

NICANOR L. ESCALANTE. PETITIONER, VS. HON. ANJANETTE N. DE LEON ORTILE, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MARIKINA CITY, BRANCH 156, AND LNC (SPV-AMC) CORPORATION, ...

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before Us is the Petition for Certiorari under Rule 65 of the Rules of Court filed by petitioner Nicanor L. Escalante, assailing, on the ground of grave abuse of discretion amounting to lack or in excess of jurisdiction, the Orders dated August 29, 2012 and February 21, 2013 issued by public respondent which denied petitioner's application for issuance of a Writ of Preliminary Injunction in Civil Case No. 2011-1474-MK entitled: "Nicanor L. Escalante vs. LNC (SPV-AMC) Corporation."

As borne by the record of the case, the facts are as follows:

Petitioner Nicanor Escalante was the former owner of a parcel of land located at 88 Starlite Street, Rancho Estate 3, Concepcion Dos, Marikina City. He obtained a loan from Export Industry Bank (EIB) and as a security thereof, petitioner mortgaged the said property to EIB. He failed to pay his loan; hence, the mortgaged property was foreclosed by EIB. Unable to redeem the property, petitioner negotiated with EIB to buy back the property but EIB already sold the subject property to private respondent LNC (SPV-AMC) Corporation (LNC). Petitioner thus negotiated with LNC for the purchase of the property. From 2007 to 2008, series of negotiations were held between petitioner and LNC. They, however, failed to reach an agreement since they could not agree on the term of payment. LNC insisted that the purchase price be paid within six (6) months while petitioner wanted to pay within one (1) year.

From the time the negotiations bogged down in 2008 nothing was heard from petitioner until three years thereafter when he received on May 6, 2011 a Notice to Vacate^[1] from LNC urging him to transfer peacefully the possession of the property to LNC. This event prompted petitioner to negotiate anew with LNC. Eventually, on August 23, 2011, petitioner and LNC reached an agreement and executed a document denominated as Term Sheet^[2] wherein they agreed, among others, that the purchase price of the property shall be P4,500,000.00, to be paid on or before September 30, 2011; that upon execution of the Term Sheet, the petitioner will give the amount of P900,000.00 to LNC as earnest money which shall form part of the purchase price; that in the event petitioner fails to pay the balance in full on September 30, 2011 or fails to proceed with the transaction, LNC may, by mere notice, rescind the Term Sheet without need of court action and upon issuance of the notice, the Term Sheet shall be automatically rescinded and all the payments made by petitioner shall be forfeited in favor of LNC as reasonable compensation and liquidated damages.

On August 23, 2011, upon the execution of the Term Sheet, petitioner gave the amount of P900,000.00 to LNC as earnest money.^[3] On September 27, 2011, or three days before the deadline for the full payment of the purchase price, petitioner wrote a letter^[4] to LNC requesting that he be given reasonable time within which to pay in full

the purchase price and, as a sign of good faith, he gave the additional amount of P600,000.00[5] to LNC on October 25, 2011. Instead of favorably acting on the request, LNC sent a Final Demand for Payment[6] to petitioner demanding the full payment of the outstanding balance on or before November 15, 2011, otherwise, LNC would rescind the Term Sheet and forfeit all payments made by petitioner and refer the matter to their legal department for appropriate action.

A day before the deadline set by LNC for payment, petitioner filed before the Regional Trial Court of Marikina City, Branch 156, a Complaint[7] for Reformation of Instrument with application for the issuance of Writ of Preliminary Injunction. In support of his application for the issuance of a Writ of Preliminary Injunction, petitioner submitted his Judicial Affidavit[8] wherein he alleged, among others, that, although he was not certain that he would be able to meet the designated closing date for him to pay in the full the amount of the purchase price, he, nevertheless, signed the Term Sheet because he and his family were threatened of being evicted from the property. Petitioner lamented that his family is in danger of losing their home and also the payment he made if LNC decides to forfeit his payment and to rescind the Term Sheet. He thus prayed that his application for the issuance of a Writ of Preliminary Injunction be granted to prevent LNC from forfeiting the payments he made and of rescinding the Term Sheet.

On August 29, 2012, public respondent issued an Order denying petitioner's application for the issuance of Writ of Preliminary Injunction. The subsequent Motion for Reconsideration of petitioner was also denied by public respondent, hence, petitioner is now before Us seeking redress, assigning as issues the following:

A.

Whether or not public respondent judge acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in issuing the assailed orders considering that petitioner had shown and demonstrated by his Judicial Affidavit as his direct testimony and documentary exhibits offered in evidence a right that is actual and existing, the invasion of that right, and that grave and irreparable injury would result thereby unless restrained, and there is no plain, speedy and adequate remedy in the ordinary course of law except this petition.

B.

Corollary to the first issue is whether the execution of the Term Sheet was attended with inequitable conduct preventing the true intention of the parties from being expressed therein. Thus, whether the petitioner, by the fact of the execution of the Term Sheet, was vested or imbued with a right that deserve protecting by way of preliminary injunction to prevent LNC from carrying out its threats to unilaterally revoke the contract, forfeit the payments made by petitioner, evict petitioner and sell the property to another buyer.

We rule against petitioner.

The only issue for determination in this Petition is whether public respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the application of petitioner for the issuance of a Writ of Preliminary Injunction.

It is settled that to be entitled to the injunctive writ, petitioner must show that there exists a right to be protected which is directly threatened by an act sought to be enjoined. Furthermore, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to

prevent a serious damage.[9] It is to be resorted to only when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation.[10]

We uphold the finding of the trial court that petitioner failed to show a clear and positive right to be protected. It is apparent in this case that the alleged right of petitioner is anchored on the Term Sheet he entered into with LNC for the purchase of the subject property. Undeniably, however, it was petitioner himself who violated the said agreement when he failed to pay in full the amount of the purchase price on the agreed closing date. Hence, at the very least petitioner's right under the Term Sheet becomes doubtful. In this regard, it has been held that where the complainant's right or title is doubtful or disputed, injunction is not proper.[11]

Even granting that there exists a right of the petitioner to be protected, We are of the opinion that there is no urgent or pressing necessity for the issuance of the Writ. For even if the private respondent would finally decide to rescind the Term Sheet, forfeit the payments, and evict petitioner from the premises, yet there are legal remedies available to the latter to vindicate or protect his right in such eventuality. Firstly, he may question before the court the act of LNC in rescinding the Term Sheet. While the Term Sheet contains a stipulation authorizing LNC to extrajudicially rescind the said agreement in case petitioner fails to pay the remaining balance of the purchase price on the agreed closing date, the same is still subject to judicial determination if petitioner should decide to impugn LNC's declaration of rescission.[12] Extrajudicial rescission, after all, has legal effect where the other party does not oppose it.[13] Where it is objected to, a judicial determination of the issue is still necessary.

Secondly, petitioner's apprehension of being evicted from the premises is merely conjectural and anticipatory. Although LNC may have a valid claim of ownership on the property based on the muniments of title in its name with petitioner's refusal to voluntarily surrender possession of the premises to LNC, still the latter could not just oust petitioner and his family from the premises since regardless of the actual condition of the title of the property, LNC must still bring the appropriate judicial action for its physical recovery.

Finally, even assuming that the LNC would forfeit the payment of petitioner which, undeniably, would result in pecuniary loss on the part of petitioner, the same is capable of pecuniary estimation. Indeed, any loss petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted.[14]

In fine, We hold that public respondent court did not commit grave abuse of discretion in denying petitioner's application for the issuance of a Writ of Preliminary Injunction.

WHEREFORE, the Petition is DENIED. Consequently, We SUSTAIN the Order dated August 20, 2012 of public respondent denying the application of petitioner for the application of a Writ of Preliminary Injunction in Civil Case No. 11-147-MK.

SO ORDERED.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Annex "Ä" of Petition, Rollo, p. 51.

- [2] Annex “C” of Petition, Rollo, pp. 53-56.
- [3] Annex “D” of Petition, Rollo, p. 57.
- [4] Annex “E” of Petition, Rollo, p. 58.
- [5] Annex “F” of Petition, Rollo, p. 59.
- [6] Annex “G” of Petition, Rollo, p. 60.
- [7] Rollo, pp. 52-50.
- [8] Rollo, pp. 61-67.
- [9] Cortez-Estrada vs. Heirs of Domingo Samut, G.R. No. 154407, February 14, 2005.
- [10] De Rosario vs. Court of Appeals, 255 SCRA152.
- [11] Mizona vs. Court of Appeals, 346 SCRA 727.
- [12] See Arturo M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume IV [1991], p. 178 citing Sentencias of June 22, 1911, and October 24, 1941; De Buen: 3 Colin & Capitant 401.
- [13] Zulueta vs. Mariano, 111 SCRA 206; Nera vs. Vacante, 3 SCRA 505; Magdalena Estate vs. Myrick, 71 Phil.344.
- [14] Second Division Australian Professional Realty Inc. vs. Municipality of Padre Garcia, Batangas Province. G.R. No. 183367, March 14, 2012.

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