

SONIO PALANCA, PRIMO PALANCA, CARLOS PALANCA, DEHE PALANCA, QUINTIN GARCIA, PABLO PALANCA, BARTOLOME PALANCA, CHU TIONG, ADRIANO GALEOS, LUISA PALANCA AND ALFREDO SEVILLE, PETIT...*G.R. No. L-26494. August 31, 1970*

Ponente: CONCEPCION, C.J.

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This is an original action for certiorari to annul two (2) orders issued by Hon. Vicente Cusi, Jr., as Judge of the Court of First Instance of Davao, in Civil Case No.4716 thereof. Petitioners prayed, also, for the issuance of a writ of preliminary injunction restraining respondents Manufacturers Bank and Trust Company and Sancho Canoy, as Deputy Sheriff of Davao, from proceeding with the extrajudicial foreclosure and sale of the properties involved in said case, which writ We issued upon the posting of a bond in the sum of P50,000.

On May 25, 1964, petitioners herein, namely, Sonio Palanca, Primo Palanca, Carlos Palanca, Dehe Palanca, Quintin Garcia, Pablo Palanca, Bartolome Palanca, Chu Tiong, Adrian Galeos, Luisa Palanca and Alfredo Seville - who (except Chu Tiong, who is related by affinity to the Palancas, and Quintin Garcia) are officers and/or stockholders of Davao Ricorn, Inc. - executed a special power of attorney, Annex A, whereby they appointed Marcelino E. Calinawan, Jr. - who was the Chairman of the Board of Directors and President of the Davao Ricorn, Inc. - their attorney-in-fact, for them and in their "names, place and stead, x x x":

"To make, execute, sign and deliver mortgages of real estate for the purpose of securing the payment of any loan, indebtedness or obligation which our Attorney-In-Fact may obtain or contract personally or in behalf of the DAVAO RICORN, INC., with the MANUFACTURERS BANK & TRUST COMPANY of Manila, its renewal, extension of payment of the whole or any part thereof x x x"

and authorizing him "to transfer and convey, by way of mortgage, "eight (8) parcels of registered lands described in said Annex A. Soon later, or on May 28, 1964, Calinawan executed, on behalf of petitioners herein, in favor of the Manufacturers Bank and Trust Company, hereinafter referred to as the Bank, a deed of real estate mortgage (Annex B) on said eight (8) parcels of land, to secure the payment "of certain loans, overdrafts and other credit accommodations obtained" by Davao Ricorn, Inc. - hereinafter referred to as Ricorn - and "those that may" thereafter "be obtained" - "the principal of all of which" was "fixed at FOUR HUNDRED SIXTY THOUSAND ONLY Pesos (P460, 000.00) " - as well as "those that the Mortgagee may extend to the Mortgagor, including interest and expenses or any other obligation owing to the mortgagee, x x x."

Presently, or on June 3, 1964, Calinawan, acting once more on behalf of petitioners herein, executed, in favor of the same Bank, deed, Annex C, constituting a real estate mortgage on other six (6) parcels of land belonging to said petitioners, to guarantee the payment of "loans, overdrafts, and other credit accommodations obtained" from the Bank by the Ricorn - the "principal of all of which" was fixed at P120,000 - as well as those that the "Mortgagee" may extend to the "Mortgagor". This instrument was acknowledged at Manila before Notary Public

Jose A. Ortiz and entered as "Doc. No. 511, Page 29, Book. XVIII" of his Notarial Register, Series of 1964. Three (3) days later, or on June 6, 1964, petitioners executed in favor of Calinawan the special power of attorney, Annex D, granting him the authority mortgage the aforementioned six (6) parcels of land to the Bank as security for the payment "of any loan, indebtedness or obligation" which he "may obtain or contract personally or in behalf of the DAVAO Ricorn, INC.," and "ratifying and confirming all that our said attorney (his delegates or substitutes) shall lawfully do or cause to be done particularly" the aforementioned "REAL ESTATE MORTGAGE executed" by him in favor of the Bank "on June 3, 1964, as evidenced by a public document denominated as 'Doc. No. 511,' entered on 'Page 29, Book XVIII, Series of 1964,' of the Notarial Register of Notary Public JOSE A. ORTIZ of Manila x x x."

Both deeds of mortgage authorized the Bank, should the "Mortgagor x x fail or refuse to pay any of the sums of money secured" by the mortgage "or any part thereof" or "fail to perform any of the conditions stipulated" therein, to foreclose the mortgage extra-judicially, and to this end, the President of the Bank or his substitute was "appointed attorney-in-fact of the Mortgagor, with full power of substitution, to enter upon and take possession, of the mortgaged properties without the order of any court or any authority other than that granted" therein "and to sell and dispose of the same x x x in accordance with the provisions of Act No. 3135 of the Philippine Legislature. x x x."

It appears that on or about April 7, 1965, the Bank filed, with the Office of the Sheriff of Davao, a petition (Annex 1) for the extrajudicial foreclosure of said mortgages to satisfy an indebtedness of Davao Ricorn, Inc., allegedly aggregating P574,401.08, as of March 15, 1965. Thereupon, the sheriff caused to be given and published the corresponding notice of extrajudicial sale of the fourteen (14) lots aforementioned to take place on June 17, 1965.[1] Hence, on June 15, 1965, herein petitioners filed Civil Case No. 4716 of the Court of First Instance of Davao against the Bank and Sancho Canoy, as Deputy Sheriff of Davao. Alleging that, although "the obligation to pay the mortgage debt aforementioned does not fix a period, x x x from the nature and circumstances it can be inferred that a period was intended," petitioners prayed in their complaint, Annex 2, that judgment be rendered. "fixing a period within which" they "should comply with their obligation to pay the" Bank and declaring that such obligation is "not yet due and demandable," and that, meanwhile, a writ of preliminary injunction issue restraining the Bank and the sheriff "from proceeding with the extrajudicial foreclosure and the sale of the mortgaged properties." Thereupon, or on June 16, 1965, said court - then presided over by Hon. Vicente Bullecer - issued ex parte the auxiliary writ prayed for. On June 25, 1965, the Bank moved to dissolve said writ, but the lower court denied it.[2] Meanwhile, petitioners had amended the complaint and prayed therein for a declaration of extinction of the guaranty and discharge of the mortgage, upon the theory that the Bank had granted the Ricorn extensions of time for the payment of its debt, without petitioners' consent.

On January 25, 1966, petitioners filed a second amended complaint in which they averred, inter alia, that the deeds of mortgage Annexes B and C are null and void, because of the provisions therein renouncing the right of redemption, in the event of foreclosure, and constituting the Bank, in case of default in the payment of the obligation, as petitioners' attorney-in-fact, with authority to take possession of the mortgaged properties and to sell and dispose of the same, which were allegedly beyond the powers of Marcelino E. Calinawan, Jr., as petitioners' attorney-in-fact, and that, when they made him their attorney-in-fact, petitioners agreed that they would "only be bound as guarantors and not as solidary debtors and x x x were assured by x x Calinawan, Jr. and the x x x Bank that, in case of default, the properties of the principal debtor would be exhausted first before proceeding with the foreclosure x x x," and praying that judgment be rendered declaring that the real estate mortgages in question are "null and void for having been made beyond the scope of the agent's authority"; that the relation of the petitioners with the Bank is "that of guarantors"; that "the guaranty is already extinguished, or in the remote hypothesis that it is not" that "the projected extrajudicial foreclosure" is "illegal," because "said real estate mortgages are null and

void and/or that" petitioners "as guarantors have in their favor the benefit of excussion" and/or that petitioners "had not yet been in default."¹

In its answer to the second amended complaint,² the Bank alleged that Calinawan had not in fact waived the mortgagor's right of redemption, and that the power of attorney given to Calinawan, Jr. included, inter alia, renewals and extensions of payment; and denied the alleged agreement either to make the petitioners mere guarantors or to grant them the right of excussion. By way of special defenses, the Bank averred that petitioners have no cause of action; that the extra-judicial foreclosure in question is in accordance with Act No. 3135 as amended by Act No. 4118; that the alleged nullity of the waiver of petitioners' right of redemption does not affect the validity of the mortgage as security for the payment of the principal obligation; that the right of excussion is not available when a mortgage is constituted as special security for the payment of a principal obligation; that petitioners have acted in bad faith in not including Marcelino E. Calinawan, Jr., whose acts are being contested in this case, as a party therein; and that the loan constituting the principal obligation was obtained through petitioners' own corporation, the Ricorn, of which they are all the principal stockholders and directors. The Bank, likewise, set up a counterclaim for damages, attorney's fees and actual expenses.

On July 21, 1966, the Bank asked once again that the writ of preliminary injunction issued on June 16, 1965, be lifted.³ After considering petitioners' opposition thereto, and the evidence introduced at the trial on the merits, which was held on July 19, 1966, the lower court, presided over by respondent Judge, issued, on August 3, 1966, an order¹ dissolving said writ. A reconsideration of this order having been denied, on August 27,² petitioners commenced the present action, on September 5, 1966. Prior thereto, or on August 31, 1966, respondent Judge had, however, rendered a decision³ on the merits of Case No. 4716, dismissing petitioners' complaint therein, subject to the qualification that they have the right of redemption granted by law to mortgagors whose properties are foreclosed extrajudicially. Notice of said decision was, on September 2, 1966, served upon petitioners' counsel, who filed, on September 20, 1966, their notice of appeal, appeal bond and record on appeal, the approval of which has been, however, held in abeyance owing to the pendency of the case at bar (?).⁴

Petitioners maintain that, in issuing said order of August 3, 1966 and refusing to reconsider the same, "respondent Judge committed a grave abuse of discretion amounting to lack of jurisdiction," because:

a. Calinawan had exceeded his authority in waiving petitioners' right to redeem their properties in the event of extra-judicial foreclosure thereof; in appointing the president of respondent Bank as petitioners' attorney-in-fact, with full power of substitution, and the authority to enter upon and take possession of the mortgaged properties without the order of any court or any authority other than that granted in the deeds of mortgage, as well as to sell and dispose of said properties to the highest bidder; and in stipulating in paragraph 12 of said deeds of mortgage that:

"All correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the Mortgagor at 167 Monteverde, Sta. Ana, Davao City, or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee. The mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the Mortgagor for all legal purposes, and the fact that any communication is not actually received by the Mortgagor or that it has been returned unclaimed to the Mortgagee, or that no person was found at the address given or that the address is fictitious or cannot be located, shall not excuse or relieve the Mortgagor from the effects of such notice."

b. When they signed the special powers of attorney in favor of Calinawan, petitioners "were assured by the latter and two representatives of respondent Bank" that they (petitioners) "were merely acting as personal guarantors for the Davao Ricorn, Inc. and that, before the respondent Bank could proceed against them, it has to exhaust first the

properties of the principal debtor";

c. The extra-judicial foreclosure during the pendency of Case No. 4716, tends to render the same moot and academic;

d. It is not true that, in view of petitioners' right of redemption, the sale of the properties would not cause them irreparable injury;

e. Whatever damages the Bank may suffer by reason of the injunction would be amply compensated by the fact that the properties in litigation are worth more than P2,500,000.

We note that the writ of preliminary injunction issued on June 16, 1965, was dissolved by an order of August 3, 1966, or two (2) weeks after Civil Case No. 4716 had been heard on the merits, on July 19, 1966, and that, in issuing said order, respondent Judge had taken into consideration the evidence then introduced - as well as the Bank's motion for the dissolution of the writ and petitioners' opposition thereto. In fact, four (4) weeks later, or on August 31, 1966, respondent Judge rendered his decision dismissing petitioners' complaint in Case No. 4716 - with the qualification already adverted to - upon the ground, in effect, of lack of cause of action on the part of petitioners herein, inasmuch as:

1. The deeds of mortgage executed by Marcelino E. Calinawan, Jr. on behalf and in the name of petitioners herein are valid and binding upon them. The waiver of their right of redemption, even if it were illegal did not affect the validity of the mortgage constituted in favor of the Bank, not being an essential element thereof, apart from the fact that, despite said waiver, petitioners' right of redemption is acknowledged by the Bank. Moreover, the alleged lack of authority of Calinawan, Jr. to agree on some other minor stipulations in said at mortgage was cured by the power-of-attorney, Annex D, ratifying the deed of mortgage, Annex C, which, insofar as the afore mentioned waiver and stipulations are concerned, is identical to the first deed of mortgage, Annex B.

2. The testimonial evidence for the petitioners, concerning the alleged "personal" character of their guaranty and the right of excussion they claim to have, are unworthy of credence, because: (a) they are inconsistent with the clear tenor and the nature of the deeds of mortgage Annexes B and C; (b) petitioners' contention is based upon assurances allegedly given by Calinawan, who did not represent the Bank, and by mere appraisers of the latter, who could neither give such assurances nor bind the Bank thereby; (c) had petitioners really labored under the impression that they were no more than personal guarantors who were entitled to excussion, they would have said so in their original complaint and their first amended complaint, instead of merely asking that a period be fixed for the payment of their obligation under said deeds of mortgage, thereby admitting impliedly, but necessarily, that the Bank had a real right over the mortgaged properties and was not bound to make said excussion; (d) failure to include Calinawan among the defendants in Case No. 4716 is strongly indicative of the infirmity of petitioners' theory; and (e) the principal obligation guaranteed by the mortgage inured to the benefit of Ricorn, a corporation of which petitioners - except Quintin Garcia, and Chu Tiong, who is, however, related by affinity to the other petitioners - are stockholders and some are even directors.

Considering that the decision in Case No. 4716 is not before this Court for review on appeal; that the records before Us do not show, and petitioners herein do not even claim, that the foregoing findings contained in said decision are not substantially supported by the evidence; that said findings amply justify the dissolution of the writ of preliminary injunction, issued on June 16, 1965; and that, although they could not be and were not explicitly made in the order of August 3, 1966, lifting the injunction - those findings being proper for a decision on the merits, which was promulgated four (4) weeks later - the tenor of the order clearly indicates that, in issuing the same, respondent judge had the aforementioned findings in mind, We are of the opinion and so hold that the dissolution of the injunction was not attended by a grave abuse of discretion amounting to lack or excess of

jurisdiction, and that, patently, petitioners herein are not entitled to the relief prayed for.

WHEREFORE, the petition in this case must be, as it is hereby, dismissed and the writ of preliminary injunction issued therein, accordingly, set aside, with costs against the petitioners. Writ denied.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] See Annex 1-A.

[2] Annexes 3 and G.

1 Annex E, pp. 26-43, Rollo.

2 Annex F.

3 Annex H.

1 Annex J.

2 Annexes K, N and O.

3 Annex 7, pp. 217-228, Rollo.

4 Pp. 242, 247-250, Rollo.

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