

## **TENTH DIVISION**

**[ CA-G.R. SP NO. 92289, August 29, 2006 ]**

**UNION BANK OF THE PHILIPPINES, PETITIONER, VS. HON.  
EVELYN L. DIMACULANGAN-QUERIJERO AND DOMINADOR  
PAULINO, RESPONDENTS.**

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

**TAYAG, J.:**

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to set aside the Decision<sup>[1]</sup> of the Regional Trial Court (RTC), Third Judicial Region, Branch 25, Cabanatuan City dated July 21, 2004 which ordered the Sheriff and the petitioner to desist from conducting the auction sale of the property of the private respondent erected on the land already sold at public auction, and the Order<sup>[2]</sup> dated September 15, 2005 of the RTC denying petitioner's Motion for Reconsideration.

The case involves a complaint for exclusion from the foreclosure proceeding of an industrial building (bodega) with an area of 176 square meters erected on Lot 8, Block 4 and declared under assessment of Real Property No. 07130-05153, and a commercial building (restaurant) with a floor area of 450 square meters erected on Lot 20, Block 3 and declared under assessment of Real Property No. 07130-05152 allegedly owned by Dominador Paulino, private respondent herein.

Private respondent filed the complaint for exclusion from the foreclosure proceeding against petitioner, alleging that he is the owner of the buildings erected on the two parcels of land, subject of real estate mortgages; that he has not given any authority to the mortgagors (Cesar Paulino, Felicisimo Rodriguez and Christina Rodriguez) to include in the mortgage the buildings erected on their respective parcels of land; that the said buildings must be excluded from the foreclosure proceeding filed by the petitioner Union Bank of the Philippines because of his non-consent to the inclusion of his building in the Real Estate Mortgage.

Petitioner, as defendant, answered the complaint alleging, among others, that private respondent is not the real party in interest; that the private respondent is not the owner of the improvement "bodega" but the lot owners themselves Spouses Felicisimo and Cristina Rodriguez and Cesar Paulino; that Accession (building) follows the principal (Lot); that for having irregularly and unlawfully declared the improvement "bodega" for tax purposes does not by itself confer on the private respondent's conclusive proof of ownership thereof; it is the spouses Felicisimo and Cristina Rodriguez and Cesar Paulino who are deemed by law to be the owners of the improvement "bodega" standing on their lot covered by TCT No. 43193 pursuant to Article 445 of the New Civil Code which provides: "whatever is built, planted or shown on the land of another and the improvements or repairs thereon belongs to the owner of the land"; that the mortgage on the two lots "including all the

improvements erected and to be erected thereon" were constituted as early as in November of 1995 whereas the construction of the building on Lot 8, Block 4 (TCT No. 43193) was only built in January of 1997; that even assuming that it was private respondent who has actually spent for the construction of the building "bodega", its exclusion in the foreclosure sale can never be justified because he is charged with the knowledge, both actual and constructive, that lots and buildings thereon constructed were made the subject of Real Estate Mortgage in favor of the defendant Union Bank of the Philippines; that private respondent is estopped from questioning the ownership by Spouses Felicisimo and Cristina Rodriguez and Cesar Paulino of the building erected on their lot or the property of its inclusion when they mortgaged the lot (TCT No. 43193) together with the adjoining lot (TCT No. 43192) to defendant Union Bank of the Philippines by reason of his silence, implied consent and inactions; that private respondent knew that the Rodriguez spouses will mortgage their two (2) lots, together with the improvements found and may be introduced thereon, to defendant Union Bank of the Philippines way back in November of 1995 when the Real Estate Mortgage was first executed; that such fact was judicially admitted; that in spite of knowledge, he kept silent indicating his acquiesce thereto for he did not bother to inform defendant Union Bank of the Philippines, the mortgagee bank, about his adverse claim on the improvement "bodega" neither did he institute the proper action in Court for the immediate protection of his so called rights on the building; that without impleading the Spouses Felicisimo and Cristina Rodriguez and Cesar Paulino, the registered co-owners of the lot under TCT No. 43193 on which the building is built as indispensable party-respondents to this case, there can be no effective judgment because their rights and interest on the building "bodega" will necessarily be affected and prejudiced pursuant to Section 7 of Rule 3 of the 1997 Rules of Civil Procedure.

On May 27, 2004, the RTC issued a temporary restraining order (TRO) effective for seventy-two (72) hours only upon Deputy Sheriff Villarin with respect to the auction sale of the improvement, but as scheduled, the sale of the land covered by TCT No. 43193 proceeded with Cesar Paulino being adjudged as the highest bidder.

On May 31, 2004, after a summary hearing on the preliminary injunction, an order was issued by the RTC giving the parties a period of five (5) days within which to file their respective memoranda or comment; thereafter, the incident shall be deemed submitted for consideration.

Subsequently, on July 21, 2004, a decision<sup>[3]</sup> was rendered by the RTC, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

Ordering the Sheriff Victor Villarin and the defendant Union Bank of the Phils. to desist from conducting the auction sale of the property (bodega) of the plaintiff erected on the land already sold at public auction.

SO ORDERED."

After petitioner's Motion for Reconsideration<sup>[4]</sup> was denied by the RTC with its September 15, 2005 Order<sup>[5]</sup>, petitioner filed this Petition for Certiorari with the following issues:

**WHETHER OR NOT THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION IN:**

- 1. RENDERING THE ASSAILED QUESTIONED DECISION WITHOUT DUE PROCESS, I.E., TRIAL OR PROPER HEARING.**
- 2. GRANTING THE INJUNCTIVE RELIEF EVEN IF PRIVATE RESPONDENT FAILED TO ESTABLISH HIS CLEAR RIGHT OVER THE IMPROVEMENT IN DISPUTE.**

On January 26, 2006, this Court issued a resolution<sup>[6]</sup> directing the private respondent to file comment on the petition within ten (10) days from receipt of the resolution. However, considering that no comment was filed as per Judicial Records Division's (JRD) verification dated April 10, 2006, the private respondent maybe deemed to have waived his right to file comment.

**There is merit in the instant petition for certiorari.**

The proper mode of review of a decision of a Regional Trial Court rendered in the exercise of its original jurisdiction is an ordinary appeal initiated by a notice of appeal pursuant to *Section 2 (a), Rule 41 of the Rules of Civil Procedure*. Thus, as a rule, certiorari is not proper to seek a reversal of the said decision, unless the court which rendered it has no jurisdiction. In fact, one of the requisites of certiorari is that "there is no appeal, or plain, speedy and adequate remedy in the ordinary course of law." Decisional law ordains that certiorari is not a substitute for appeal.<sup>[7]</sup> There are of course exceptions to the foregoing rule. Among these are: (a) when the questioned order is an oppressive exercise of authority<sup>[8]</sup>; (b) when the trial judge capriciously and whimsically exercised his judgment<sup>[9]</sup>; and (c) when the rigid application of the rule that certiorari is not a substitute for appeal would result in manifest injustice<sup>[10]</sup>.

We find that the trial court capriciously and whimsically exercised his judgment in declaring the private respondent as owner of the building "bodega" on the basis of a mere tax declaration and in ordering the petitioner and the sheriff to desist from conducting the public auction sale of the property.

**One.** Tax declarations are not proofs of ownership but are issued only for taxation purposes (*Palomo Spouses, et. al. vs. Court of Appeals, et. al., G.R. No. 95608, 21 January 1997, Second Division, Romero J.*). Hence, no amount of tax declarations can overcome the legal presumption under *Article 445, Civil Code* that the owner of the land is presumed to be the owner of the building erected thereon.<sup>[11]</sup>

**Two.** The real estate mortgage contains the following provision: