

C & C COMMERCIAL CORPORATION AND CLARA REYES PASTOR AND OTHER STOCKHOLDERS OF C & C COMMERCIAL CORPORATION SIMILARLY SITUATED, PETITIONERS, VS. PHILIPPINE NATIONAL BANK, NATIONA...

G.R. No. L-42449. July 05, 1989

Ponente: CORTES, J.

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CORTES, J.:

The applicability to the case at bar of Presidential Decree No. 385, dated January 31, 1974, prohibiting the issuance of injunctions against foreclosure sales sought by government financial institutions is the principal problem that needs to be resolved in the instant special civil action for certiorari.

The controversy now before this Court traces its roots to the period between February 27, 1957 and December 20, 1960 when petitioner C & C Commercial Corporation (now Asbestos Cements Products Phil. Inc., hereinafter referred to as ACPPI) opened seven letters of credit with the respondent Philippine National Bank (hereinafter referred to as PNB) to import machines and equipment for its plant. Since petitioner's obligations under the said letters of credit totalling five million four hundred fifty-one thousand eight hundred fifty-one pesos and eighty-three centavos (P5,451,851.83) as of January 31, 1968 were not paid, PNB instituted on March 13, 1968 a collection suit with a prayer for preliminary attachment against ACPPI, impleading Clara Reyes Pastor as party defendant in her capacity as joint and solidary debtor and controlling stockholder.

However, instead of proceeding with the collection suit, PNB agreed, at the behest of Mrs. Pastor, as majority stockholder of ACPPI, to enter into a Voting Trust Agreement on March 5, 1969 to protect PNB's interests in ACPPI. The collection suit was therefore dismissed without prejudice. Private respondents, PNB and its subsidiary or affiliate, the National Investment Development Corporation (hereinafter referred to as NIDC), as the trustees named under the said agreement, immediately proceeded to take over the management of ACPPI pursuant to the agreement which granted them "full authority, subject only to the limitations set by law and the other conditions set forth herein, to manage the affairs and the accounts and properties of C & C Commercial Corporation, Inc.; to choose its directors and key officers; to safeguard its interest and those of its creditors; and in general, to exercise all such powers and discharge such functions as inherently pertain to the ownership and/or management of such corporation" for a period of five (5) years from the date of its execution or up to March 1974 [Rollo, pp. 32-40.]

During the time that the Voting Trust Agreement was in force, ACPPI executed a chattel mortgage dated September 6, 1971 over its personal properties in favor of NIDC as security for the loan of seven hundred thousand pesos (P700,000.00) granted by the latter to the former to finance the production of asbestos cement products and their exportation to Brunei and to repair/rehabilitate its plant building which had been damaged by typhoon "Yoling".

On August 27, 1973, the accounting firm of Sycip, Gorres and Velayo, after examining the management and

operations of ACPPI for the first three years under the Voting Trust Agreement, submitted a report finding that the PNB/NIDC management of ACPPI was a complete and disastrous failure. In view of this report, petitioners ACPPI (then C & C Commercial Corporation), Clara Reyes Pastor and other stockholders of ACPPI similarly situated filed a complaint on October 16, 1973 in the Quezon City Branch of the Court of First Instance of Rizal for the termination of the Voting Trust Agreement with a prayer for and award of damages in the sum of about twenty-seven million pesos (P27 M) alleging, inter alia, that by reason of the grossly negligent or incompetent management of ACPPI by private respondents, the corporation suffered huge losses. In the aforesaid case, which was docketed as Civil Case No. Q-18176, ACPPI also sought as an ancillary remedy the appointment of a receiver.

On November 27, 1973, the respondents PNB and NIDC filed their answer to the complaint denying the charge of mismanagement and alleging that ACPPI's indebtedness to PNB had reached an amount of eleven million five hundred thirty-eight thousand twenty-nine pesos and sixty-three centavos (P11,538,029.63) as of August 31, 1973 excluding daily interest, and to NIDC, one million two hundred nineteen thousand nine hundred eighty-two pesos (P1,219,982.00) as of April 15, 1973 excluding daily interest.

On January 22, 1974, the lower court issued an order appointing Bayani Barzaga as receiver. But subsequently, in an order dated November 13, 1974 -- pursuant to an agreement reached between ACPPI, PNB and NIDC to provide a mutually acceptable mechanism for management of ACPPI pending the settlement negotiations between them -- the court a quo converted the one-man receivership of Barzaga into a joint receivership, with PNB-NIDC nominee Atty. Ricardo L. Sadac and ACPPI nominee Atty. Roberto L. Bautista assuming office as joint receivers together with Barzaga.

In the meantime, on December 19, 1973, Development Bank of the Philippines (hereinafter referred to as DBP) executed a deed of assignment in favor of PNB whereby the former assigned to the latter its rights and interests under the promissory notes and deeds of real estate mortgages executed on May 16, 1960 and May 8, 1961 by ACPPI in favor of DBP for the principal amounts of four hundred ninety thousand pesos (P490,000.00) and seven hundred ninety-six thousand pesos (P796,000.00), respectively.

On March 11, 1974, PNB filed with the Provincial Sheriff of Rizal a "PETITION FOR SALE UNDER ACT 3135 AS AMENDED". The foreclosure sale initiated by PNB was not only to recover on the allegedly defaulted secured loans of four hundred ninety thousand pesos (P490,000.00) and seven hundred ninety-six thousand pesos (P796,000.00) assigned by DBP to PNB but also for: 1) the unsecured advances granted by PNB to ACPPI relating to the letters of credit opened sometime between 1957 and 1960; 2) the unsecured advances from PNB during the five-year period of the Voting Trust Agreement; and, 3) the interests, penalties and charges computed thereon during the same five-year period when PNB controlled and managed ACPPI. A foreclosure sale was thus sought to satisfy ACPPI's total indebtedness to PNB in the amount of fourteen million five hundred seventy-one thousand seven hundred thirty-six pesos and eighty-seven centavos (P14,571,736.87) as of January 31, 1974.

ACPPI wrote a letter to the Board of Directors of PNB expressing its opposition to the contemplated extrajudicial foreclosure sale. In reply, PNB sent a letter agreeing to meet with ACPPI in settlement negotiations. However, ACPPI's proposals for the settlement of its accounts with PNB were rejected for not being economically feasible and so, PNB made a final demand for payment with a warning that unless full payment or other satisfactory arrangement was made, PNB would proceed with the scheduled auction sale if the mortgaged properties on September 30, 1975.

On September 22, 1975, Civil Case No. 22047, a suit for nullification of the extrajudicial foreclosure proceedings with prayer for a writ of injunction, was filed by ACPPI against PNB and the Provincial Sheriff of Rizal in the

Pasig Branch of the Court of First Instance of Rizal, contesting PNB's foreclosure of the mortgage and the auction sale scheduled for September 30, 1975. Said court subsequently issued an order dated September 30, 1975 restraining the scheduled foreclosure sale and directing the maintenance of the status quo until further orders of the court.

Meanwhile, NIDC foreclosed the chattel mortgage executed by ACPPI on September 6, 1971 and filed with the Sheriff of the City of Manila a petition for the auction sale of "all the finished products in inventory located at the MORTGAGOR's (ACPPI) plant at Barrio Napindan, Taguig, Rizal . . ." [Rollo, p. 165] in order to satisfy an alleged total indebtedness of ACPPI to NIDC amounting to one million eight hundred forty-five thousand one hundred nine pesos and twenty-two centavos (P1,845,109.22). On October 3, 1975, ACPPI instituted with the same Pasig Branch of the Court of First Instance of Rizal Civil Case No. 22133 for the nullification of the extrajudicial foreclosure proceedings sought by NIDC scheduled for October 16, 1975. The lower court also granted a temporary restraining order in the latter case.

On December 17, 1975, on separate motions to dismiss filed by the respondents PNB and NIDC in Civil Cases Nos. 22047 and 22133, respectively, the Court of First Instance dismissed said civil cases in separate decisions but on the common ground that these cases violate the procedural rule against splitting a single cause of action and also, that ACPPI, being under receivership, was without legal capacity to contest the foreclosures.

On January 5, 1976, ACPPI moved for leave to file a supplemental complaint with a prayer for the issuance of a writ of preliminary injunction in Civil Case No. Q-18176, the action for termination of the Voting Trust Agreement, in order to submit for adjudication in the same proceeding and before said court the renewed threats by PNB and NIDC to effect the sale at public auction of the foreclosed properties.

The lower court in an Order dated January 15, 1976 admitted the supplemental complaint but denied the application for injunction on account of the provision of Presidential Decree No. 385 prohibiting the issuance of restraining orders and temporary or permanent injunctions against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in said decree.

Petitioners filed a motion for reconsideration of the order but the motion was denied. Hence, petitioners' recourse to this Court by way of a special civil action for certiorari with injunction, alleging grave abuse of discretion on the part of respondent Judge Augusto Valencia, Presiding Judge of the Court of First Instance of Rizal, Quezon City Branch XXXI, in issuing the aforementioned orders.

In a resolution dated January 20, 1976, this Court resolved to issue a temporary restraining order to enjoin the sale by PNB and NIDC of the foreclosed properties scheduled on January 21 and 30, 1976.

On October 7, 1976, petitioner-movant Clara Reyes Pastor filed in the instant case a Motion for Termination of Receivership with Alternative Motion for Substitution of Receiver.

This Court however finds no legal basis for granting said motion as the receivership of ACPPI is not at all an issue in the instant case. Time and again, this Court has acknowledged that it possesses no authority to rule upon non-jurisdictional issues in a certiorari proceeding. Thus, "it is settled to the point of being elementary that the only question involved in certiorari is jurisdiction, either want of jurisdiction or excess thereof. . . ." [F.S. *Divinagracia Agro-Commercial Inc. v. Court of Appeals*, G.R. No. L-47350, April 21, 1981, 104 SCRA 180. 191.]

Besides, the said motion was premature. It must be noted that on September 25, 1975, petitioner ACPPI filed before the lower court an omnibus motion to annul the joint receivership, to which motion respondents filed their joint opposition on October 2, 1975. On October 8, 1975, the lower court issued an order denying petitioner's

aforementioned omnibus motion. Petitioner moved to reconsider the said order and this motion is still awaiting resolution by the trial court. In view of the pendency of the aforesaid motion for reconsideration, it would be premature for this Court to act on the motion for termination of receivership filed before it. Petitioners should await resolution by the lower court of their omnibus motion to annul joint receivership before resorting to this Court.

The crucial problem to be dealt with in this petition is whether the trial court's refusal to grant an injunction against the threatened foreclosure sales by PNB and NIDC constitutes grave abuse of judicial discretion amounting to lack or excess of jurisdiction.

The court a quo's basis for denying the injunction sought by ACPPI is P.D. 385 which makes it "mandatory for government financial institutions . . . to foreclose the collaterals and/or securities for any loan, credit, accommodation and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interests and other charges, as appearing in the books of account and/or related records of the financial institution concerned". [Section 1, P.D. 385.]

Pursuant to the aforesaid law:

Sec. 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages had been paid after the filing of foreclosure proceedings. . . [Underscoring supplied.]

* * *

Since the arrearages on the PNB and NIDC loans cover the entire amount of the indebtedness, thus more than satisfying the 20% arrearages requirement under the law, it would seem that this case falls within the purview of the general rule laid down in P.D. 385. Injunction will not be granted except upon payment of twenty percent (20%) of the outstanding arrearages after filing of the foreclosure proceedings. This has not been done here. Nevertheless, the Court believes that, in view of the peculiar factual circumstances obtaining in the case, P.D. 385 should not have been applied peremptorily by the respondent trial judge.

I. THE PNB FORECLOSURE SALE:

The extrajudicial foreclosure sale sought by PNB is based on two deeds of real estate mortgage executed on May 16, 1960 and May 8, 1961, respectively, by ACPPI in favor of DBP to secure promissory notes for the principal amounts of four hundred ninety thousand pesos (P490,000.00) and seven hundred ninety-six thousand pesos (P796,000.00), respectively. PNB acquired all the rights and interests under the aforementioned deeds of mortgage by virtue of a deed of assignment executed by DBP in its favor on December 19, 1973.

But the PNB foreclosure sale seeks to satisfy not only the amounts stated in the secured promissory notes but also the unsecured advances amounting to some five million four hundred thousand pesos (P5.4 M) granted by PNB on account of the opening of letters of credit by ACPPI sometime between 1957 and 1960 before DBP assigned the mortgages to PNB in 1973. The Court's inquiry is thus centered on whether the foreclosure sale pursuant to the DBP-assigned mortgage should proceed as ordered by the respondent trial judge considering that the sale also seeks to satisfy previously incurred unsecured obligations.

A. As to the DBP-assigned credits, there is no doubt that foreclosure can proceed as these were secured by

appropriate mortgages. Moreover, contrary to petitioner's pretensions, the validity of the assignment of the mortgage credit by DBP to PNB is beyond question. Article 1624 of the Civil Code provides that "an assignment of credits and other incorporeal rights shall be perfected in accordance with the provisions of Article 1475" which in turn states that "the contract of sale is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price." The meeting of the minds contemplated here is that between the assignor of the credit and his assignee, there being no necessity for the consent of the debtor, contrary to petitioner's claim. It is sufficient that the assignment be brought to his knowledge in order to be binding upon him. This may be inferred from Article 1626 of the Civil Code which declares that "the debtor who, before having knowledge of the assignment, pays his creditor shall be released from the obligation." This view of Manresa was already quoted with approval by this Tribunal. Thus:

* * *

The above-mentioned article (Article 1527 of the Old Civil Code) states that a debtor who, before having knowledge of the assignment, should pay the creditor shall be released from the obligation.

In the first place, the necessity for the notice to the debtor in order that the assignment may fully produce its legal effects may be inferred from the above. It refers to a notice and not to a petition for the consent which is not necessary. We say that the notice is not necessary in order that the legal effects may be fully produced, because if it should be omitted, such omission will not imply that the assignment will not exist legally, but that its effects will be limited to the parties thereto; at least, they will not reach the debtor [Sison v. Yap Tico, 37 Phil. 584, 587 (1918); Underscoring supplied.]

As the petitioner does not claim absence of any notice of the assignment but only lack of its consent thereto, the validity of DBP's assignment of the mortgage credit as well as the right of PNB as assignee, to foreclose the assigned mortgage, cannot be doubted.

B. However, petitioners question the inclusion of the unsecured obligations of ACPPI in the foreclosure sale. In this regard, petitioner advances the following proposition: The unsecured advances by PNB to ACPPI relating to the opening of letters of credit in 1957 cannot be tacked on to the mortgage loans acquired by PNB through assignment from DBP which are now being foreclosed. To do so would be to allow an originally unsecured loan to be covered by a mortgage securing another loan without the consent of the mortgagor. Since the foreclosure sale sought by PNB includes such unsecured obligations, petitioners argue that the same should be enjoined [Rollo, p. 25.]

PNB sought to justify its inclusion of the unsecured obligations in the aggregate amount of indebtedness secured by the mortgages to be foreclosed by citing a provision in the assigned DBP Mortgage Contract which states:

Now, therefore, for and in consideration of the premises and as security for the payment of the note or notes approved in order and/or the interest there and/or other obligation arising thereunder or hereunder, the mortgagor does hereby transfer and convey by way of first mortgage, unto the Mortgagee, its successors and assigns, the real and /or personal properties described in the list appearing on the back of this document . . . [Rollo, p. 388.]

However, the aforequoted terms of the mortgage contract do not support PNB's conclusions. The mortgage contract clearly secures only the amount of the promissory note executed by ACPPI and the interest thereon and other obligations which may arise under the promissory note (hence, the word "thereunder") and under the mortgage contract (hence, the word "hereunder"). Certainly, the previously incurred debt of ACPPI cannot be embraced within the terms of the DBP mortgage contract which merely extends security to future*, but not past obligations. PNB also argues in vain that the inclusion of the unsecured obligations in the contemplated

foreclosure proceedings finds support in the law which states that "(i)t shall be mandatory . . . to foreclose the collaterals and/or securities for any loan, credit accommodation and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent of the total outstanding obligations, including interest and other charges, as appearing in the books of accounts and/or related records of the government financial institution concerned. . . ." (Section 1, P.D. 385.) PNB maintains that the phrase "related records" may be interpreted to mean such records evidencing the mortgage credit assigned and other records of another government financial institution which are related to the assigned obligation. PNB's stand is that the credits appearing in the records of the mortgagor or any other government financial institution, whether secured or unsecured must necessarily be included as long as they are related to the mortgage being foreclosed.

This argument must be rejected. The law, in authorizing a mandatory foreclosure by government financial institutions, contemplates secured obligations appearing in the books of accounts and/or related records of the government financial institution concerned. The clear terms of the law indicate that foreclosure shall be made on the "collaterals and/or securities for any loan, credit accommodation and/or guarantees granted by them" [Section 1, P.D. 385.] Since the original advances by PNB were not secured by any mortgage, these cannot be included in the foreclosure proceedings sought by PNB for the simple reason that foreclosure of mortgage presupposes an unpaid obligation secured by the mortgage. In addition, the rule is well settled that an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage except in mortgage contracts securing future advancements [Lim Julian v. Lutero, 49 Phil. 703 (1926).]

In view of the fact that an unsecured obligation is being included among the obligations of ACPPI sought to be satisfied by the PNB foreclosure sale, the lower court's blanket application of P.D. 385 and the consequent denial of ACPPI's application for injunction against the threatened foreclosure by PNB constitute grave abuse of discretion. P.D. 385, in laying down the prohibition on the issuance of an injunction, did not intend to make the debtor's mortgaged property answer for an unsecured obligation.

Since the petition for the PNB foreclosure sale was materially defective in that it included in the amount of the total indebtedness to be satisfied by the sale previously incurred unsecured obligations, the assailed order of the respondent judge denying ACPPI's motion for the issuance of a preliminary injunction must accordingly be set aside and the extrajudicial foreclosure sale sought by PNB should be enjoined. This is without prejudice however to the right of PNB to petition for an extrajudicial foreclosure sale to satisfy the obligations specifically secured by the DBP-assigned mortgage after due publication of an appropriate notice of sale.

II. THE NIDC FORECLOSURE SALE:

ACPPI challenges the right of NIDC to foreclose the chattel mortgage in its favor on the grounds that (1) part of the principal loan secured by the NIDC mortgage was not expended for the purposes for which it was intended; and (2) the subsequent advances granted by NIDC during the time that the Voting Trust Agreement was in force are merely "fictitious" amounts and therefore, do not constitute valid and demandable obligations; hence, the mortgage securing the same is likewise void [Petition, p. 21; Rollo, p. 24.]

In this case, NIDC sought to include certain advances granted to ACPPI during the lifetime of the Voting Trust Agreement in the total amount of the mortgage indebtedness secured by the chattel mortgage. Such action was based on an all-embracing clause in the mortgage contract allowing said mortgage to "stand as security for said obligations and any and all other obligations of the MORTGAGOR to the MORTGAGEE of whatever kind and nature, whether such obligations have been contracted before, during or after the constitution of this mortgage" [Rollo, p. 226.]

Without passing upon the validity of this clause, the Court rules that in view of the dictum laid down in Filipinas

Marble Corporation v. Court of Appeals [G.R. No. 68010, May 30, 1986, 142 SCRA 180], the foreclosure sale sought by NIDC should have been enjoined. The rationale for enjoining a foreclosure sale sought by a government financial institution charged with mismanagement and misappropriation of the proceeds of the loan secured by its mortgage, as aptly expressed in the aforementioned decision penned by Mr. Justice Gutierrez finds relevance in the instant case. Thus:

* * *

Presidential Decree No. 385 was issued primarily to see to it that government financial institutions are not denied substantial cash inflows, which are necessary to finance development projects all over the country, by large borrowers, who when they become delinquent, resort to court actions in order to prevent or delay the government's collection of their debts and loans.

The government however is bound by basic principles of fairness and decency under the due process clause of the Bill of Rights. P.D. 385 was never meant to protect officials of government lending institutions who take over the management of a borrower corporation, lead that corporation to bankruptcy through mismanagement or misappropriation of its funds, and who, after ruining it, use the mandatory provisions of the decree to avoid the consequences of their misdeeds.

The designated officers of the government financing institution cannot simply walk away and then state that since the loans were obtained in the corporation's name, then P.D. 385 must be peremptorily applied and that there is no way the borrower corporation can prevent the automatic foreclosure of the mortgage on its properties once the arrearages reach twenty percent (20%) of the total obligation no matter who was responsible. [At 188-189; Underscoring supplied.]

* * *

In the Filipinas Marble case, petitioner Filipinas Marble Corporation (FMC) applied for a loan in the amount of five million dollars (\$5 M) with respondent Development Bank of the Philippines (DBP) which was granted subject to the conditions, inter alia, that petitioner shall have to enter into a management contract with respondent Bancom Systems Control, Inc. (Bancom) and that the key officers/executives to be chosen by Bancom for the corporation shall be appointed only with DBP's prior approval and made directly responsible to DBP. Pursuant to these conditions, FMC entered into a management contract with Bancom whereby the latter agreed to manage the company for a period of three years.

Subsequently, FMC filed a complaint seeking annulment of the deeds of mortgage and deed of assignment which it executed in favor of DBP in order to secure the five million dollars (\$5 M) loan, averring failure of consideration with regard to the execution of the said deeds and claiming that the respondents and their directors/officers mismanaged and misspent the loan, leaving the petitioner "desolate and devastated". It charged respondents DBP and Bancom of abandoning the petitioner's project for which the approved loan was intended.

This Court ruled that it cannot make any conclusions as to whether DBP and Bancom actually misappropriated and misspent the five million dollars (\$5 M) loan as this matter should rightfully be litigated below in the main action. It thus held that

. . . (p)ending the outcome of such litigation, P.D. 385 cannot automatically be applied for if it is really proven that respondent DBP is responsible for the misappropriation of the loan, even if only in part, then the foreclosure of the petitioners' properties under the provisions of P.D. 385 to satisfy the whole amount of the loan would be a gross mistake. It would unduly prejudice the petitioner, its employees and their families.

Only after trial on the merits of the case can the true amount of the loan which was applied wisely or not, for the benefit of the petitioner, be determined. Consequently, the extent of the loan where there was no failure of

consideration and which may be properly satisfied by foreclosure proceedings under P.D. 385 will have to await the presentation of evidence in a trial on the merits . . . [Id. at 189-190.]

In fine, since the issue of misappropriation of the proceeds of the loan is still being litigated, the liability of FMC for the loan which was the basis of the mortgage being foreclosed was not yet settled; hence, the Court's allowance of an injunction against the foreclosure sale.

In the instant controversy, the liability of ACPPI for the loans secured by the NIDC chattel mortgage is likewise still in dispute in the proceedings below inasmuch as petitioners are seeking nullification of said loans for failure or lack of consideration in the pending action before the court a quo. Petitioners contend that the portion of the principal NIDC loan supposed to be used to fund the repairs on the ACPPI plant building had not been expended for such intended purpose. Also, they challenge the adequacy of consideration of the additional advances allegedly granted by NIDC to ACPPI for the payment of the various services availed of or utilized by NIDC/PNB which petitioners claim to be fictitious.

Thus, although initially, the issue before the lower court was limited to whether petitioners herein are entitled to a termination of the Voting Trust Agreement, additional issues concerning the validity of the NIDC loans were raised in the supplemental complaint filed before said court [See Rollo, p. 179, et seq.] In line with the *Filipinas Marble* ruling, pending determination by the lower court of these issues involving the misappropriation and/or mismanagement of the proceeds of the NIDC loans and the larger issue of failure of consideration, the sale at public auction of the foreclosed chattels should be enjoined, P.D. 385 notwithstanding.

IN VIEW OF THE FOREGOING, the instant petition for certiorari is hereby GRANTED and the questioned order of the respondent trial judge dated January 15, 1976 denying petitioners' application for a writ of preliminary injunction is hereby SET ASIDE. The respondent sheriffs are hereby ordered to DESIST from carrying out the extra-judicial foreclosure sales sought by PNB and NIDC in the petitions dated March 11, 1974 and September 25, 1975, respectively. The temporary restraining order issued by the Court dated January 20, 1976 is accordingly made PERMANENT, subject to the qualifications stated in the following paragraph.

This judgment is without prejudice to the right of PNB, after due publication of an appropriate notice of sale specifying the amount of the secured obligations, to cause the foreclosure sale on the DBP-assigned real estate mortgages dated May 6, 1960 and May 8, 1961. On the other hand, the NIDC foreclosure sale, upon filing of a bond in such amount as the trial court may deem adequate, from an indubitably solvent bonding company, shall be enjoined until the final resolution by the court a quo of Civil Case No. Q-18176.

Finally, as stated at the outset, petitioner Clara Reyes Pastor's "Motion for Termination of Receivership with Alternative Motions" is DENIED.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., and Bidin, JJ., concur.
Feliciano, J., in the result.

* Thus, the DBP mortgage also provides that "(i)n the event that the mortgagor execute subsequent promissory note or notes either as a renewal of the former note, as extension thereof, or as a new loan, this mortgage shall stand as security for the payment of said note or notes without the necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes were existing on the date hereof" [Rollo, pp. 388-389; Underscoring supplied.]

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