

**MIGUEL PEREZ RUBIO, PETITIONER, VS. THE HON. SAMUEL REYES,
ROBERT O. PHILLIPS AND MAGDALENA YSMAEL PHILLIPS, ET AL,
RESPONDENTS.**

G.R. No. L-24581. May 27, 1968

Ponente: DIZON, J.

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DIZON, J.:

In our Resolution of January 31, 1966 bearing upon several incidental matters at the time pending before Us for resolution, We set forth the facts and events that gave rise to the present action for Certiorari, as follows:

"Upon the facts alleged in the complaint filed in Civil Case No. 8632 of the Court of First Instance of Rizal by Robert O. Phillips and Sons Inc. et al., vs. Miguel Perez Rubio, said plaintiffs prayed for judgment as follows:

1.- That a temporary restraining order and/or ex parte writ of preliminary injunction be issued against the defendant to prevent and restrain them from further unlawful and will-ful interference with the transaction between the plaintiff corporation with Alfonso T. Yuchengco on the sale of the shares of stock of Hacienda Benito, Inc., and from enforcing whatever amount he may claim to be due to them from the plaintiffs under the Agreements (Annexes IA; 1A-1' and 'A-2'), after the approval of the injunction bond;

2.- That, after due hearing, judgment be rendered in favor of the plaintiffs against the defendant;

- a) Restraining him from willfully and unlawfully interfering with the transaction of the plaintiffs with Alfonso T. Yuchengco on the sale of the shares of stock of Hacienda Benito, Inc.,;
- b) Declaring that the defendant has no right to rescind the Agreements as referred to in Annexes 'A', 'A-1' and 'A-2';
- c) Declaring that the defendant has no vendors' lien over the shares of stock of Hacienda Benito, Inc., sold by them to the plaintiff corporation;
- d) Restraining the defendant from enforcing any collection action against the plaintiffs until the obligations, if any, mature;
- e) Making the writ of preliminary injunction permanent;
- f) Sentencing the defendant to pay the plaintiffs';
 - 1) P2,500,000.00, more or less, as actual damages;
 - 2) Moral damages which this Honorable Court may deem just and reasonable;
 - 3) Exemplary damages, which this Honorable Court may deem just and reasonable;
 - 4) P50,000.00, as attorney's fees; and
 - 5) Costs of suit; and

3.- That the plaintiffs be granted such further and other reliefs to which they may be entitled in law and in equity.

"Upon an ex-parte petition filed by the plaintiffs, the respondent judge issued on April 1, 1965 a writ of preliminary injunction to be mentioned again later. Subsequently, the respondent judge also denied Perez Rubio's motion to dissolve the preliminary injunction.

"It appears that the Perez Rubio spouses owned shares of stock in Hacienda Benito Inc. registered in their names and in the names of Joaquin Ramirez and Joaquin Ramirez Jr. On April 13, 1963 the Perez Rubios, with the conformity of the Ramirezes, sold said shares to Robert O. Phillips and Sons Inc. for P5,500,000.00 payable in installments and other conditions agreed upon as follows:

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'3. That for and in consideration of the mutual agreements and promises, MIGUEL and MARIA LUISA hereby sell to PHILLIPS all the shares of stock of Hacienda Benito, Inc. registered in their names and in the names of Joaquin Ramirez and Joaquin Ramirez, Jr. for the total price of FIVE MILLION FIVE HUNDRED THOUSAND PESOS (P5,500,000.00), Philippine Currency, payable as follows:

- a. FIFTY THOUSAND PESOS (750,000.00) upon execution of this agreement.
- b. ONE MILLION TWO HUNDRED THOUSAND PESOS (P1,200,000.00) within sixty (60) days from this date.
- c. ONE MILLION TWO HUNDRED AND FIFTY THOUSAND PESOS (P1,250,000.00) on April 30, 1964 less the amount of P96,830.56 due the Hacienda Benito, Inc. from MARIA LUISA and the amount of P127,096.09 from MIGUEL; hereby authorizing PHILLIPS to deduct said amounts and to pay the same to Hacienda Benito, Inc.
- d. ONE MILLION TWO HUNDRED AND FIFTY THOUSAND PESOS (P1,250,000.00) on or before April 30, 1965.
- e. ONE MILLION TWO HUNDRED AND FIFTY THOUSAND PESOS (P1,250,000.00) on or before April 30, 1966.
- f. FIVE HUNDRED THOUSAND PESOS (P500,000.00) on or before April 30, 1967.

'4. That should PHILLIPS fail to pay the amount of ONE MILLION TWO HUNDRED THOUSAND PESOS (P1,200,000.00) due sixty (60) days from this date and to execute the letter of credit and/or bond or both to secure the payment of the remaining installments, as agreed upon, then the Sellers shall have the right, at their own discretion, either to rescind this agreement or to enforce the same, provided that any number of days used by the SELLERS to consider the acceptability of the bank or bonding company proposed by PHILLIPS shall be added to the period of sixty (60) days herein mentioned;

'5. That in case of default, PHILLIPS shall pay interest at the rate of eight percent (8%) per annum on all amounts in arrears until paid in full either by the guaranteeing bank, bonding company or Phillips;

'6. That all the installments due during the years 1964, 1965, 1966, and 1967 with all the conditions above mentioned, shall be jointly and severally guaranteed by means of Irrevocable Standby Letter of Credit from a bank in favor of MIGUEL and MARIA LUISA, in the proportion they may agree, which shall be communicated to the bank and to PHILLIPS before final contract is entered into with the bank, or by a bond from a bonding company duly approved by MIGUEL and MARIA LUISA;

'7. That the stock certificates cor-responding to the shares sold, including those in the names of Joaquin Ramirez and Joaquin Ramirez, Jr. shall not be transferred to PHILLIPS until the installment due within sixty (60) days from this date is paid in full;'.
'

"On June 23, 1964 Robert O. Phillips and Sons Inc., and Robert O. Phillips himself and his wife, entered into an agreement with the Perez Rubios deferring payment of the April 30, 1964 installment already overdue to August 31, 1964 under the following conditions:

(a) The deferred installment would bear an interest of eight (8%) per cent per annum from April 30, 1964 although partial payments on the principal and on the interest due may be paid during the period granted, in such amounts and at such times as funds as available to Robert O. Phillips & Sons, Inc.;

(b) Should Robert O. Phillips & Sons, Inc. fail to pay the particular install-ment now due on August 31, 1964 or any of the subsequent installments on the exact date due, the whole obligation would be-come immediately demandable without notice;

(c) In consideration of this extension granted to Robert O. Phillips & Sons, Inc., Robert O. Phillips himself and his wife, Magdalena Ysmael Phillips, jointly and severally guaranteed all the installments and other obligations of Robert O. Phillips and Sons, Inc., under the original contract of sale dated April 13, 1963.

"In the meantime, Robert O. Phillips, in his behalf and in that of his wife and Robert O. Phillips and Sons Inc., entered into negotiations for the sale of their shares of stock in Hacienda Benito Inc. to Alfonso Yuchengco. Upon being informed of this, the Perez Rubios, through their attorney in fact, Joaquin Ramirez, reminded the Phillips spouses and the Phillips corporation in writing of their obligations under the contract of sale of April 13, 1963 and reminded them in particular that the shares subject matter thereof were still subject to the payment of the unpaid balance of the sale price. They gave a similar notice to Alfonso Yuchengco, but expressed no objection to the sale provided the obligations in their favor were satisfied.

"On March 26, 1965, the Phillips (individuals and corporation), through their attorney, Juan T. David, sent a letter to the Perez Rubios telling them, in substance, that the only obstacle to the consummation of the Phillips Yuchengco sale of the shares of stock of Hacienda Benito Inc. was their letter of November 24, 1964 and warned that unless the same was withdrawn by March 29, they would seek redress elsewhere. On March 27, 1965, the Perez Rubios, for their part, wrote the Phillips that due to the latter's inability to comply with the former's conditions, the negotiations going on between them were cancelled, and should the full amount due to them remained unpaid by noon of March 31, 1965, they would file action in court in the afternoon thereof. However, on March 30, 1965, stealing a march on the Perez Rubios, the Phillips (individuals and corporation) filed Civil Case No. 8632 mentioned heretofore where they obtained, ex-parte, a preliminary injunction to this effect:

'TT IS HEREBY ORDERED by the undersigned Judge of the Court of First Instance that, until further orders, you, all your attorneys, representatives, agents, and any other person assisting you, REFRAIN from interfering with the transaction between the plaintiff corporation with Alfonso T. Yuchengco on the sale of the shares of stock of Hacienda Benito, Inc., and from enforcing whatever amount he may claim to be due to them from the plaintiffs under the Agreements (Annexes 'A' 'A-1,' and 'A-2') mentioned in the complaint.'

"On April 8, 1965 the Perez Rubios filed a motion to dissolve the above reproduced writ of preliminary injunction, which the respondent judge denied on May 6, 1964. But even before the motion aforesaid could be acted upon, they also filed their answer to the complaint with a counterclaim of P4,500,000.00 representing the unpaid balance of the sale price of their shares. Because of this the Perez Rubios were charged with contempt.

"The original petition for certiorari filed in this case is based principally on the allegation that, in taking cognizance of Civil Case No. 8632 and in issuing the writ of preliminary injunction ex-parte mentioned

heretofore, the respondent court committed a grave abuse of discretion and, as a consequence, the petition prayed that the respondent judge be restrained from in any way proceeding with the case, and to restrain the respondent Phillips from proceeding with the sale of the shares of stock of Hacienda Benito, Inc. or any of its assets to Alfonso Yuchengco or to any other person, or from performing any act which will diminish the value of said shares of stock or deplete the assets of the company."

On September 28, 1965, petitioner filed a motion for the admission of the supplemental petition thereto attached, the main purpose of which was to include the Manufacturer's Bank and Trust Company - hereinafter referred to as the Bank - and Victoria Valley Development Corporation - hereinafter referred to as VVDC - as additional parties respondent and to allege against them the cause of action to be referred to hereinafter. Before We could act upon it, petitioner filed an amended supplemental petition intended to correct minor errors in his previous pleading and to eliminate Leonides S. Virata from the list of officers of the respondent Bank. By our resolution of January 31, 1966, this amended supplemental petition was admitted. On February 18 of the same year, petitioner filed in the record a copy of a notice of lis pendens he had filed with the Register of Deeds of the Province of Rizal affecting the real properties titled in the name of the respondent Bank and whose attachment he sought, among other remedies, in his amended supplemental petition. Subsequently or more specifically on February 1, 1966, petitioner filed a second amended supplemental petition to implead Hacienda Benito, Inc. - hereinafter referred to as Hacienda - as an additional party respondent and praying for relief as follows:

"WHEREFORE, it is respectfully prayed that:

1. The Manufacturer's Bank & Trust Company and/Or Victoria Valley Development Corporation be ordered to return the properties it bought from Hacienda Benito, Inc., to Hacienda Benito, Inc.;
2. That a writ of attachment be issued in favor of your petitioner against the properties of the Respondents Phillips including those of Hacienda Benito, Inc., or against the proceeds of their sale in the ordinary course of business and of the other corporations who were defendants in Civil Case No. 8766 for an amount equivalent to your petitioner's counterclaim;
3. Respondents Phillips be held in contempt of this Honorable Court;
4. Alfonso Yuchengco, Antonio de las Alas, Ambrosio Padilla, Macario Tiu, Romeo Villonco be summoned before this Honorable Court to show cause why they should not be held in contempt of this Honorable Court.
5. Pending the issuance of the writ of preliminary attachment in favor of your petitioner as prayed for above, the Hacienda Benito, Inc., be restrained from disposing of its properties or assets in any way save in the ordinary cause of its business of selling lots in subdivision.

Petitioner likewise prays that:

1. He be declared to have had a vendor's lien over the shares of stock he sold to respondents Phillips on installment and which up to now remain unpaid;
2. He be permitted to sue and collect on the outstanding balance of P4,250,000 due for sale of the shares of Hacienda Benito, Inc., to respondents Phillips; and, therefore,
3. The injunction and order of the respondent court dated April 1, 1965 (Annex 'T') be revoked and be declared null and void.

"Petitioner likewise prays for such other relief as may be just and equitable in the premises."

On March 7, 1966, VVDC filed its answer to the amended supplemental petition.

For their part, on March 22, 1966, the respondent judge and his co-respondents, the Phillips spouses and Robert

O. Phillips and Sons, Inc., filed a motion to dismiss the case.

On May 3, We issued a resolution admitting the second amended supplemental petition and requiring the respondents to file their answer thereto within ten days from notice, and denying the motion to dismiss above-mentioned.

On June 23, 1966 the Bank filed its answer to the second amended supplemental petition, as did the respondent judge and his co-respondents Robert O. Phillips and Sons, Inc. and Hacienda on June 28 of the same year. As the respondent VVDC appears not to have filed an answer to the second amended supplemental petition, its previous answer must be deemed reproduced as its answer to the latter.

For its part, the petitioner on June 30, 1966 filed his answer to the counterclaim interposed by the respondents Phillips and Sons, Inc. and Hacienda.

As originally commenced, the objective of the present action for certiorari was simple enough: the annulment of (a) the writ of preliminary injunction issued ex-parte by the respondent judge on April 1, 1965 in Civil Case No. 8632 entitled "Robert O. Phillips and Sons, Inc. et al. vs. Miguel Perez Rubio", and of his (b) order of May 6 of the same year denying petitioner's motion to dissolve said writ.

As already stated, the contested writ ordered petitioner, his attorneys, representatives, agents and any other person assisting him, to refrain from (1) interfering with the transaction between the plaintiffs in the case, on the one hand, and Alfonso T. Yuchengco, on the other, in connection with the sale of the shares of stock of Hacienda and from (2) enforcing (collecting) whatever amount said petitioner claimed was due to him from said plaintiffs under the agreements mentioned in the complaint as Annexes A, A-1 and A-2. Upon the filing of the original petition in this case and on motion of petitioner, We, in turn, issued on July 26, 1965 a writ of preliminary injunction restraining all the respondents named in the original petition firstly, from taking further proceedings in Civil Case No. 8632; secondly, from proceeding with the sale of the shares of Hacienda or any of its assets to Alfonso T. Yuchengco or to any other person, and thirdly, from performing any act which will either diminish the value of said shares of stock or deplete the assets of Hacienda subjectmatter of the aforesaid Civil Case No. 8632.

It is obvious that what the plaintiffs in Civil Case No. 8632 considered as interference, on the part of the therein defendant (petitioner herein) with the negotiations or transaction at that time being carried on between said plaintiffs, on the one hand, and Alfonso T. Yuchengco, on the other, regarding the sale of the shares of stock of Hacienda was said defendant's intention to enforce his right to collect from Robert O. Phillips and Sons, Inc. and its guarantors, the Phillips spouses, the unpaid balance - P4,250,000.00 - due to him from the latter of the purchase price of their shares in Hacienda mentioned at the beginning hereof. As a matter of fact, when said defendant filed his answer in Civil Case No. 8632 interposing therein a counterclaim for the collection of said unpaid balance, the plaintiffs therein charged him with having violated the terms of the writ of preliminary injunction issued by the respondent judge. Proceedings in connection with this charge, however, were held in abeyance by reason of the writ of preliminary injunction We issued in the present case.

After a careful consideration of the material facts and the law applicable to them, We are of the opinion and so hold, that the writ of preliminary injunction issued ex-parte by the respondent judge was unjust and improvident. Without hearing the party concerned, and without any legal justification, it restrained a creditor (Perez Rubio) from enforcing his undenied right to collect from his debtor and the latter's guarantors the sum of P4,250,000.00 representing the unpaid balance of the purchase price of his shares in Hacienda. It is a fact that the debtor Corporation (Robert O. Phillips and Sons, Inc.) and its guarantors, the Phillips spouses, do not deny the indebtedness, and yet, notwithstanding its extraordinary amount, they attempted to sell all the shares of stock of Hacienda without making any reasonable provision for the payment thereof. For them to prevent their creditor

from enforcing his right to collect, and for the Court to enjoin said creditor from enforcing that right in any law-ful manner is, in any language, rank injustice.

But other more complicated issues cropped up into this case through the filing of the supplemental petitions mentioned heretofore. Summarized, the last of them alleges substantially the following facts:

That after the respondent judge had denied petitioner's motion to dissolve the writ of preliminary injunction issued in Civil Case 8632, and sensing that the latter would take up the matter to Us for review, on June 3, 1965 the Articles of Incorporation of the respondent VVDC were drawn up, and filed with the Securities and Exchange Commission the following day, with the following as Incorporators: Dee K. Chiong, Alfonso T. Yuchengco, Macario Tiu, George F. Lee and Antonio de las Alas, who also composed the Board of Directors together with Bienvenido Tantoco, Romeo Villonco, Leonides S. Virata and Ambrosio Padilla, Tiu being besides the Executive Vice-President and General Manager of the Bank, Ambrosio Padilla a Director thereof, Antonio de las Alas, President and Member of the Board, and Villonco, Treasurer and Senior Vice-President; that on June 10, 1965 the Bank filed a complaint dated May 31, 1965 against (1) Hacienda, (2) Compound Investment Corporation, (3) Corregidor Development Corporation, (4) Robert O. Phillips and Sons, (5) Crescent Corporation and (6) Francisco D. Santana to foreclose the real estate mortgage constituted on the properties of Hacienda to secure not only its own obligations but also those of other corporations and business enterprises of Robert O. Phillips, which by then had reached the total amount of more than P7,000,000.00 (Civil Case No. 8766 of the Court of First Instance of Rizal); that instead of filing an answer to the complaint, the defendants in said case entered into a compromise agreement dated June 17, 1967 whereby: (a) Hacienda agreed to convey and assign its properties covered by the mortgage and to assign all receivables due to it from the buyers of lots in its subdivision, to the Bank in payment not only of its own mortgage debt but also of the other defendants; (b) Hacienda was subrogated to all the rights and interest of the Bank under the deeds of mortgage being foreclosed in respect of its co-defendants; (c) Hacienda waived its right to redeem its properties thereby transferred or sold to the Bank; that on June 21, 1965, the Phillips - individuals and corporation - received notice of our reso-lution of June 15, 1965 giving due course to the original petition filed in this case and requiring the petitioner therein to put up the bond required for the issuance of the writ of preliminary injunction; that this notwithstanding, on June 30, 1965, obviously in line with the compromise agreement of June 17 of the same year but be-fore its approval by the Court in the foreclosure pro-ceeding, Hacienda, through Robert O. Phillips, executed a deed of absolute sale of its properties in favor of the Bank in payment of the amounts due from all the defendants; that on August 9, 1965 the deed of sale Was registered in the office of the. Register of Deeds of Rizal, the consideration appearing thereon being the total sum of P7,485,492.98 representing the mortgage debts of all the defendants, plus costs and attorney's fees; that since July 1965 the newly organized VVDC had in fact been managing the Victoria Valley Subdivision which com-prises the properties of Hacienda, payment of receivables from the purchasers of lots being made directly to it or to the Bank; that the aforesaid purchase price of the pro-perties of Hacienda was grossly inadequate as shown by the fact that Alfonso Yuchengco himself, an incorporator and board member of the VVDC, had offered previously the total sum of P12,507,899.24 for 1007% of the shares of Hacienda; that the deed of sale also deprived Hacienda of its right to redeem the mortgaged properties; that the foreclosure proceedings, the compromise agreement and the sale mentioned heretofore were a scheme to circumvent and avoid the legal effects of the writ of preliminary injunction issued by Us in the present case and would, in effect, render valueless all the shares of Hacienda; that all the aforesaid foreclosure suit, compromise agreement and sale were calcu-lated to produce the same result which could have been accomplished by Phillips & Sons, Inc. selling all the shares of Hacienda to Yuchengco and his group; that these proceedings and transactions amounting to a virtual disposal of all the assets of the Phillips spouses and of Robert O. Phillips and Sons, Inc. were in fraud of peti-tioner, their creditor, who would then have penniless debtors from whom he could not collect the unpaid

balance of P4,250,000.00 due to him; that considering the fact that a good number of the members of the Board of the Bank were also members of the Board of VVDC, these corporations must be deemed to have had knowledge of the scheme just described and of the action taken by some of the members of their respective Board in furtherance thereof.

Upon the foregoing, petitioner prayed for the following remedies: (1) that he be declared to have a vendor's lien over the shares of stock he sold to respondent Phillips & Sons, Inc. upon which is still due the sum of P4,250,000.00; that he be permitted to sue and collect the aforesaid outstanding balance; that the Bank and/or the VVDC be ordered to return to Hacienda the properties it or they bought from the latter.

And after making proper additional allegations, petitioner likewise prayed for the issuance of a writ of attachment against the properties of the respondents Phillips, including those of Hacienda, or against the proceeds of the sale of the latter and of the other corporations-defendants in Civil Case No. 8766, for an amount equivalent to petitioner's claim; that all the respondents and additional parties - Alfonso T. Yuchengco, Antonio de las Alas, Ambrosio Padilla, Macario Tiu and Romeo Villonco - be cited for contempt, and that pending the issuance of said preliminary attachment, Hacienda be restrained from disposing of its properties or assets in any way, save in the ordinary course of its business of selling the lots of its subdivision.

The answer to the second amended supplemental petition filed by the respondent judge, Robert O. Phillips and Sons, Inc. and Hacienda admits some of the material averments of the latter and specifically denies the others, particularly the charge that Hacienda was utilized by its co-respondents to carry out a transaction to circumvent and avoid the claim of the petitioner. In support of said denials or by way of affirmative defenses it further alleges: that the obligations for which the properties of Hacienda stood as collaterals in favor of the Bank were incurred much earlier than the sale of the 49% shares of stock in Hacienda owned by petitioner and his wife; that Civil Case No. 8766 of the Court of First Instance of Rizal instituted to foreclose the questioned mortgage was filed by the Bank solely to protect and enforce its rights in view of the nonpayment of the mortgage debt by the mortgagors, and did not form part of any scheme to prejudice or defraud petitioner; that the compromise agreement entered into between the parties in said case and the subsequent sale made in accordance therewith were not unlawful nor were they intended to defraud petitioner; that the purchase price of P7,000,000.00 was not inadequate, considering the fact that the sum of more than P12,000,000.00 for all the shares of stock of Hacienda offered by Yuchengco was not only for the purchase of the seventy-eight hectares sold to the Bank but included other fifty-seven hectares owned by Hacienda; that the sale aforementioned did not render the shares of stock of Hacienda valueless because the latter still had sufficient properties left to answer for the obligation of Phillips and Sons, Inc. to petitioner; that petitioner can not question the validity of the foreclosure proceedings, the compromise agreement and the sale mentioned heretofore because his claim was lodged against the respondents Phillips - individuals and corporation - and not against Hacienda; and finally, that the issues raised by petitioner in the second amended supplemental petition concerning the validity of said proceedings and transactions should have been ventilated either in the aforesaid foreclosure proceedings or in Civil Case No. 8632, both of the Court of First Instance of Rizal.

Further, the answer avers that the preliminary mandatory injunction prayed for in the second amended supplemental petition was not proper nor authorized by the premises set forth therein, nor was there any ground for the issuance of a writ of preliminary attachment against the properties of the respondents.

Lastly, by way of compulsory counterclaim, the answering respondents aver that as a result of petitioner's bad faith in instituting the present unfounded action, they had suffered damages in the sum of P500,000 by way of attorney's fees.

For its part, VVDC, after making admissions and specific denials in its answer, particularly denied that it was hastily incorporated, the truth being that it was organized in the ordinary course of business for the purposes set forth in its Articles of Incorporation, in line with which, among other things, it negotiated to acquire and develop the properties of Hacienda for a good, valuable and adequate consideration; denied that the properties of Hacienda had already been transferred to it through the Bank, the truth being that it had only agreed to receive payment of receivables from the purchasers of lots of Hacienda, in trust for the Bank, pending completion of negotiations for the purchase of said properties by it - a transaction which has been held in abeyance because of the injunction issued in the present case; that in choosing to negotiate the purchase of the properties of Hacienda instead of its shares, it was guided purely by a business judgment and not by any intention to prejudice petitioner in connivance with Hacienda and other parties.

By way of affirmative defenses, VVDC further alleged that, in so far as it is concerned, there is no principal action to support petitioner's prayer for a writ of pre-liminary mandatory injunction; that it has not acquired nor is it in possession of any real property of Hacienda which it can be ordered to return; that not being a party in Civil Case No. 8632, it is not proper to include it as respondent in this case; finally, that the amended supplemental petition states no cause of action against it.

For its part the Bank in its answer to the second amended supplemental petition also made admissions and specific denials of the material averments of the complaint. Its extensive allegations, however, may be summarized as follows: that the Bank was not aware of the pendency of Civil Case No. 8632 nor of the present proceedings and the issuance by this Court of a writ of preliminary injunction when it filed the foreclosure proceedings questioned by petitioner; that the Bank could not have intended to deprive petitioner of any guaranty for his claim against the Phillips for the simple reason that the mortgages in its favor over the properties of Hacienda were superior and preferred over the unsecured claim of petitioner against said parties; that the foreclosure proceedings aforementioned were not commenced to defraud or prejudice petitioner but to protect the Bank's rights and interest and to recover long overdue mortgage credits from the therein defendants in the total sum of more than P7,000,000.00; that, as the properties foreclosed consist only of seventy-eight out of one-hundred thirty-five hectares of land titled in the name of Hacienda, the foreclosure proceedings, the compromise agreement and the deed of sale executed in connection therewith could not have been intended to transfer all the properties of Hacienda to the Bank or to the Yuchengco group, nor to render the shares of Hacienda completely valueless; that there has been no transfer of the properties of Hacienda between Phillips to VVDC, through the Bank, the truth being that the latter is still the registered owner of the seventy-eight hectares foreclosed and ceded to it by Hacienda; that while the Bank has received an offer from VVDC for the purchase of said properties, the negotiations have not been perfected, much less consummated, averring further that such negotiations were not intended to circumvent the writ of preliminary injunction issued by Us.

By way of special and affirmative defenses, the Bank further alleges the following:

1. A petition for certiorari (G. R. No. L-24581) cannot properly include additional parties which were not parties in the original case (CFI, No. 8632), where the respondent judge is complained of having acted with abuse of discretion;
2. Said petition for certiorari cannot be altered or enlarged as to allege facts which are disputed and controverted as false or misleading as to require the reception of evidence, which should be done in the trial court;
3. Such a petition for certiorari cannot legally include a prayer to return property which was mortgaged to the MBTC, foreclosed in another case No. 8766, and was assigned to the MBTC in payment of its mortgage, when said mortgage creditor was not a party to the original case (CFI No. 8632);

4. A prayer for contempt against the Directors of the MBTC, who were not parties to the original case cannot be properly joined in the petition for certiorari.

By way of counterclaim, the Bank likewise alleges having suffered actual damages and was further entitled to compensatory damages, and prays for the corresponding judgment therefor against petitioner.

Petitioner in due time filed its own answer to the counterclaims interposed against him by the VVDC and the Bank.

It is clear from the facts alleged in the second amended supplemental petition that the burden of petitioner's case - aside from the annulment of the writ of preliminary injunction issued by the respondent judge on April 1, 1961 (Annex I of the original petition, p. 57 of the record) - is that all the material events that transpired after the filing of his original petition show that the Bank, Robert O. Phillips and Sons, Inc., the Phillips spouses and VVDC, conspired amongst themselves to put the properties of Hacienda and the assets of the latter's guarantors - the Phillips spouses -, beyond his reach and thus make it impossible for him to collect the sum of P4,250,000 still unpaid on the purchase price of his shares in Hacienda sold to the Phillips corporation; that they sought to accomplish this by having the Bank foreclose the mortgage constituted on the properties of Hacienda and acquire them at the foreclosure sale; that, in fact Hacienda, through Robert O. Phillips, has already conveyed its properties to said Bank; that after acquiring them, the Bank would transfer them all to the hurriedly organized VVDC, who would then become their owner and from whom it would be at least difficult to enforce the vendor's lien thereon claimed by petitioner.

The alleged conspirators, of course, deny the conspiracy and aver that the mortgage in favor of the Bank existed long before the sale of petitioner's shares to the Phillips corporation; that at the time the Bank commenced the judicial foreclosure proceedings, more than P7,000,000.00 were due to it from Hacienda and the other corporations defendants who were either owned or controlled by the Phillips spouses; that the foreclosure proceedings were instituted in good faith exclusively to protect or enforce the rights of the Bank; that as a result of the aforesaid foreclosure proceedings the mortgaged properties were lawfully acquired by it; that while thereafter there had been negotiations for the acquisition of said properties by VVDC, the same were held in abeyance by reason of the writ of preliminary injunction issued in this case; that there could have been no attempt to make futile the enforcement of petitioner's right to collect the amount due to him from the Phillips corporation and the Phillips spouses because after the sale of the one-hundred thirty-five hectares to the Bank by Hacienda, the latter still had somewhere around fifty-eight hectares of land.

The above conflicting allegations of the parties inevitably give rise to questions of fact which are not within our power to decide in the present action for Certiorari, not only because the latter involves exclusively questions of jurisdiction but also because such questions of fact must be subjected to an ordinary trial where both parties may enjoy the right to present evidence in support of their respective contentions. Upon mere allegations made in the pleadings before Us and the documents attached thereto, We have no authority to decide, for instance, whether or not there was conspiracy amongst the respondents; in the affirmative, whether or not that conspiracy was for the purpose of defrauding petitioner; whether or not the latter has a vendor's lien on the properties already conveyed by Hacienda to the Bank, enforceable against and superior to the rights acquired thereon by the latter, and whether or not the foreclosure proceedings in question were tainted with fraud.

Upon the other hand, it is undeniable that the situation created by the acts admittedly done by the respondents in connection firstly, with the proposed sale of the shares of stock of Hacienda to Alfonso T. Yuchengco and his group, and secondly, with the conveyance of the properties of Hacienda to the Bank and the contemplated conveyance thereof to VVDC, placed petitioner's right and ability to collect the sum of P4,250,000.00 still due to

him from the Phillips corporation and its guarantors, the Phillips spouses, in clear jeopardy, and it is our considered opinion in this regard that petitioner is entitled, both in law and equity, to a measure of protection - compatible with fairness towards the respondents - while in the process of taking whatever steps may be necessary for the enforcement and protection of his rights.

WHEREFORE, judgment is hereby rendered as follows:

(1) In connection with the writ of preliminary injunction issued by the respondent judge in Civil Case 8632 on April 1, 1965 mentioned heretofore, the same is hereby declared null and void and is, consequently, set aside, with the result that the writ of preliminary injunction issued by Us in this case enjoining its enforcement is hereby made final. The order of the respondent judge of May 6, 1965 denying petitioner's motion to set aside the aforesaid writ of preliminary injunction of April 1 of the same year is hereby reversed;

(2) The writ of certiorari prayed for by petitioner is hereby denied in so far as it seeks to annul the judicial proceedings had in Civil Case 8766 of the Court of First Instance of Rizal, instituted by the Bank against Hacienda and other parties for the foreclosure of the mortgage constituted in its favor upon the properties of Hacienda; without prejudice, however, to the right of petitioner to seek such relief and any other relief that he might be lawfully entitled to against the herein respondents, singly or collectively, in the aforesaid Civil Case 8766 of the Court of First Instance of Rizal or in a separate action. In this connection, it is our judgment that the writ of preliminary injunction issued in this case shall remain subsisting and binding for a period of thirty days from the date of finality of this decision, upon the expiration of which period the same shall be deemed automatically lifted or dissolved, irrespective of whether petitioner had or had not taken steps required for the enforcement and protection of his rights as already indicated;

(3) All petitions actually pending in this case for contempt against the Bank, the other respondents and other parties charged in the proper petition, are hereby deemed denied. Similarly and for obvious reasons, petitioner's prayer for the issuance of a writ of preliminary mandatory injunction against the Bank, requiring the latter to turn over to him the possession of the properties of Hacienda subject of the foreclosure proceedings mentioned above, as well as the petition for the issuance of a writ of preliminary attachment against the properties of the respondents herein, are likewise denied;

(4) All counterclaims interposed in this case against petitioner are likewise dismissed, without prejudice to the right of the claimants to litigate them in Civil Case No. 8632 still pending in the Court of First Instance of Rizal, or in any other appropriate separate action.

Lastly, deciding Hacienda's repeated motions for clarification and/or authority to allow it to pay its just and legitimate obligations, We refer said party to the terms of the writ of preliminary injunction issued in this case, and to our resolution of January 21, 1966 where, among other things, We said:

"x x x However, the injunction issued in this case is directed exclusively to the parties herein and, in connection with the assets of said hacienda, they are the only ones enjoined from performing any act which will either diminish the value of said shares of stock or deplete the assets of said hacienda."

Neither the writ nor the above-quoted portion of our resolution restrains Hacienda from carrying on its ordinary business and meeting its legitimate and reasonable expenses and obligations.

Without costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

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