



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

SPOUSES LEONARDO LONTOC  
and NANCY LONTOC,

Petitioners,

G.R. No. 217860\*

Present:

GESMUNDO, C.J.,

*Chairperson,*

HERNANDO,

ZALAMEDA,

ROSARIO, and

MARQUEZ, JJ.

- versus -

SPOUSES ROSELIE TIGLAO and  
TOMAS TIGLAO, JR.,

Respondents.

Promulgated:

JAN 29 2024

X-----X

DECISION

GESMUNDO, C.J.:

A judgment of foreclosure must always indicate the amount, including the interest and costs, and the period for the judgment debtor to pay the same in accordance with Rule 68, Section 2 of the Rules of Court. Otherwise, the decision is incomplete and cannot be the subject of execution.

\* Part of the Supreme Court Decongestion Program.

### The Case

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> against the Decision<sup>2</sup> and Resolution<sup>3</sup> of the Court of Appeals (CA) rendered on September 10, 2014 and April 6, 2015, respectively, in CA-G.R. SP No. 125188 by which the CA found grave abuse of discretion on the part of Branch 153, Regional Trial Court of Pasig City (RTC, Branch 153) when it issued the Orders dated November 28, 2011<sup>4</sup> and March 19, 2012<sup>5</sup> in SCA Case No. 3340-TG denying the Motion for Issuance of a Writ of Possession<sup>6</sup> filed by respondents spouses Roselie Tiglao<sup>7</sup> and Tomas Tiglao, Jr. (spouses Tiglao).

### Antecedents

The present controversy may be traced from a complaint for nullification of deed of absolute sale filed by spouses Tiglao against spouses Leonardo Lontoc and Nancy Lontoc (spouses Lontoc).<sup>8</sup> On December 20, 1999, Branch 158, RTC of Pasig City (RTC, Branch 158) rendered a Decision<sup>9</sup> in Civil Case No. 66897 in favor of spouses Tiglao and held that the sale executed in favor of spouses Lontoc was an equitable mortgage. The trial court decreed:

WHEREFORE, judgment is rendered in the following manner:

(1) Declaring the Deed of Absolute Sale (Exh. "2") as one of equitable mortgage in the tenor of the Kasulatan ng Sanglaan (Exh. "1"). [Spouses Tiglao] then has three (3) months from finality of this Decision to redeem the property at [PHP] 300,000.00, after which, a new tax declaration be issued in [spouses Tiglao's] names;

(2) Declaring null and void the absolute sale between Juanita Rodriguez and [spouses Lontoc] dated April 13, 1999 (Exh. "4") so that tax declaration no. C-016-00748 in the name of [spouses Lontoc] is cancelled;

<sup>1</sup> *Rollo* (G.R. No. 217860), pp. 55–68.

<sup>2</sup> *Id.* at 70–80. The Decision was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Vicente S.E. Veloso and Maria Elisa Sempio Diy of the Special Tenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 82–83. The Resolution was penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Maria Elisa Sempio Diy of the Former Special Tenth Division, Court of Appeals, Manila.

<sup>4</sup> *Id.* at 99–104. The Order was issued by Pairing Judge Leili Cruz Suarez.

<sup>5</sup> *Id.* at 115–119. The Order was issued by Pairing Judge Leili Cruz Suarez.

<sup>6</sup> *Id.* at 223–224.

<sup>7</sup> Also referred to as "Roselle Tigalo" and "Rosalie Tiglao" in some parts of the *rollo* (*see rollo* [G.R. No. 217860], pp. 3 and 55, respectively).

<sup>8</sup> *Rollo* (G.R. No. 217860), p. 93.

<sup>9</sup> *Id.* at 85–92. The Decision was penned by Judge Jose R. Hernandez.

(3) On the counterclaim, [spouses Tiglao] are directed to pay [spouses Lontoc] the amount of [PHP] 1,043,205.00 plus legal rate of interest until the total amount shall have been fully paid.

Parties to bear their respective cost.

SO ORDERED.<sup>10</sup>

On December 17, 2004, the CA promulgated a Decision<sup>11</sup> on the appeal filed by spouses Tiglao docketed as CA-G.R. CV No. 65930, thus:

WHEREFORE, the appealed 20 December 1999 Decision is MODIFIED. Its disposition declaring the Deed of Absolute Sale dated 9 September 1992 NULL and VOID (the transaction being one of equitable mortgage) and directing the appellants to pay the appellees the amount of [PHP] 300,000.00 to redeem their property is AFFIRMED. However, its disposition directing the appellants to pay the appellees the amount of [PHP] 1,043,205.00 plus interest until full payment is made, is SET ASIDE for being without merit.

SO ORDERED.<sup>12</sup>

Spouses Lontoc appealed to this Court which was docketed as G.R. No. 168503, but it was denied through a Resolution<sup>13</sup> dated July 25, 2005. Said Resolution became final and executory on January 18, 2006.<sup>14</sup>

Upon spouses Tiglao's failure to pay the amount of PHP 300,000.00, spouses Lontoc filed a Complaint<sup>15</sup> for foreclosure of mortgage. Spouses Lontoc prayed that judgment be rendered ordering spouses Tiglao: (a) to pay within 90 days the sum of PHP 300,000.00 with 12% legal interest per annum from the execution of the mortgage, plus attorney's fees; and (b) in case of default, the subject property be ordered sold to pay off the outstanding obligation including interest.<sup>16</sup> The Complaint was raffled to RTC, Branch 153.

<sup>10</sup> *Id.* at 92.

<sup>11</sup> *Rollo* (G.R. No. 168503), pp. 30-43. The Decision was penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino of the Tenth Division, Court of Appeals, Manila.

<sup>12</sup> *Id.* at 42.

<sup>13</sup> *Id.* at 55.

<sup>14</sup> *Rollo* (G.R. No. 217860), p. 94.

<sup>15</sup> *Id.* at 182-185.

<sup>16</sup> *Id.* at 184.

### The RTC Proceedings

After due hearing, the RTC, Branch 153 rendered a Decision<sup>17</sup> on February 17, 2011 (February 17, 2011 Decision) declaring the contested property foreclosed, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the Plaintiffs-Spouses Leonardo Lontoc and Nancy Lontoc and against Defendants-Spouses Roselle [sic] Tiglao and Tomas Tigalo, [sic] Jr., as follows:

1. Declaring the house and lot under Tax Declaration Nos. 0-016-00680 and B-016-01215 of the defendants as foreclosed;
2. Ordering the defendants to pay plaintiffs [the] sum of sixty thousand ([PHP] 60,000.00) pesos, as and by way of attorney's fees; and
3. To pay the cost of the suit.

SO ORDERED.<sup>18</sup>

Since both parties did not interpose any appeal, the above Decision became final and executory.<sup>19</sup>

On April 25, 2011, spouses Tiglao filed a Motion for Execution<sup>20</sup> and pointed out that the February 17, 2011 Decision was silent as to the amount and manner of its execution. They then prayed that a writ of execution be issued pursuant to Rule 68, Section 2 of the Rules of Court by ordering them to pay the sum of PHP 360,000.00 within 90 days from notice, considering that the RTC, Branch 158 had already determined that the mortgage debt amounted to PHP 300,000.00.<sup>21</sup> Spouses Lontoc did not interpose any objection to the Motion.<sup>22</sup>

On June 24, 2011, the RTC, Branch 153 issued an Order<sup>23</sup> granting the Motion. Consequently, a Writ of Execution<sup>24</sup> was issued on July 8, 2011, the pertinent portions of which read:

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<sup>17</sup> *Id.* at 93–98. The Decision was penned by Judge Briccio C. Ygafia.

<sup>18</sup> *Id.* at 97–98.

<sup>19</sup> *Id.* at 208.

<sup>20</sup> *Id.* at 203–204.

<sup>21</sup> *Id.* at 92, 204.

<sup>22</sup> See Comment (Re: Motion for the Issuance of Writ of Execution, *rollo* [G.R. No. 217860], pp. 205–206).

<sup>23</sup> *Rollo* (G.R. No. 217860), pp. 207–209. The Order was issued by Judge Briccio C. Ygafia.

<sup>24</sup> *Id.* at 210–211.

WHEREAS, defendants spouses Roselle [sic] Tiglao and Tomas Tiglao, Jr., filed a [M]otion for Execution and the same was granted by this Court in its Order dated June 24, 2011.

WHEREAS, the defendants have the equity period of one hundred twenty days (120) days within which to pay the judgment amount of Three Hundred Sixty Thousand ([PHP] 360,000.00) Pesos to the plaintiffs;

NOW THEREFORE, you SHERIFF ROBERTO Q. ALVAREZ, are hereby ordered to require movants-defendants to pay the aforesaid judgment amount with the equity period of One Hundred Twenty (120) days reckoning from the date of finality of the decision dated February 17, 2011. Should defendants fail to pay the subject amount, you are ordered to sell at public auction the subject house and lot covered by Tax Declaration Nos. 0-016-00680 and B-016-01215 in the name of defendants spouses, to satisfy the mortgage indebtedness, duly observing the requirements of the law therefore.<sup>25</sup>

Spouses Lontoc then filed a Motion for Reconsideration or Partial Clarification<sup>26</sup> emphasizing that spouses Tiglao failed to pay the mortgage debt within the redemption period of three months as provided in the December 20, 1999 Decision of the RTC, Branch 158 in relation to the December 17, 2004 Decision of the CA. Moreover, the Writ of Execution violated the principle of immutability of judgment since the February 17, 2011 Decision did not order spouses Tiglao to pay the mortgage debt.

On August 2, 2011, the RTC, Branch 153 issued an Order<sup>27</sup> denying the Motion. Consequently, Sheriff Roberto Q. Alvarez (Sheriff Alvarez) submitted the Sheriff's Report<sup>28</sup> indicating that spouses Tiglao had already paid PHP 360,000.00 on July 22, 2011 per Official Receipt No. 1022052 issued by the Office of the Clerk of Court of the RTC, Pasig City.

On August 22, 2011, spouses Tiglao filed a Motion for Issuance of a Writ of Possession. However, spouses Lontoc, through their counsel Atty. Laudemer Daza, sent a letter<sup>29</sup> dated September 5, 2011 to Sheriff Alvarez directing the conduct of an auction sale. The RTC, Branch 153 issued an Order<sup>30</sup> on October 17, 2011, disregarding said letter.

As regards the pending Motion for Issuance of a Writ of Possession filed by spouses Tiglao, the RTC, Branch 153 issued an Order on November 28, 2011 disposing in the following manner:

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<sup>25</sup> *Id.* at 211.

<sup>26</sup> *Id.* at 212–219.

<sup>27</sup> *Id.* at 220–222. The Order was issued by Pairing Judge Leili Cruz Suarez.

<sup>28</sup> *Id.* at 225.

<sup>29</sup> *Id.* at 227–228.

<sup>30</sup> *Id.* at 232. The Order was issued by Pairing Judge Leili Cruz Suarez.

WHEREFORE, premises considered, the Motion (For Issuance of a Writ of Possession) filed by [spouses Tiglao] is DENIED.

The Writ of Execution, dated July 8, 2011, is declared Null and Void and recalled and a new Writ of Execution is directed to be issued.

The house and lot of [spouses Tiglao] under Tax Declaration Nos. 0-016-00680 and B-016-01215, which were foreclosed in favor of [spouses Lontoc], is directed to be sold at public auction.

[Spouses Tiglao] are directed to collect back from the Cashier, Office of the Clerk of Court, Regional Trial Court, Pasig City, and the latter is directed to release to [spouses Tiglao], the amount of [PHP]300,000.00 erroneously paid under Official Receipt No. 1022052 dated July 22, 2011.

[Spouses Lontoc] are directed to collect from the Cashier, Office of the Clerk of Court, Regional Trial Court, Pasig City, and the latter is directed to release to [spouses Lontoc], the amount of [PHP] 60,000.00 as attorney's fees, correctly paid under the same Official Receipt.

SO ORDERED.<sup>31</sup>

Spouses Tiglao moved to reconsider<sup>32</sup> but the same was denied<sup>33</sup> through another Order issued on March 19, 2012. Dissatisfied, spouses Tiglao filed a Petition for *Certiorari* and *Mandamus*<sup>34</sup> with the CA.

### The CA Decision

In the now assailed Decision, the CA granted the Petition and decreed:

We GRANT the Petition for [*Certiorari*] and *Mandamus*, and ORDER as follows:

1) We SET ASIDE the Order dated 28 November 2011, and the Order dated 19 March 2012, both issued by the Regional Trial Court, Branch 153 of Pasig City in Special Civil Action Case No. 3340-TG; and

2) We DIRECT the RTC Branch 153, Pasig, to issue the corresponding Writ of Possession to Spouses Roselie Tiglao and Tomas Tiglao, Jr., and to conduct the rest of the foreclosure proceedings pursuant to the Rules of Court.

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<sup>31</sup> *Id.* at 103-104.

<sup>32</sup> *Id.* at 239-243.

<sup>33</sup> *Id.* at 119.

<sup>34</sup> *Id.* at 120-138.

IT IS SO ORDERED.<sup>35</sup>

The CA explained that Rule 68, Sections 2 and 3 of the Rules of Court laid down the following procedure to execute a judgment of judicial foreclosure: (1) in the judgment of foreclosure, the RTC orders the payment of the sum due to the court or the judgment creditor, to be effected within a period of not less than 90 days or more than 120 days from the entry of judgment; (2) the judgment debtor pays, or the judgment debtor fails to pay, and the judgment creditor moves for the sale of the subject property at a public auction; (3) the subject property is redeemed or the sale at a public auction is confirmed by the court; (4) the last redemptioner or the purchaser at the public auction moves for the issuance of a possessory writ; and (5) the court issues a possessory writ. It held that the RTC, Branch 153 failed to observe the fifth step when it denied the writ of possession and recalled the writ of execution. It opined that the denial of the motion for a writ of execution and the recall of the writ of execution contravened Rule 68, Section 3 of the Rules of Court which mandates the court to issue a possessory writ.<sup>36</sup>

Also, the CA noted that the November 28, 2011 Order altered the February 17, 2011 Decision when it did not allow a period of redemption and instead ordered the contested property to be sold at public auction. The CA opined that such action by the RTC, Branch 153 violated the principle of immutability of judgments.<sup>37</sup>

Spouses Lontoc filed a Motion for Reconsideration,<sup>38</sup> but the CA denied<sup>39</sup> the same via a Resolution dated April 6, 2015.

Hence, this appeal.

### Issues

Spouses Lontoc buttress their appeal on the following grounds:

I.

[THE COURT OF APPEALS] DECIDED THE CASE WHICH IS PATENTLY NOT IN ACCORD WITH LAW AND WITH APPLICABLE DECISION OF THIS HONORABLE COURT.

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<sup>35</sup> *Id.* at 79.

<sup>36</sup> *Id.* at 77-79.

<sup>37</sup> *Id.* at 79.

<sup>38</sup> *Id.* at 7-20.

<sup>39</sup> *Id.* at 82.

## II.

[THE COURT OF APPEALS] ERRED WHEN IT DEPARTED AND CLEARLY ABANDONED THE RULES OF COURT AND ALLOWED THE [SPOUSES TIGLAO] TO EXERCISE THEIR RIGHT OF REDEMPTION STATED BY THEIR OMISSION TO DO SO AFTER THREE MONTHS FROM THE FINALITY OF THE MODIFIED DECISION OF THE HONORABLE COURT OF APPEALS ON 17 DECEMBER 2004.<sup>40</sup>

Spouses Lontoc believe that the CA erred and violated the doctrine of immutability of judgments when it brushed aside its Decision rendered on December 17, 2004 which allowed spouses Tiglao to pay within a period of three months. Spouses Lontoc pointed out that the February 17, 2011 Decision impliedly incorporated the three-month period, and spouses Tiglao's failure to pay during that period, terminated their right to redeem the property. Hence, granting spouses Tiglao with another right of redemption circumscribed the period provided in its December 17, 2004 Decision.<sup>41</sup>

They also contend that the amount indicated in the Writ of Execution does not find support in the February 17, 2011 Decision. Fixing spouses Tiglao's obligation to only PHP 300,000.00 results to injustice considering that they had not paid any interest thereon for more than 23 years since the loan in 1992.<sup>42</sup>

In their Comment,<sup>43</sup> spouses Tiglao maintain that Rule 68, Section 2 of the Rules of Court grants the judgment obligor the equity of redemption. Since the body of the February 17, 2011 Decision mentioned the PHP 300,000.00 obligation of spouses Tiglao, the same was not separable from the dispositive portion.<sup>44</sup> Hence, the June 24, 2011 Order of the RTC, Branch 153 which granted spouses Tiglao with an equity period of 120 days to pay the judgment amount of PHP 360,000.00 is valid and conforms with Rule 68, Section 2 of the Rules of Court.<sup>45</sup> Also, the failure to expressly mention the amount in the February 17, 2011 Decision does not mean that Rule 68, Section 2 will no longer apply. The said provision is deemed written in the Decision, similar to a law being part of a valid contract without need of express reference by the parties.<sup>46</sup>

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<sup>40</sup> *Id.* at 61.

<sup>41</sup> *Id.* at 63-64.

<sup>42</sup> *Id.* at 65-66.

<sup>43</sup> *Id.* at 160-181.

<sup>44</sup> *Id.* at 170-171.

<sup>45</sup> *Id.* at 172.

<sup>46</sup> *Id.* at 178.



Spouses Tiglao further insist that the November 28, 2011 Order of the RTC, Branch 153 which directed the sale of the contested property has no legal basis. It also departed from Rule 68, Section 2 of the Rules of Court and established jurisprudence which recognized the equity of redemption. Undoing the redemption defeats the final and executory decision declaring the purported sale of an equitable mortgage. They emphasized that the Court has liberally construed in favor of the original owner the rule requiring full payment of the purchase price within the redemption period.<sup>47</sup> Moreover, since they had already satisfied the terms laid down in the June 24, 2011 Order, they are entitled to a writ of possession as a matter of right.<sup>48</sup>

### The Court's Ruling

It is rather unfortunate that the present case reached this stage when the controversy could have been averted if only the courts *a quo* had properly applied Rules 68, Sections 2 and 3 of the Rules of Court. On account of this inadvertence, the Petition is partially impressed with merit.

*A judgment on judicial foreclosure should render judgment for the sum due and order the same to be paid within a period of 90-120 days from entry of judgment*

Rule 68, Section 2 of the Rules of Court provides for the manner of resolving an action for foreclosure and enumerates the contents of the judgment thereon. Section 2 reads as follows:

Section 2. *Judgment on foreclosure for payment or sale.* — If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and *shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.* (Emphasis supplied)

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<sup>47</sup> *Id.* at 176–177.

<sup>48</sup> *Id.* at 178.

Section 2 expressly mandates the trial court (1) to render judgment on the amount due and thereafter (2) order the judgment debtor to pay the sum within 90 days, but no longer than 120 days from entry of judgment. It is only when the judgment debtor defaults from paying the amount that the trial court shall order the property sold at public auction following the guidelines under Rule 39 of the Rules of Court.

A plain reading of the *fallo* of the February 17, 2011 Decision shows that the RTC, Branch 153 merely declared the disputed property as foreclosed, and ordered spouses Tiglao to pay for attorney's fees in the amount of PHP 60,000.00. Evident therefrom that it failed to strictly adhere to the requirements laid down in Section 2 by indicating the amount as well as the period to pay the same. It bears emphasis that there was nothing erroneous with the decision, only that it was incomplete in view of the requirements laid down by Rule 68, Section 2 of the Rules of Court.

Interestingly, the RTC, Branch 153 had been sufficiently apprised of such omission when spouses Tiglao ironically moved for the execution of the February 17, 2011 Decision. Spouses Tiglao pointed out that the said Decision was silent as to how it can be executed pursuant to Rule 68, Section 2. Despite this information, the RTC, Branch 153 merely granted the Motion mainly because of spouses Tiglao's averments and spouses Lontoc's manifestation that they had no objection against the Motion. It was at this point that the RTC, Branch 153 committed the error of granting the Motion instead of merely amending its February 17, 2011 Decision.

The ruling in *Rodriguez v. Caoibes*,<sup>49</sup> which the Court reiterated in *Philippine Trust Company v. Policarpio*,<sup>50</sup> finds relevance in the case at bar. *Rodriguez* dealt with the incomplete disposition of the trial court in a foreclosure proceeding when it failed to indicate the period within which the judgment obligee should pay. In resolving the matter, the Court said that the trial court may still amend the incomplete decision despite having attained finality, in order to conform with the rules. The Court also clarified that instead of appealing the incomplete decision, the parties should have merely invited the attention of the court to the flaw in its judgment:

The case at hand is for the foreclosure of a mortgage. It was tried as such in the Court of First Instance of Batangas as well as in this court on appeal. In reversing the appealed decision, by an involuntary omission it was not ordered to deposit the amount of the judgment with the clerk of the court of origin, within a period of not less than three months, and, in default thereof, to sell the mortgaged properties to pay the mortgage

<sup>49</sup> 62 Phil. 142 (1935) [Per J. Villa-Real].

<sup>50</sup> 139 Phil. 547 (1969) [Per J. Barredo].

indebtedness and the costs. This involuntary omission of an imperative mandate of section 256 of the Code of Civil Procedure, . . . cannot alter the nature of the action, and the amendment of the decision may be asked to correct the defect, inasmuch as said provision is a necessary part hereof.

On this point the American jurisprudence has laid down the following doctrine:

A judgment or decree of foreclosure may be corrected after its rendition in respect of an error or omission, so as to make it conform to the intention of the court or the facts of the case[.]

If anything has been omitted from the judgment which is necessarily or properly a part of it, and which was intended and understood to be a part of it, but failed to be incorporated in it through the negligence or inadvertence of the court or counsel, or the clerk, the omission may be supplied by an amendment even after the term[.]<sup>51</sup>

Although *Rodriguez* may have only treated the omission of the period to pay in a judgment of foreclosure, the Court deems it applicable in the instant case. It should be underscored that the essence of *Rodriguez* lies on the duty of the courts to strictly comply with the required contents of a judgment on foreclosure under Rule 68, Section 2 of the Rules of Court namely: (1) the amount due and (2) the period to pay the sum within 90 days but no longer than 120 days from entry of judgment. Regardless of whether the omission pertained to either the first or second content, or both, as in this case, the required action from the lower court is to amend its prior decision despite its finality, by furnishing the missing details pursuant to Rule 68, Section 2. The trial courts should bear in mind that an incomplete decision although having attained finality, is inoperative, ineffectual, and cannot be the subject of execution.

It is a settled rule in this jurisdiction that what can be the subject of execution is that which is ordained or decreed in the dispositive part of the decision.<sup>52</sup> For this reason, the July 8, 2011 Writ of Execution<sup>53</sup> which directed the sheriff to require spouses Tiglao to pay PHP 360,000.00 within 120 days from finality of the February 17, 2011 Decision is null and void. The Writ of Execution cannot supply the deficiencies of the incomplete Decision.

<sup>51</sup> *Rodriguez*, *supra* note 49, at 145.

<sup>52</sup> *Casilan v. De Salcedo*, 136 Phil. 108, 113 (1969) [Per J. Zaldivar].

<sup>53</sup> *Rollo* (G.R. No. 217860), pp. 210-211.

*Order to sell the foreclosed property on public auction is only proper after judgment debtor fails to pay*

The error in granting spouses Tiglao's Motion for Execution and issuing the corresponding writ was compounded by another mistake when the RTC, Branch 153 issued the November 28, 2011 Order. Although it sought to correct the previous error in granting spouses Tiglao's Motion and issuing the Writ of Execution, it also committed a procedural gaffe when it ordered the sale of the contested property through public auction. Evidently, the directive to sell the subject property contravenes Rule 68, Sections 2 and 3 of the Rules of Court. Section 3 provides:

*Section 3. Sale of mortgaged property; effect. — When the defendant, after being directed to do so as provided in the next preceding section, fails to pay the amount of the judgment within the period specified therein, the court, upon motion, shall order the property to be sold in the manner and under the provisions of Rule 39 and other regulations governing sales of real estate under execution. Such sale shall not affect the rights of persons holding prior encumbrances upon the property or a part thereof, and when confirmed by an order of the court, also upon motion, it shall operate to divest the rights in the property of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law.*

Upon the finality of the order of confirmation or upon the expiration of the period of redemption when allowed by law, the purchaser at the auction sale or last redemptioner, if any, shall be entitled to the possession of the property unless a third party is actually holding the same adversely to the judgment obligor. The said purchaser or last redemptioner may secure a writ of possession, upon motion, from the court which ordered the foreclosure. (Emphasis supplied)

The wordings of both Sections 2 and 3 are clear. There can be no mistake in following the directive that the sale at public auction comes only *after* the judgment debtor defaults from paying the mortgage obligation and other costs. In turn, the judgment debtor is deemed in default only after the period provided in the judgment of foreclosure has lapsed without paying the amount indicated therein pursuant to Rule 68, Section 2.

Spouses Lontoc, however, argue that spouses Tiglao already lost their right to redeem the property when they failed to pay the amount of PHP 300,000.00 within three months after G.R. No. 168503 became final. They maintain that the CA Decision which this Court later affirmed, impliedly included the three-month period decreed by the RTC, Branch 153.

The argument fails to impress.

A plain reading of the December 17, 2004 CA Decision in CA-G.R. CV No. 65930 reveals that the CA only concurred with the finding that the parties entered an equitable mortgage and that spouses Tiglao are liable to pay the redemption sum of PHP 300,000.00. The CA neither affirmed nor discussed the three-month period fixed by the trial court. This can be gathered from the following discussion by the CA, *viz.*:

From the testimonies of the defendants-appellees, it appears that prior to the execution of the real estate mortgage and/or deed of sale covering the property of the plaintiffs-appellants located at Int. Maestrang Pinang St., Ligid, Tipas, Taguig, Metro Manila, the plaintiffs-appellants had existing debt with them. In fact, they alleged that they have in their possession the 7 checks issued by the plaintiffs-spouses but which nevertheless bounced due to insufficiency of funds. However, despite this claim, there was no other evidence presented in court from which We can deduce the exact amount of debt of the appellants-spouses to the defendants-appellees prior to the execution of the aforementioned real estate mortgage and/or execution of deed of sale. As such, We will limit Our discussion to the validity of the mortgage and/or deed of sale, and the corresponding consideration thereof.

The first issue that We have to resolve is whether or not the trial court is correct in its conclusion that what the parties really intended was only have the subject property offered as real estate mortgage to secure the plaintiffs-appellants' loan that amounted to more or less PHP300,000.00. True, there was a deed of sale bearing the same date as the date of execution of the mortgage, but as aptly explained by the trial court: "The court finds it odd that on September 9, 1992, plaintiffs borrowed [PHP] 200,000.00 from defendants to finance the construction of their house. Then, at the same day, in a span of a few minutes, convince defendants to just buy their lot and the unfinished house." As such, the facts and circumstances before, during and immediately after the subject transaction led Us to the conclusion that the transaction is not a sale, even if the deed was denominated a Deed of Absolute Sale, but one of equitable mortgage.

.....

In this case, We find it intriguing that while it appears that the plaintiffs sold the subject realty to the defendants in order that the former could somehow settle their loan obligation to the latter, yet still, said defendants continued to ask plaintiffs-appellants to pay them the amount of [PHP] 300,000.00 (the amount of the loan). In *Erlinda San Pedro vs. Ruben Lee and Lilian Sison*, the Supreme Court held that either of those circumstances enumerated under Article 1602 is "sufficient to declare a contract as an equitable mortgage, *in consonance with the rule that the law favors the least transmission of property rights*. Here, the facts all point to one conclusion – that what the parties actually intended was a real

estate mortgage not a contract of sale. We thus find no cogent basis to reverse the findings of the trial court on this matter.<sup>54</sup> (Emphasis in the original)

The above excerpt clearly shows that the CA only affirmed the RTC, Branch 153 finding of equitable mortgage and the mortgage obligation of spouses Tiglao. The wisdom of the CA in not providing for a period to pay the mortgage debt is not difficult to discern.

G.R. No. 168503 originated from the action for declaration of nullity of the deed of sale initiated by spouses Tiglao on the ground of double sale. In their answer, spouses Lontoc filed a counterclaim which was in the nature of a collection of sum of money allegedly due to the several loans they extended to spouses Tiglao.<sup>55</sup> Hence, the reliefs that may be validly accorded to the prevailing party shall be limited to: (1) declaring the validity or nullity of the deed of sale; and (2) ordering spouses Tiglao to pay for their remaining obligation. In contrast, if the action filed was that of foreclosure, it will be incumbent upon the trial court to order the foreclosure of the mortgaged property and sell the same at public auction in the event that the mortgagor fails to pay the monetary obligation within the period under Section 2 of Rule 68.<sup>56</sup>

In view of the nature of the respective claims filed by the parties in the courts below, the fixing of any period to pay the mortgage debt is improper. Spouses Lontoc, therefore, have no basis to insist that the CA Decision impliedly included the three-month period fixed by the trial court, and that spouses Tiglao failed to timely exercise their right to redeem the property.

More importantly, spouses Lontoc confuse the right of redemption with the equity of redemption in arguing against spouses Tiglao's entitlement to redeem the mortgaged property.

The Court, in *Limpin v. Intermediate Appellate Court*,<sup>57</sup> distinguished at length the difference between the right of redemption and the equity of redemption, thus:

The equity of redemption is, to be sure, different from and should not be confused with the right of redemption.

<sup>54</sup> *Rollo* (G.R. No. 168503), pp. 38–41.

<sup>55</sup> *Rollo* (G.R. No. 217860), p. 86.

<sup>56</sup> *See Korea Exchange Bank v. Filkor Business Integrated, Inc.*, 430 Phil. 170, 178 (2002) [Per J. Quisumbing, Second Division].

<sup>57</sup> 248 Phil. 318 (1988) [Per J. Narvasa, First Division].

The right of redemption in relation to a mortgage — understood in the sense of a prerogative to re-acquire mortgaged property after registration of the foreclosure sale—exists only in the case of the extrajudicial foreclosure of the mortgage. No such right is recognized in a judicial foreclosure except only where the mortgagee is the Philippine National Bank or a bank or banking institution.

Where a mortgage is foreclosed extrajudicially, Act 3135 grants to the mortgagor the right of redemption within one (1) year from the registration of the sheriff's certificate of foreclosure sale.

Where the foreclosure is judicially effected, however, no equivalent right of redemption exists. The law declares that a judicial foreclosure sale, "when confirmed by an order of the court, . . . shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law." . . . These laws confer on the mortgagor, his successors in interest or any judgment creditor of the mortgagor, the right to redeem the property sold on foreclosure — after confirmation by the court of the foreclosure sale — which right may be exercised within a period of one (1) year, counted from the date of registration of the certificate of sale in the Registry of Property.

But, to repeat, no such right of redemption exists in case of judicial foreclosure of a mortgage if the mortgagee is not the PNB or a bank or banking institution. In such a case, the foreclosure sale, "when confirmed by an order of the court . . . shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser." There then exists only what is known as the equity of redemption. This is simply the right of the defendant mortgagor to extinguish the mortgage and retain ownership of the property by paying the secured debt within the 90-day period after the judgment becomes final, in accordance with [Section 2 of] Rule 68, or even after the foreclosure sale but prior to its confirmation.

....

This is the mortgagor's equity (not right) of redemption which, as above stated, may be exercised by him even beyond the 90-day period "from the date of service of the order," and even after the foreclosure sale itself, provided it be before the order of confirmation of the sale. After such order of confirmation, no redemption can be effected any longer.

It is this same equity of redemption that is conferred by law on the mortgagor's successors-in-interest, or third persons acquiring rights over the mortgaged property subsequent, and therefore subordinate, to the mortgagee's lien. If these subsequent or junior lien-holders be not joined in the foreclosure action, the judgment in the mortgagor's favor is ineffective as to them, of course. In that case, they retain what is known as the "unforeclosed equity of redemption," and a separate foreclosure proceeding should be brought to require them to redeem from the first mortgagee, or the party acquiring title to the mortgaged property at the foreclosure sale, within 90 days, under penalty of losing that prerogative to redeem. In the case at bar, however, there is no occasion to speak of any

“unforeclosed equity of redemption” in Sarmiento’s favor since he was properly impleaded in the judicial proceeding where his and Ponce’s rights over the mortgaged property were ventilated and specifically adjudicated.<sup>58</sup>

Clearly, the right of redemption does not exist in case of judicial foreclosure of a mortgage if the mortgagee is not a bank or banking institution. In such case, the foreclosure sale, when confirmed by an order of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser. There exists only the equity of redemption which refers to the right of the mortgagor to extinguish the mortgage and retain ownership of the property by paying the secured debt within the 90-day period after the judgment becomes final, in accordance with Rule 68, or even after the foreclosure sale but prior to its confirmation.<sup>59</sup>

Since spouses Lontoc opted to judicially foreclose the mortgaged property under Rule 68, then spouses Tiglao, as mortgagor-debtors, may exercise the equity of redemption within the period provided under Rule 68, Section 2 of the Rules of Court. Despite spouses Tiglao’s failure to pay for their mortgage debt, they cannot be deprived of their equity of redemption which is guaranteed by the said rule.

*Spouses Tiglao’s payment of  
PHP 300,000.00 is invalid;  
Only the prevailing party has  
the right to move for execution*

Evidently, spouses Tiglao availed of the equity of redemption when they paid the amount of PHP 360,000.00. Nonetheless, such payment was not validly tendered and should be returned to them.

To recall, the deficiencies of the February 17, 2011 Decision were not amended despite the subsequent Orders dated June 24, 2011 and November 28, 2011. Being an incomplete decision, it is inoperative and ineffectual to the extent that it cannot be validly executed. Since spouses Tiglao paid the judgment obligation based on the Writ of Execution issued on July 8, 2011, which in turn was issued pursuant to the June 24, 2011 Order granting spouses Tiglao’s Motion for Execution, such was not validly made.

<sup>58</sup> *Limpin, supra* note 57, at 325–328.

<sup>59</sup> *See Spouses Rosales v. Spouses Suba*, 456 Phil. 127, 133–134 (2003) [Per J. Sandoval-Gutierrez, Third Division], citing *Huerta Alba Resort, Inc. v. Court of Appeals*, 394 Phil. 22, 41–42 (2000) [Per J. Purisima, Third Division], citing *Limpin, supra* note 57, at 326.



Even assuming that the February 17, 2011 Decision fully complied with Rule 68, Section 2, the payment cannot be deemed as valid. The execution of the Decision should have been initiated by spouses Lontoc and not by spouses Tiglao pursuant to Rule 39, Section 1 of the Rules of Court. The Court explained in *AFP Mutual Benefit Association, Inc. v. Court of Appeals*<sup>60</sup> that the losing party cannot move for execution and compel the prevailing party to take the judgment, thus:

Assuming that AFPMBAI was bound by the judgment in Civil Case No. 40615, and be substituted for Investco, Inc., it is clear that Investco, Inc. prevailed in the case. It was the winning party. *It is the prevailing party which is entitled as a matter of right to a writ of execution in its favor. It is not an option of the losing party to file a motion for execution of judgment to compel the winning party to take the judgment.* As the losing party in Civil Case No. 40615, Solid Homes, Inc. [cannot] now insist on the performance of the very contract on which it defaulted for more than fourteen (14) years. Hence, Solid Homes, Inc. has no personality to move for execution of the final judgment in Civil Case No. 40615. The trial court correctly denied its motion for execution.

It would be the height of unfairness if Solid Homes, Inc. which has failed to pay anything since 1981 and defaulted since 1982, would now get the property by performance of the very contract which it violated. With the passage of time, more than fourteen (14) years, and appreciation in the value of real estate, the property is now worth billions of pesos, thus enriching Solid Homes, Inc. for its violation of the contract and default on its obligation.<sup>61</sup> (Emphasis supplied)

The initial action here was that of foreclosure which the RTC, Branch 153 decided in spouses Lontoc's favor. As the winning party, it was spouses Lontoc who had the right to move for execution of the February 17, 2011 Decision. Similar to the circumstances behind *AFP Mutual Benefit Association*, spouses Tiglao should not be allowed to benefit from their prolonged default in satisfying their mortgage obligation. It should be emphasized that their mortgage debt of PHP 300,000.00 remained unpaid since 1992 despite repeated demands by spouses Lontoc and the finality of the Decision in G.R. No. 168503. It would be the height of injustice if spouses Tiglao will be allowed to move for execution and pay for the original obligation after more than 20 years of ignoring spouses Lontoc's demands and even the Decision of this Court in G.R. No. 168503.

Thus, spouses Tiglao are not in the position to file a motion to execute the decision since, clearly, they did not prevail in the foreclosure proceeding. It was, therefore, erroneous for the CA to validate the granting of spouses

<sup>60</sup> 417 Phil. 250 (2001) [Per J. Pardo, First Division].

<sup>61</sup> *Id.* at 262.

Tiglao's Motion for Execution and the issuance of the corresponding writs of execution and possession.

Furthermore, spouses Tiglao's payment only covered the amount of PHP 360,000.00 and did not include the costs of suit pursuant to Rule 142, Section 1 of the Rules of Court which was clearly indicated in the February 17, 2011 Decision. "Judicial costs are the statutory allowances to a party to an action for his [or her] expenses incurred in the action, and having reference only to the parties and to the amounts paid by them. Costs are allowed to the prevailing party as a matter of course, unless otherwise provided in the Rules of Court."<sup>62</sup> Ineluctably, spouses Tiglao's payment of PHP 360,000.00 was invalid and cannot serve as basis in issuing a writ of possession.

*Amendment to the February 17, 2011 Decision should specify the amount including interest and costs, and the period for spouses Tiglao to pay such amount*

Under Rule 68, Section 2 of the Rules of Court, the judgment on foreclosure should render judgment on the sum due to the plaintiff. The amount shall include not only the mortgage debt or obligation, but also interest, other charges, and costs approved by the Court.<sup>63</sup>

It is undisputed that spouses Tiglao's mortgage obligation was fixed at PHP 300,000.00 pursuant to the CA Decision which the Court affirmed in G.R. No. 168503. Hence, spouses Tiglao should be ordered to pay this sum.

As for the interest, the February 17, 2011 Decision denied imposing interest on the said obligation because the parties failed to expressly stipulate the same in writing. There being no appeal timely filed by spouses Lontoc, such ruling had become final and not subject to amendment herein.

Nonetheless, the Decision only referred to the interest on the loan and not to the judgment award. Interest on the judgment obligation should be imposed in view of Rule 68, Section 2 of the Rules of Court which expressly provides for adjudication on the amount which includes interest, among others. Also, Rule 39, Section 8 on the contents of a writ of execution

<sup>62</sup> *Damasen v. Hernando*, 191 Phil. 453, 458 (1981) [Per J. Melencio-Herrera, First Division].

<sup>63</sup> *Spouses Cuyco v. Spouses Cuyco*, 521 Phil. 796, 811 (2006) [Per J. Ynares-Santiago, First Division].

expressly requires that the interest should be included in the writ, viz.:

Section 8. *Issuance, form and contents of a writ of execution.*— . . .

(a) If the execution be against the property of the judgment obligor, *to satisfy the judgment, with interest*, out of the real or personal property of such judgment obligor;

(b) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees of the judgment obligor, *to satisfy the judgment, with interest*, out of such property;

. . . .

(e) *In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, the motion for execution shall specify the amounts of the foregoing reliefs sought by the movant. (Emphasis supplied)*

Thus, following *Nacar v. Gallery Frames*,<sup>64</sup> the sum of PHP 360,000.00 awarded in favor of spouses Lontoc consisting of the mortgage debt and attorney's fees, shall earn interest at 6% per annum from finality of the February 17, 2011 Decision until its satisfaction.

Finally, in view of the time that had lapsed for spouses Tiglao to settle their mortgage obligation, the Court deems it just to only allow them a period of 90 days from finality of this Decision, to pay the amended judgment award. The PHP 360,000.00 that spouses Tiglao had erroneously paid, shall be deducted from the total judgment award, and the remaining balance shall be paid within 90 days from finality of this Decision. In the event that spouses Tiglao fail to settle the deficiency, the Clerk of Court of the RTC, Pasig City shall return the same after the 90-day period has lapsed.

**ACCORDINGLY**, the Court **GRANTS IN PART** the Petition for Review on *Certiorari*; **REVERSES** and **SETS ASIDE** the September 10, 2014 Decision and the April 6, 2015 Resolution rendered by the Court of Appeals in CA-G.R. SP No. 125188; and **AMENDS** the February 17, 2011 Decision of Branch 153, Regional Trial Court of Pasig City in SCA Case No. 3340-TG, to read as follows:

<sup>64</sup> 716 Phil. 267 (2013) [Per J. Peralta, *En Banc*].

**WHEREFORE**, premises considered, judgment is hereby rendered in favor of the Plaintiffs-Spouses Leonardo Lontoc and Nancy Lontoc and against Defendants-Spouses Roselle [sic] Tiglao and Tomas Tiglao, Jr., as follows:

1. Declaring the house and lot under Tax Declaration Nos. 0-016-00680 and B-016-01215 of the defendants as foreclosed;
2. Ordering the defendants to pay plaintiffs the principal sum of THREE HUNDRED THOUSAND PESOS (PHP 300,000.00) plus legal interest of 6% per annum from finality of this Decision until fully paid;
3. To pay plaintiffs the sum of SIXTY THOUSAND PESOS (PHP 60,000.00) as attorney's fees; and
4. To pay the costs of suit.

The foregoing money judgment shall be paid within ninety (90) days from entry of judgment. In case of default, the house and lot covered by Tax Declaration Nos. 0-016-00680 and B-016-01215 shall be sold at public auction.

**SO ORDERED.**

The 90-day period for respondents spouses Roselie Tiglao and Tomas Tiglao, Jr. to pay the judgment award shall be reckoned from the finality of this Decision.

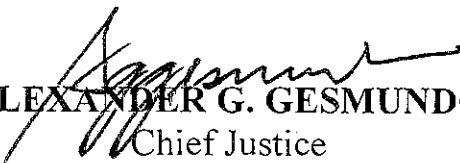
In the event that spouses Tiglao fail to pay the remaining balance of the total judgment award within the 90-day period, the Office of the Clerk of Court, Regional Trial Court, Pasig City shall return to spouses Tiglao the amount of PHP 360,000.00 that they previously paid under Official Receipt No. 1022052 dated July 22, 2011.

**FINALLY**, the Orders of Branch 153, Regional Trial Court of Pasig City, issued on June 24, 2011, August 2, 2011, October 17, 2011, November 28, 2011, and March 19, 2012, and the Writ of Execution dated July 8, 2011 are hereby declared **NULL** and **VOID** and **SET ASIDE**.


Costs against respondents spouses Roselie Tiglao and Tomas Tiglao, Jr.

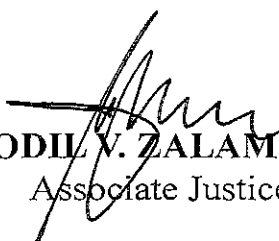


**SO ORDERED.**

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

**WE CONCUR:**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

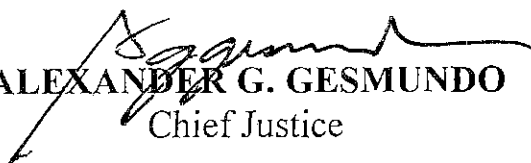
  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice