, issue a writ of preliminary mandatory injunction directing the restoration of petitioners to their original status as possessors of their properties covered by TCT Nos. 210778 and 210776 during the pendency of the petition.

2. After due notice and hearing, render judgment setting aside and nullifying the following:

- 2.1 The November 6, 2006 Order in so far as the properties of the petitioners are concerned;

- 2.2 The November 16, 2006 2<sup>nd</sup> Amended Writ of Possession ;

- 2.3 The November 24, 2006 Notice to Vacate ;

- 2.4 The July 23, 2007 Order;

3. Direct that the injunction be permanent.

Petitioners pray for such other relief and remedies equitable and appropriate under the law. xxx"[38]

On April 16, 2009, a Resolution[39] was issued by this Court which ordered the consolidation of petitioners Christian, et. al.'s Petition for Certiorari[40], docketed as CA-G.R. SP No. 100436, with petitioner Librada's Petition for Certiorari[41], docketed as CA-G.R. SP No. 97013.

Petitioner Librada, in her Petition for Certiorari[42], raised this sole ground:

**"RESPONDENT TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION, WHEN IT REVERSED ITS EARLIER ORDER OF MARCH 20, 2006, EXCLUDING THE HEREIN PETITIONER FROM THE WRIT OF POSSESSION, AS THE PETITIONER IS CLEARLY COVERED BY THE DECISION OF THE SUPREME COURT IN PNB VS. CA, 374 SCRA 222 WHICH IS AT ALL FOURS WITH THE CASE AT BAR, HENCE EJECTING THE HEREIN PETITIONER AT THIS TIME IS VIOLATIVE OF HER RIGHT TO DUE PROCESS."**<sup>[43]</sup> (Emphasis supplied)

For their part, petitioners Christian, et al. raised the following grounds in their Petition for Certiorari<sup>[44]</sup>:

**"PUBLIC RESPONDENT PRESIDING JUDGE OF RTC 96 QUEZON CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE NOVEMBER 6, 2006 AND JULY 23, 2007 ORDERS.**

**PUBLIC RESPONDENT BRANCH CLERK OF COURT RTC 96 QUEZON CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN SHE ISSUED THE NOVEMBER 16, 2006 AND AMENDED WRIT OF POSSESSION.**

**PUBLIC RESPONDENT DEPUTY SHERIFF OF RTC 96 QUEZON CITY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE NOVEMBER 24, 2006 NOTICE TO VACATE."**<sup>[45]</sup> (*Emphasis made in the original*)

As properly raised by petitioner Librada in her *sole ground* and by petitioners Christian, et al. in their *first assigned ground*, a Writ of Possession could not be issued *ex parte* over the subject properties.

In concluding that petitioner Librada could not be excluded from the coverage of the *ex parte* Writ of Possession<sup>[46]</sup> issued in favor of private respondent BPI, respondent court ruled as follows:

"In the instant case, oppositor [Librada] Aquino cannot feign innocence nor a third party adversely possessing the property against the mortgagor Aure as she (Aquino) is deemed to be technically a party to the execution of the mortgage, if not in cohort with mortgagor Aure to perpetuate fraud against herein petitioner. [Librada] Aquino could not claim to be ignorant of the execution mortgage on her properties in favor of the petitioner, because she personally and voluntarily executed the Deed of Absolute Sale over her properties to give way for mortgagor Aure to mortgage her properties to the petitioner. Aquino could not therefore deny this authority as against the petitioner, the highest bidder in the auction sale, and a mortgagee in good faith and for value. Apparently, gleaned from the record, the controversy should be limited between Aquino and mortgagor Aure, as there seems to be a misunderstanding about the proceeds of the mortgage from which, petitioner had no knowledge whatsoever."<sup>[47]</sup>

For their part, as to the inclusion of petitioners Christian, et al. to the coverage of the *ex parte* Writ of Possession<sup>[48]</sup>, respondent court stated the following: