

BF HOMES, INCORPORATED PETITIONER, VS. THE HONORABLE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PARAÑAQUE CITY OF BRANCH 257, BANGKO SENTRAL NG PILIPINAS, BANCO FILIPINO SAV...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for certiorari[1] under Rule 65 of the Rules of Court, as amended, assailing the order[2] dated November 14, 2012 issued by respondent Judge Rolando G. How of the Regional Trial Court of Parañaque City, Branch 257 in Civil Case No. 12-0332, denying the motion for the issuance of preliminary injunction prayed for by petitioner BF Homes, Incorporated.

The facts of the case are as follows:

Respondent Banco Filipino Savings and Mortgage Bank (BFSMB) applied for a Special Liquidity Facility Loan from Bangko Sentral ng Pilipinas (BSP) which was approved on December 4, 2002. On December 9, 2002, BFSMB delivered to BSP a Deed of Assignment of its Credit against Pro Managers Inc. (PMI)[3] in order to secure the loan application. The said credit is evidenced by a promissory note and secured by a Mortgage Agreement of PMI with BFSMB over several properties registered in the name of petitioner.[4]

On October 23, 2012, petitioner was informed of a foreclosure proceeding instituted by BSP, through a Notice of Extrajudicial Foreclosure Sale scheduled on November 12 and 26, 2012 at 10:00 in the morning.

On November 8, 2012, petitioner filed an action for declaratory relief and prohibition with application for the issuance of temporary restraining order (TRO)/ writ of preliminary injunction.[5] The same was raffled to the Regional Trial Court (RTC) of Parañaque City, Branch 257 and that the application for TRO was scheduled for hearing on November 12, 2012 at 8:30 in the morning.[6]

During the hearing conducted on November 12, 2012, Executive Judge Brigido Artemon M. Luna II presided as Pairing Judge due to the absence of respondent Judge Rolando G. How. Judge Luna voluntarily inhibited himself from taking action on the case; hence, the hearing was reset to November 14, 2012.[7]

On November 12, 2012, respondent Atty. Jerry R. Toledo, in his official capacity as Ex-Officio Sheriff of the Regional Trial Court of Parañaque City conducted the sale by public auction resulting from extrajudicial foreclosure of mortgage under Act 3135, as amended by Act 4118 of the properties owned by petitioner. BF Town Corporation was declared as the highest bidder.[8]

On November 14, 2012, respondent judge issued an order[9], which reads:

"In connection with the hearing today which is about the application for preliminary injunction, since there was no temporary restraining order issued in the hearing last Monday, November 12, 2012, which was presided by the Pairing Judge, Brigido Artemon M. Luna III and the auction sale was already made and it was already completed in a sense that the highest bid was already announced and declared to be BF Town Corporation, the

Motion for the Issuance of Preliminary Injunction is denied for being moot.

SO ORDERED."

In the instant petition for certiorari, petitioner raised the following issues for the determination of this Court:

"IWHETHER RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE APPLICATION FOR TEMPORARY RESTRAINING ORDER (TRO)/PRELIMINARY INJUNCTION.

IIWHETHER A TEMPORARY RESTRAINING ORDER (TRO)/PRELIMINARY INJUNCTION IS PROPER."[10]

After examining the allegations in the instant petition, this Court finds the same to be without merit. Record shows that petitioner failed to file a prior motion for reconsideration with the trial court before this action was instituted. The well-established rule, with some recognized exceptions, is that a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.[11] In the case at bar, petitioner failed to show that this case falls under any of the exceptions. Except for its bare allegation, petitioner failed to present any plausible justification for dispensing with the requirement of a prior motion for reconsideration. It must be emphasized that the filing of a motion for reconsideration and filing it on time are not mere technicalities of procedure. These are jurisdictional and mandatory requirements which must be strictly complied with. Thus, failure of petitioner to move for the reconsideration of the court a quo's order before availing itself of the special civil action for certiorari is a fatal infirmity.[12]

Even if this Court were to decide on the merits, the petition must likewise be dismissed. When the act sought to be enjoined had become fait accompli, the prayer for provisional remedy should be denied. In the instant case, the holding of the extrajudicial sale rendered the application for the issuance of TRO/preliminary injunction moot and academic.[13] There is, therefore, no more actual case or controversy between the parties insofar as the RTC's refusal to enjoin the sale is concerned, and any resolution by this Court on the impropriety or propriety of the RTC's refusal to issue any restraining or injunctive relief against the foreclosure sale will serve no purpose but to addle the controversy in Civil Case No. 12-0332 pending before the RTC.[14]

WHEREFORE, the petition for certiorari is DISMISSED.

SO ORDERED.

Acosta, (Chairperson), and Gaerlan, JJ., concur.

[*] Vice J. Fernanda Lampas Peralta voluntarily inhibited as per raffle dated September 30, 2014.

[1] Rollo, pp. 9-23.

[2] Rollo, p. 26.

[3] Rollo, pp. 27-32.

[4] Rollo, pp. 33-66.

[5] Rollo, pp. 67-83.

[6] Rollo, p. 84.

[7] Rollo, pp. 24-25.

[8] Rollo, p. 85.

[9] Rollo, p. 26

[10] Rollo, p. 13.

[11] Audi AG vs. Mejia, G. R. No. 167533, July 27, 2007.

[12] Republic Of The Philippines, Represented By The Privatization And Management Office (PMO) vs. Pantranco North Express, Inc. (PNEI), Pantranco Employees Association (PEA-PTGWO), Eusebio Ramoso, Ciriaco M. Magsino, A. Cachuela, A. Camus, M. Calahi, R. Cano, B.T. Lantano, L. Bersamina, A. Alfaro And 495 Others, G.R. No. 178593 : February 15, 2012.

[13] See PNB vs. Court of Appeals, G.R. No. 121251, June 26, 1998.

[14] See Caneland Sugar Corporation vs. Hon. Reynaldo M. Alon, Land Bank of the Philippines, and Eric B. De Vera, G.R. No. 142896 : September 12, 2007.

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