

**SPOUSES RAFAEL Y. ARCEGA, AND TERESITA F. ARCEGA,
PETITIONERS, VS. THE COURT OF APPEALS (17TH DIVISION), AND
RIZAL COMMERCIAL BANKING CORPORATION, RESPONDENTS.**

G.R. No. 122206. July 07, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

In June 1988, petitioners herein, the spouses Rafael and Teresita Arcega, obtained two loans amounting to P900,000.00 from respondent Rizal Commercial Banking Corporation (RCBC). Said loan was secured by a real estate mortgage executed by the parties on April 10, 1989 on a 561-square-meter property with improvements covered by Transfer Certificate of Title No. 377692.[1] Petitioners paid a total of about P300,000.00 but later defaulted on their loan obligations.

The bank foreclosed the mortgage on petitioners' property and acquired the property at the public auction held on May 21, 1990 with the highest bid of P984,361.08. The Sheriff's Certificate of Sale issued on the same day was duly registered with the Quezon City Register of Deeds on May 25, 1990.

The spouses Arcega repeatedly communicated with respondent bank's Assistant Vice-President Emily Sibulo Hayudini in connection with the status of the foreclosed property.[2] On May 23, 1991, two days before the expiration of the redemption period, Rafael Arcega wrote the bank for an extension of three weeks and informing it that he has applied for a housing loan[3] to refinance his loan account with RCBC. On May 25, 1991, petitioners' counsel wrote respondent bank for a four-week extension within which to redeem the property. Four days later, respondent bank informed petitioners that their request for a three-week extension, until June 14, 1991, was granted. During all this time, petitioners raised no question regarding the regularity of the foreclosure sale and proceedings.

On June 14, 1991, Assistant Vice-President Hayudini inquired through the telephone from Mr. Ching Hoe, Benefits Specialist of the Asian Development Bank about the status of Rafael Arcega's loan. Mr. Hoe informed her that said loan application was canceled because Arcega was going to file a court case. Surprised at this development, after the expiration of the extended redemption period, respondent bank's officers executed an Affidavit of Consolidation on June 17, 1991 to secure a new title in the name of Rizal Commercial Banking Corporation. T.C.T. No. 40782 was later issued in the bank's name.

It appears that on June 11, 1991, petitioners filed Civil Case No. 91-9055 against respondent bank for annulment of foreclosure and/or auction sale with restraining order/preliminary injunction/damages before the Regional Trial court of Quezon City, Branch 104. In said complaint, petitioner averred that they were not aware of the auction sale, that there was no notice of posting or prior publication thereof in a newspaper of general circulation as required by law and that they protested the bank's action pertinent to the foreclosure to no avail. The Notice of Lis Pendens was annotated on the title of the subject property on July 16, 1991.

On November 23, 1993, the bank filed "In re : Petition for Issuance of Writ of Possession" (LRC No.

Q-6483(93)) with the Regional Trial Court of Quezon City.

On February 3, 1994, petitioners sought the issuance of a writ of preliminary injunction and/or restraining order to prevent respondent bank and Sheriff from transferring the subject property to third persons in the case at bar. After hearing and due consideration of the evidence submitted by the parties, on June 21, 1994, the Regional Trial Court issued its questioned Order granting the writ of a preliminary injunction. Respondent bank's motion for reconsideration was denied by the trial court on August 1, 1994.

On August 24, 1994, RCBC sought relief in the Court of Appeals by way of a petition for certiorari seeking the nullification of the trial court's Orders dated June 21, 1994 and August 1, 1994. Respondent appellate court granted the petition on August 17, 1995 in a decision with the following dispositive portion:

“WHEREFORE, the instant petition is hereby GRANTED by this Court. The questioned Orders dated June 21, 1994 and August 1, 1994 of the respondent court, granting the issuance of the writ of preliminary injunction, and denying its reconsideration in Civil Case No. Q-91-9055 are declared null and void.”

On October 12, 1995, the motion for reconsideration filed by the Arcegas was denied by respondent court.

Hence, the instant petition for review was filed seeking the annulment of the Court of Appeals' decision for lack of legal basis and for having been issued with grave abuse of discretion.

On the sole question of whether or not the writ of preliminary injunction was issued with grave abuse of discretion, we affirm respondent court's decision and deny the instant petition.

The issuance of the writ was unjustified, the spouses Arcega not having any legal right that merits protection by the court.

For the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage.[4]

In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.[5] Injunction is not designed to protect contingent or future rights. Where the complainant's right or title is doubtful or disputed, injunction is not proper.[6] The possibility of irreparable damage without proof of actual existing right is no ground for an injunction.[7]

The circumstances in the case at bar show that the Arcegas did not possess a clear legal right sought to be protected by said writ. Petitioners defaulted on their loan and failed to redeem the subject property during the extended period granted by the bank. It was only three days prior to the redemption period that petitioners decided to question the foreclosure proceedings, giving the impression that the case at bar is an afterthought or a last-ditch effort to save their property. Title to the property had already been transferred to the bank which now possesses a certificate of title in its name.

Respondent bank's right to possess the property is clear and is based on its right of ownership as a purchaser of the properties in the foreclosure sale to whom title has been conveyed.[8] Under Section 7 of Act No. 3135 and Section 35 of Rule 39, the purchaser in a foreclosure sale is entitled to possession of the property.[9] The bank in this case has a better right to possess the subject property because of its title over the same.[10]

Respondent appellate court added:

“x x x (I)t was highly irregular for the respondent court to issue the questioned writ based merely on the document of sheriff's certificate of posting. No other evidence, oral or documentary, was ever presented by the private respondents to fully substantiate their prayer for the injunctive relief. It is well-settled that a foreclosure

proceeding enjoys the presumption of regularity in its conduct being an official business, and it is the defendants, herein private respondents, who have the burden of showing by convincing proof that the foreclosure proceeding is tainted with irregularity for them to be entitled to the writ prayed for.”[11]

WHEREFORE, the instant petition is hereby DENIED. The Regional Trial Court of Quezon City, Branch 104, where Civil Case No. 91-9055 is pending is directed to continue with the proceedings of said case and resolve the same with dispatch. Costs against petitioner.

SO ORDERED.

Regalado, (Chairman), and Mendoza., JJ., concur.
Puno, and Torres, Jr, JJ., on leave.

[1] The bank charged 19.5% per annum as interest rate on the loans which were payable in ten years.

[2] As of October 15, 1990, the Statement of Account amounted to P1,232,479.94, which amount included 33% interest for 143 days, attorney’s fees, sheriff’s fee, documentary stamps, etc.

[3] With the Asian Development Bank, where petitioner Rafael Arcega was employed.

[4] Syndicated Media Access Corporation v. CA, 219 SCRA 797 (March 11, 1993).

[5] Vinzons-Chato v. Natividad, 244 SCRA 787 (June 2, 1995).

[6] China Banking Corporation et. al. v. CA, G.R. No. 121158, December 5, 1996.

[7] Ulang v. CA, 225 SCRA 642 (August 29, 1993) citing Talisay-Silay Milling Co., Inc. v. CFI Negros Occidental, 42 SCRA 577; Prado v. Veridiano II, 204 SCRA 654 (December 6, 1991).

[8] Philippine National Bank v. CA, 118 SCRA 110 (November 2, 1982).

[9] Javelosa v. CA, G.R. No. 124292, December 10, 1996.

[10] Persons with Torrens title over land are entitled to possession thereof. Pangilinan v. Aguilar, 43 SCRA 136 (1972).

[11] Rollo, p. 38.

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