

## **BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. THE REGIONAL TRIAL COURT OF PASIG CITY, BR. 71, SALDAÑA AND COMPANY, INC. AND SALDAÑA DEVELOPMENT AND MANAGEMENT CORPORATION, RESP...**

Ponente: BARRIOS, J.

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### **BARRIOS, J.:**

The petitioner Bank of Philippine Islands (or BPI for brevity) through this petition for certiorari seeks to have the twin Orders dated June 28, 2001 and August 10, 2001 issued by Branch 71 of the Regional Trial Court of Pasig City, reversed and set aside.

The respondents Saldaña and Company, Inc. and Saldaña Development and Management Corporation (or Saldaña Corporations) filed before the court a quo a case for Breach of Contract, Damages, Nullity of Foreclosure, Certificate of Sale, Consolidation of Ownership, Accounting with TRO and Injunction against the Far East Bank and Trust Company which has since merged with and continued to exist as BPI.

On May 22, 2001 the court a quo issued a Temporary Restraining Order (p. 96, rollo) which enjoined BPI from consolidating the title to the property with an area of 5,646 square meters located in Brgy. Kapitolyo, Pasig City and covered by Transfer Certificate of Title No. PT-101473, which was used by Saldaña Corporations as a collateral to their loan with BPI.

The following facts, as correctly determined by the court a quo, are attendant:

Plaintiffs which engaged in import and export garments / fabrics were granted by defendant a P130,000,000.00 omnibus line and US\$6,000.00 long term loan per Amended and Restated Real Estate Agreement dated October 21, 1996. Due to financial crisis, the omnibus line reached P125,486,284.90 and the term loan to P6,869,660.23 totaling to P132,355,945.00. The amount stated in the Summary Statement of Account was P136,166,086.33 as of October 31, 2000 plus interest of P26,629,682.32 including penalties of P2,893,204.16 totaling to P165,688,972.81. Although the demand letter referred to a total sum of P132,355,945.10 and the Extra-Judicial Foreclosure of Real Estate Mortgage dated June 30, 2000 the amount of P132,676,725.66, including the Notice of Sheriff's Sale dated October 3, 2000, the Agreement of October 21, 1996 and Certificate of Sale of December 1, 2000 had P260,000.00 as the increased total annotations on the Existing Real Estate Mortgage Documents as the aggregate principal sum.

Negotiations followed to find ways and means to extrajudicially settle plaintiffs' financial obligations with defendant.

Defendant told plaintiffs that it would foreclose the mortgage to comply with its standard operating procedure and assured them that plaintiffs could offer the collateral covered by TCT No. 101473, with an area of 5,646 square meters situated at Brgy. Kapitolyo, Pasig City, to third parties.

The mounting unconscionable rates of interest including penalties imposed on the loan even after the foreclosure have worried plaintiffs despite defendant's commitment to adjust the computation in the financial

negotiation for amicable settlement.

Based on the Extrajudicial Foreclosure of Real Estate Mortgage dated June 30, 2000 and in relation to the Notice of Sheriff's Sale dated October 3, 2000 for the satisfaction of the mortgage debt of P132,676,725.66 as of April 30, 2000 "inclusive of interest plus all legal fees and expenses", a Certificate of Sale dated December 1, 2000 was issued with a bid price of P130,000,000.00 considered the "PARTIAL SATISFACTION" of the said "Amended and Restated Real Estate Mortgage (sic)"

Plaintiffs insist to sell the collateral to third persons at not less than P65,000.00 per square meter for 5,646 square meters or for P366,990,000.00 instead of the "bid price" of P130,000,000.00 or P23,025,150.60 per square meter which was way, way below the market value of P65,000.00 or more per square meter. Defendant does not want plaintiffs to exercise the right to sell the property to third parties.

Besides, the same collateral has been appraised at P329,233,000.00 or P58,312.61 per square meter with sound value of P285,508,000.00 at P50,568.18 per square meter against defendant own appraisal of P130,000,000.00 or P23,025.15 per square meter which is detrimental and prejudicial to the interest of plaintiffs.

The Appraisal of Property dated April 7, 1998 by the General Appraisal Company (Philippines), Inc., has obviously been disregarded or considered by defendant.

Plaintiffs have been exerting efforts to settle amicably their loan obligation including the restructuring of loan with additional collateral which defendant found it unacceptable. Although the initial payment of P5,000,000.00 by plaintiffs was considered out of plaintiffs' commitment of P15,000,000.00, the checks representing P10,000,000.00 has not been returned to plaintiffs. (pp. 18-19, rollo)

Consequently the assailed Order dated June 28, 2001 granting the preliminary injunction, was issued by the court a quo. BPI filed a motion for its reconsideration insisting that Saldaña Corporations have no more existing right over the property. In the other assailed Order dated August 10, 2001, the court a quo denied this for lack of merit (p. 22, rollo).

Hence this petition for certiorari, for the grant of which BPI assigned the lone ground that:

THE LOWER COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ORDER DATED JUNE 28, 2001 AND THE ORDER DATED AUGUST 10, 2001 DESPITE THE FAILURE OF PRIVATE RESPONDENTS TO ESTABLISH A GROUND FOR THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION (p. 5, rollo)

We deny the petition.

It is evident from the facts as ascertained by the court a quo that Saldaña Corporations have established its claimed right, and which have to be protected. In its order denying the motion for reconsideration, the court a quo ruled that:

Besides, the record does not even establish that defendant had already consolidated its supposed title to the mortgaged property. As shown and reiterated, defendant's bid price of P130,000,000.00 as "partial satisfaction" of the mortgage for an appraisal price of P319,233,000.00 is iniquitous, unreasonable and detrimental to plaintiff's existing right. (p. 22, rollo)

Also notable is the testimony of Atty. Milagros Susan Arlegue Fernandez, Executive Vice-President for Administration and a member of the board of Saldaña Corporations:

Q You were able to identify a petition for extrajudicial foreclosure of mortgage and a certificate of sale with an annotation of partial satisfaction. My question to you is this prior to the time that this extra judicial foreclosure of mortgage was initiated by the defendant bank, meaning to say Far East Bank and Trust Company, did you

have negotiation with the bank? A I have no knowledge because it is the vice president for Finance and the president negotiating.

Q Prior to the time that this was conducted, was your knowledge sought by the President of the Corporation or by the bank itself why they are foreclosing the said collateral considering that the collateral is over collateralized. Was your knowledge consulted by the president or by the bank itself? A Yes, sir.

Q Will you please inform the Honorable Court what happened to that? A Originally the president of the company objected to the foreclosure of the sale but the bank assured him that it is going to be a friendly foreclosure.

Q You mentioned that the president of the company objected but later on he was assured that it was a friendly foreclosure. Please explain to this Honorable Court what is meant by that? A Well, the friendly foreclosure is supposedly for the company Saldaña Company, Inc. to allow the foreclosure to proceed and then the bank will allow him to be able to redeem the property at a certain period and sell it at a much higher price and that certain concessions will be given him.

Q What were these concessions if you know were also discussed prior to the time that this friendly foreclosure will be implemented? A That the president of the company will be given time, one year actually, to sell the property to third parties.

Q Can you please inform this Honorable Court why the president of the company would like to sell the collateral? A Because the bid price for the property was only 130 Million and the fair market value of the property is more than 260 Million. If I may just explain because the Zonal valuation for that property in Pasig is already 23 thousand per square meter and so therefore if the company will be allowed to sell it it would be able to extinguish most of its obligations in the bank. (tsn, May 10, 2001, pp. 10-11)

Indications are that it could be proven at the trial that there was indeed a negotiation to this effect, and perforce it would be prejudicial to Saldaña Corporations for the court a quo not to issue the injunctive writ and let loose and allow BPI to consolidate the title in its name. It would certainly ramify and exacerbate the points and matters in controversy, and even involve new parties.

The purpose of preliminary injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated (*Medina vs. Greenfield Development Corporation*, 443 SCRA 150), and the matter of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court unless the court commits a grave abuse of discretion (*Toyota Motors Phils. Corporation Worker's Association (TMPCWA) vs. Court of Appeals*, 412 SCRA 69). By grave abuse of discretion is meant such capricious and whimsical exercise of judgment, or is equated to lack of jurisdiction. It must be shown that the discretion was exercised arbitrarily, or despotically, or whimsically (*Security Bank Corp. vs. Victorio*, G. R. No. 155099, August 31, 2005). In fine, it not having been shown that the assailed Orders allowing injunctive relief were done with grave abuse of discretion --

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

**SO ORDERED.**

Guariña III, and Romilla-Lontok, JJ., concur.

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