

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
HON. JUDGE ELEANOR R. KWONG, IN HER CAPACITY AS THE
PRESIDING JUDGE OF BRANCH 128 OF THE REGIONAL TRIAL COURT
OF CALOOCAN C...**

SP No. 107270, August 03, 2010

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Court of Appeals

Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, the petition for certiorari at bench seeks to nullify the Orders dated February 11, 2008 and November 25, 2008 of public respondent judge, the Hon. Eleanor R. Kwong of the Regional Trial Court of Caloocan City, Branch 128, in Civil Case No. C-21833. In the questioned orders, respondent judge issued a writ of preliminary injunction enjoining petitioner from taking possession of the property subject of the case.

The Facts

Petitioner Rizal Commercial Banking Corporation ("Petitioner"/ "TRCBC"), a commercial bank, entered into a loan agreement with LL Trucking and Trading Services ("LL Trucking").[1] The loan was evidenced by three non-negotiable promissory notes.[2] To secure the loan, LL Trucking executed a real estate mortgage, dated November 24, 1999, over its real property located in Caloocan City and covered by Transfer Certificate of Title (TCT) No. 286770.[3]

When the three promissory notes matured, LL Trucking and petitioner RCBC agreed to restructure the loan agreement. As a result, another non-negotiable promissory note was executed.[4] Despite the restructuring, however, LL Trucking again failed to pay on time. Hence, demand letters were sent to LL Trucking,[5] but the loan remained outstanding just the same.

On October 13, 2006, petitioner filed a petition for extra-judicial foreclosure of the mortgage real property.[6] Subsequently, a notice of extra-judicial sale was issued, setting the sale on November 22, 2006. The notice was also posted in three public places and published in a newspaper of general circulation.[7]

The foreclosure sale was held on November 22, 2006[8] during which petitioner acquired the property as the highest bidder.[9]

On December 21, 2006, a Certificate of Sale was issued in favor of petitioner.[10] The certificate was registered with the Register of Deeds on February 14, 2007, the date when the legal redemption period expired.[11]

However, private respondent JJJS Loyd's Realty and Developer Corporation (Respondent"/ "JJJS") claimed to have earlier bought the property from LL Trucking, under what it claims to be a Deed of Absolute Sale executed on March 21, 2006.[12] In that transaction, JJJS states that it was represented by its officer, respondent Loida Lagrimosa, while LL Trucking was represented by its president, Arthur Lacerna.[13]

Respondent JJJS, however, admits that it did not bother to check the original of the property's TCT before and during its purchase of the property, as its representative Lagrimosa purely relied on a photocopy of the title shown

to her by Lacerna of LL Trucking.[14] Thus, JJJS did not know of property's mortgage to RCBC at the time of the sale.[15]

On May 30, 2007, Lagrimosa claimed to have received a notice to vacate the property, in which it was stated that RCBG is the new owner of the property[16]

Having been thus informed, on June 15, 2007, JJJS filed a complaint for nullification of foreclosure sale/certificate of the sale and redemption with damages and prayer for preliminary injunction and/or temporary restraining order.[17]

On June 22, 2007, LL Trucking's TCT No. 286770 was canceled and a new one, TCT No. C-389862, was issued in the name of RCBC.[18]

On November 22, 2007, JJJS filed an amended complaint, which now prays for injunction, accounting, nullification of foreclosure proceedings, cancellation of title, and redemption with damages and prayer for preliminary injunction and/or temporary restraining order.[19]

On February 1, 2008, public respondent judge issued the assailed Order granting private respondent's prayer for a writ of preliminary injunction, the dispositive portion of which states:

"WHEREFORE, premises considered, the prayer for the issuance of a preliminary injunction is granted. Let a writ of preliminary injunction be issued to enjoin defendant RCBC from committing acts or threaten to commit acts which will result in the dispossession of the plaintiff of the subject property until the resolution of the case or until the writ is dissolved.

The bond posted by the plaintiffs for the issuance of the temporary restraining order shall be maintained as its injunction bond to answer for whatever damage the defendant bank may suffer if it will eventually be determined that the plaintiff is not entitled thereto, provided the bonding company interposes no objection as to the extension of its liability under the bond.

SO ORDERED".[20]

Petition filed motion for reconsideration. By the Order dated November 25, 2008, public respondent judge denied the said motion.[21]

Hence, the instant Petition for Certiorari alleging that the above orders of public respondent judge were issue in grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner presents the following as grounds in support of its Petition:

I.

Respondent Judge should not have issued the assailed writ of preliminary injunction because the court had not acquired jurisdiction over the Amended Complaint for JJJS's failure to pay the filing fees.

II.

The writ of preliminary injunction in favor of JJJS was issued with grave abuse of discretion since: (a) the default of JJJS had been clearly established, (b) JJJS failed to demonstrate a clear right to be entitled to a preliminary injunction, and (c) RCBC merely exercised its lawful proprietary rights as the registered owner of the subject property.

III.

RCBC, as the registered owner of the subject property, will suffer grave and irreparable damages if it is

enjoined from taking possession of and/or administering the subject property, by reason of the preliminary injunction issued in favor of a buyer in bad faith like JJJS.

IV.

The P1 million preliminary injunction bond is grossly inadequate to answer for all damages caused and will continue to be caused to RCBC for the wrongful issuance of the writ of preliminary injunction.

The issue

The issue for the court's resolution is: whether or not public respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in her issuance of a writ of preliminary injunction in the instant case.

The Court's Ruling

We grant the petition.

For an application for a writ of preliminary injunction to be granted, certain requisites must be met. In the case of *Marquez v. Sanchez*,^[22] they were laid down as follows:

"Under Section 3, Rule 58 of the 1997 Revised Rules of Civil Procedure, the issuance of a writ of preliminary injunction may be granted if the following grounds are established, thus:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Prescinding from the provisions mentioned above, we have consistently held that the requisites of preliminary injunction whether mandatory or prohibitory are the following:

- (1) the applicant must have a clear and unmistakable right, that is a right in esse;
 - (2) there is a material and substantial invasion of such right;
 - (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and
 - (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury."
- (Emphasis supplied.)

The onus probandi is on the applicant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined; further, 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.^[23]

In the instant case, the trial court granted private respondent's prayer for a writ of preliminary injunction on a finding that plaintiff had an "ostensible" right to the final relief prayed for. The trial court's justification for its ruling granting the writ of preliminary injunction reads:

"At this state, plaintiff(s) need not conclusively establish its (sic) right over the subject matter of the complaint, what is required is that plaintiff(s) has (sic) an ostensible right to the final relief prayed (for) in their complaint.

The plaintiffs pray that the extra-judicial foreclosure proceedings be annulled because of the lack of authority of the persons who filed the same and because the promissory note is not yet due when the foreclosure proceedings was filed. Indeed, the promissory note subject of the mortgage is yet to mature when the foreclosure proceeding was initiated. The defendant bank justified that it was so because the mortgagor was in default. But the defendant bank did not present the schedule of payments which was supposed to show when the mortgagor started to be in default which would authorize the bank to foreclose the collateral. This seriously put in issue the right of the defendant bank to foreclose the property, and so as not to render the outcome of this case moot and academic, the Court finds that an injunctive relief must issue.

Moreover, as testified to by the defendant's witness, they will again send another notice to vacate and in the event that the notice is not acceded, the bank will institute a writ of possession case. This is enough threat as to the right of the plaintiff's right to remain in possession of the property pending determination of the outcome of this case. In the event that this Court will finally resolve in favor of the plaintiff, then right to issuance of a writ of possession will necessarily fail." [24]

We find that the trial court committed grave abuse of discretion in making the above findings' and in granting private respondent's prayer for a writ of preliminary injunction enjoining petitioner RCBC from obtaining physical possession of the subject property.

Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all contemplation of law. [25]

In the instant case, the trial court's deliberate disregard of petitioner RCBC's existing title to the property, as well as the regular process which petitioner followed in its extra-judicial foreclosure of the same, is nothing short of capricious and whimsical, especially in the face of respondent's own failure to discharge its burden of proving a clear, unmistakable and existing right.

It has been held that where there is no right that is existing and which is to be protected and respected, the issuance of a writ of preliminary injunction is unwarranted, and is in grave of discretion. [26]

A perusal of the available evidence should justify a finding that respondent was not entitled to the writ. Petitioner presented is transfer certification of title [27] to the property, which enjoys the presumption of having been issued regularly and is a conclusive proof of its ownership. Petitioner likewise presented proof of the regular process it undertook to consolidate its title, such as the promissory notes signed by LL Trucking, [28] the real estate mortgage [29] the demand letters sent to LL Trucking when its obligations became due, [30] the petition for extra-judicial foreclosure, [31] the certificate of posting of the said petition and the notice of publication, [32] petitioner's bid letter, [33] the sheriff's certificate of sale, [34] and the annotation of the certificate of sale to the property's former certificate of title which was then in the name of LL Trucking. [35]

In stark contract, all that private respondents were able to present was an undated deed of sale, [36] purportedly executed by LL Trucking in favor of private respondent JJJS Loyd's Realty; no official receipts nor other proof of the terms of payment of the purchase price were presented. [37] On top of this is respondent further admission in its Amended Complaint that it entered into the purported sale without bothering to see the original of the certificate of title. [38] Had respondent bothered to see the original owner's duplicate of the TCT, or checked the one in the Register of Deeds, it would have discovered the real estate mortgage executed by LL Trucking in favor of petitioner, which had been annotated in the said title since November 24, 1999, or more than six years earlier. [39]

Having bought the property without exercising due diligence, and being a real estate company at that, respondent must now bear the unpleasant consequences of such carelessness.

All the foregoing demonstrate private respondent's patent lack of a clear, unmistakable right or a right in esse that would entitle it to a writ of preliminary injunction.

A right in esse, in its dictionary meaning, implies a right that is in actual existence, in contrast to a right that is a mere possibility, or not yet actually existing.[40]

In jurisprudence, it has been consistently held that "injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an action which did not give rise to a cause of action." [41]

In the present case, respondent's naked attacks against the validity of the transfer of the title of the subject property in favor of petitioner does not suffice to bestow on respondent a right that it can protect by virtue of a preliminary injunction enjoining his physical dispossession of the property. Especially when the fact is that such transfer was effected by virtue of a foreclosure of mortgage which has all the prima facie appearance of regularity and to which respondent was not even a party. In short, respondent's unsubstantiated claim pales in comparison to petitioner's clear title.

To the owner of the property belongs the *jus possidendi*, or the right to possess it. As evidenced by the property's present certificate of title, respondent is not even the owner of the property; neither does it derive any right from the owner to possess the same. Hence, it has no right of possession that it can ask the court to protect through an injunctive writ.

The other requisites for the issuance of a writ of preliminary injunction, likewise, have not been met.

As to the second requisite, i.e., the "material and substantial invasion of a right," respondent's lack of a right in esse means petitioner could not have invaded or yet invade a right that does not exist. Thus, there is no material and substantial invasion to enjoin via an injunctive writ.

As to the need to prevent irreparable injury, we see no reason why respondent's continued possession of the property is material to its action to annul the foreclosure of the property and the cancellation of its existing title. Whether respondent enjoys physical possession of the property or not, the action it filed should be unaffected, as it is an action to recover ownership/ cancellation of title, where ownership, and not possession, is the issue. Ownership may be proven or disproven even without actual possession. Meanwhile, it is petitioner RCBC, who has title to the property, who is suffering irreparable loss for every day that it is dispossessed of the property that legally belongs to it. The effectivity of the preliminary injunction during the pendency of the case improperly deprives petitioner of its right of ownership and possession even though its title has not yet been invalidated or cancelled.

In arriving at its decision, the trial court also gravely erred and abused its discretion in ignoring extant evidence. Contrary to its findings that "the promissory note was not yet mature" when the foreclosure petition was filed, and that "the bank did not present the schedule of payments which was supposed to show when the mortgagor started to be in default," there is ample evidence on record to show that the promissory note has an acceleration clause that made the obligation due and demandable upon the borrower's failure to pay the monthly installments.[42] The promissory note likewise clearly states that the duty to pay installment arises on a monthly basis.[43]

As to petitioner's allegation that public respondent had no jurisdiction to issue the writ of preliminary injunction because of private respondent's failure to file the correct amount of filing fees, we defer ruling on the same as we

note that petitioner itself manifested on February 26, 2009[44] that public respondent judge already ordered private respondents to pay the correct amount of filing fees within 15 days from receipt of the other.

The rule is that payment of filing fees is a compulsory and jurisdictional requirement, as laid down in *Manchester Development Corporation v. Court of Appeals*.^[45] However, this was clarified in *Sun Insurance Office, Ltd v. Asuncion*^[46] and in subsequent cases, which stated that non-payment alone should not result in outright dismissal of cases, to wit:

"1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.

2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.^[47]

Hence, absent any showing that respondents herein failed to pay the correct filing fee within the reglementary period, we defer judgment on whether private respondents' complaint should be dismissed and whether its application for a writ of preliminary injunction should be denied on this ground.^[48]

WHEREFORE, premises considered, the Petition is granted and the assailed Orders dated February 11, 2008 and November 25, 2008 are hereby nullified and set aside.

SO ORDERED.

Villon and Lazaro-Javier, JJ., concur.

[1] Rollo, p. 6.

[2] Id. at 69-74.

[3] Id. at 59-62.

[4] Id. at 75-76.

[5] Id. at 77-81.

[6] Id. at 82-84.

[7] Id. at 85-86.

[8] Id. at 8.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 116.

[13] Id.

[14] Id. at 118.

[15] Id.

[16] Id. at 117.

[17] Id. at 9.

[18] Id. at 112-113.

[19] Id. at 114-127.

[20] Id. at 56.

[21] Id. at 57-58

[22] G.R. No. 141849, February 13, 2007.

[23] European Resources and Technologies, Inc. v. Ingenieurburo Birkhahn + Nolte, Ingeniugesellschaft mbh, G.R. No. 159586, July 26, 2004

[24] Rollo, pp. 55-56.

[25] Philippine National Bank vs. RJ Ventures Realty & Development Corp., G.R. No. 164548 September 27, 2006.

[26] Locsin v. Climaco, G.R. No. L-27319, January 31, 1969.

[27] Rollo, pp. 112-113.

[28] Id. at 69-76.

[29] Id. at 59-62.

[30] Id. at 77-81.

[31] Id. at 82-84.

[32] Id. at 85-86.

[33] Id. at 87.

[34] Id. at 88-89.

[35] Id. at 66.

[36] Id. at 238-239.

[37] Id. at 27-30.

[38] Id. at 118.

[39] Id. at 68.

[40] Webster's Third International Dictionary, distinguished the meaning of the phrases in esse and in posse.

[41] Overseas Workers Welfare Administration v. Chavez, G.R. No. 169802, June 8, 2007.

[42] Rollo, pp. 75-76. See the portions marked as Exhs. 17-A and 17-B (p.75) and the tick mark "monthly" in the schedule of payments (p.76).

[43] Id.

[44] Id. at 337-340.

[45] 149 SCRA 562 (1987).

[46] 170 SCRA 274 (1989).

[47] Alday v. FGU Insurance Corp., G.R. No. 138822, January 23, 2001.

[48] Emnace v. CA, G.R. No. 126334, November 23, 2001; Metropolitan Bank and Trust Co. v. Perez, G.R. No. 181842, February 5, 2010.

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