

SPS. ARTURO J. UY AND LEONCIA O. UY, CAMALIG ART CENTER, INC. AND OBANDO-UY DEVELOPMENT CORPORATION, PETITIONERS, VS. THE HONORABLE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT O...

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 seeking a review and a reversal of the respondent trial court's order dated 26 April 2005, denying petitioners' prayer for preliminary injunction, as well as its order of 6 July 2005, denying petitioners' subsequent motion for reconsideration.

On 6 September 1999 and 3 May 2000, petitioners obtained loans from private respondent Keppel Bank Philippines, Inc. (KEPPEL) in the total amount of Twenty Million pesos (P20,000,000.00). For this, petitioner Leoncia Uy executed a mortgage agreement over three parcels of land covered by TCT Nos. T-110170, T-110171 and T-110172 all registered in Lipa City. After almost a year of paying the monthly amortization due on the loans, petitioners started to default from their amortizations as these fell due. Despite this, petitioners were able to have their loans restructured. However, after a few payments, the petitioners again failed to meet their obligations. As a result, KEPPEL demanded payment otherwise foreclosure proceedings would be initiated.[1] Thereafter, and upon KEPPEL's notice as to the status of their loan, petitioners' once again sought concessions.[2] A series of offers and counter offers ensued between the parties regarding a proposed memorandum of agreement and a dacion en pago but without success.[3] The petitioners, this time through counsel, sent another proposal to KEPPEL but the same was denied. On 10 December 2003, KEPPEL filed an application for extra-judicial foreclosure of the mortgaged properties before the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Lipa City. On 29 January 2004, petitioners through their other counsel sent another proposal to KEPPEL and further requested the deferment of the foreclosure sale set for 11 February 2004 but the same was again denied. The sale pushed through and KEPPEL, as the highest bidder, was awarded the Certificate of Sale dated 14 April 2004.[4]

With this, petitioners filed a complaint for Annulment of Mortgage and Foreclosure with Prayer for Temporary Restraining Order and/or Injunction against KEPPEL. And on 26 April 2005, the trial court issued the first assailed order denying petitioners' prayer for preliminary injunction. Petitioners then moved for reconsideration but the same was likewise denied by the trial court in its second assailed order of 6 July 2005.[5]

Thus, petitioners are now before Us raising this lone issue:

“WHETHER OR NOT PETITIONERS ARE ENTITLED TO A WRIT OF PRELIMINARY INJUNCTION TO ENJOIN RESPONDENT BANK, ITS AGENTS, ASSIGNS OR REPRESENTATIVES FROM TAKING POSSESSION/CONTROL OF THE SUBJECT PROPERTY COVERED BY TCT NOS. T-110170, T-110171 AND T-110172 OF THE REGISTRY OF DEEDS FOR LIPA CITY AS WELL AS FROM DISPOSING OR ENCUMBERING THE SAME AND FROM CANCELING PETITIONERS SPOUSES UY'S TITLE THERETO FOR THE ISSUANCE OF NEW TITLE IN ITS (RESPONDENT BANK'S) NAME.”[6]

The arguments raised by petitioners, in support of the above quoted issue, all involve the impropriety and/or inequity of the mortgage agreement between petitioners and KEPPEL which goes into the very core of the main case which is still before the trial court. As such, We most certainly will not preempt the trial court's judgment on the matter.

As to the question of whether or not petitioners are entitled to a writ of preliminary injunction, the answer is no. This remedy, according to our revered Supreme Court, is extraordinary and is calculated to preserve or maintain the status quo of things ante litem and is generally availed of to prevent actual or threatened acts, until the merits of the case can be heard. And while the grant of the writ rests on the sound discretion of the trial judge, the High Tribunal consistently remind Us that extreme caution must be observed in the exercise of such.[7]

Before the writ may issue, it is necessary that the party seeking it must establish the following: "(1) a right in esse or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage." [8] Thus, in the absence of a clear right, injunction is not proper. In fact, the High Court even said that the possibility of irreparable damage without proof of adequate existing rights is not a ground for injunction.

In the present petition, the trial court denied petitioners' prayer for preliminary injunction precisely for their failure to establish "a clear legal right which has been violated materially and substantially or the existence of an urgent and paramount necessity to prevent serious damage to petitioner(s)." [9] In the trial court's initial finding, there is no question that petitioners failed to pay their loans with KEPPEL. Consequently, KEPPEL had the right to foreclose the mortgage [10] and subsequently the right to be allowed to have possession of the foreclosed properties as an adjunct to its right of ownership. With this, and in the absence of any clear right on the part of the petitioners over the foreclosed properties, We find the court's denial of petitioners' prayer for preliminary injunction to be proper.

Thus, in *Ong v. CA*, it was held that,

"(a)ny question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case. Hence, an injunction to prohibit the issuance of the writ of possession is entirely out of place." [11]

WHEREFORE, the instant petition is DISMISSED and the two assailed Orders of the trial court are hereby AFFIRMED.

SO ORDERED.

Dacudao, (Chairman) and Perlas-Bernabe, JJ., concur.

[1] Petition, pp. 4-5; Memorandum of petitioner, pp. 199-200, ROLLO

[2] Letter of the UYs to KEPPEL dated 30 July 2003, p. 85, ROLLO

[3] Petition, p. 5; Memorandum of petitioner, p. 200, ROLLO

[4] Petition, p. 6-7; Memorandum of Petitioner, pp. 200-201, ROLLO

[5] Petition, p. 7; Memorandum of petitioner, p. 201, ROLLO

- [6] Memorandum of petitioner, p. 202, ROLLO
- [7] Tayag v. Lacson, 426 SCRA 282, 298-299
- [8] Tayag v. Lacson, supra, p. 299
- [9] RTC Order dated 26 April 2005, pp. 17-18, ROLLO
- [10] China Banking Corporation v. CA, 265 SCRA 327, 340-341
- [11] Ong v. CA, supra, 198

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