

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER, VS.
HON. FLORENTINO A. TUAZON, JR., MIGUEL CANO, NONATA
LIZARES, LOUISA LIZARES, CONGREGACION DE LAS HIJAS DE LA
CARIDAD AN...**

G.R. No. 132795. March 10, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

On June 25, 1981, petitioner Banco Filipino Savings and Mortgage Bank filed a complaint^[1] against Philippine Underwriter Finance Corporation (Philfinance) and City Bank, N.A., before the then Court of First Instance of Rizal for foreclosure of a real estate mortgage constituted in its favor by Philfinance in the latter part of 1970. The trial court, now Regional Trial Court of Makati, Branch 141, rendered judgment in favor of petitioner on February 6, 1985 which was affirmed by the Court of Appeals and this Court.

Upon remand of the records to Branch 141, petitioner, on March 28, 1988, filed a motion for execution which it granted on April 14, 1988. A foreclosure sale was thereafter set for November 21, 1988.^[2] However, the scheduled foreclosure sale was suspended by a temporary restraining order issued by the Regional Trial Court of Makati, Branch 61 where mortgagor Philfinance filed Civil Case No. 88-2425.^[3]

Another Notice of Sheriff's Sale was issued by Branch 141 on December 11, 1991 and a foreclosure sale was scheduled for January 13, 1992. But this again was suspended by a temporary restraining order from the Court of Appeals where Philfinance filed, on January 8, 1992, a petition for prohibition, injunction and annulment of judgment. However, the petition was later dismissed by the Court of Appeals on August 22, 1992 declaring that the execution of the judgment of the trial court was a matter of right of the prevailing party and that it was a ministerial duty on the part of the court to issue the writ of execution to enforce its judgment. A subsequent petition for review filed by Philfinance with the Supreme Court was also dismissed for having been filed manifestly for delay.^[4]

Another foreclosure sale was scheduled for March 15, 1993. But this again did not push through because of the motion filed by Philfinance for the cancellation of the Sheriff's sale and quashing of the writ of execution. The motion was later denied by Branch 141.

A fourth execution sale was scheduled for May 6, 1994 but Branch 66 of the RTC of Makati issued a temporary restraining order in connection with Civil Case No. 94-1688 which was filed by Manuel Cano et al.^[5] on April 27, 1994, docketed as Civil Case No. 94-1688.^[6] It is an action for damages with an application for the issuance of writ of preliminary injunction, seeking to restrain the scheduled foreclosure sale. They claim that: on December 19, 1983, Philfinance was placed under receivership; they are unpaid creditors of Philfinance; Banco Filipino, as their co-creditor, cannot obtain advantage or preference over them by execution or any other means.^[7]

On May 10, 1994, petitioner filed a motion to dismiss Civil Case No. 94-1688 on the ground that it failed to state

a cause of action.[8] On May 27, 1994, Branch 66 issued an order granting the writ of preliminary injunction without however resolving the motion to dismiss. Petitioner filed a motion for reconsideration dated June 9, 1994 and an Ex-Parte Motion to Resolve Motion to Dismiss dated August 11, 1994 which were both denied by said court on October 5, 1994.[9]

Petitioner filed its Answer to the Complaint, dated December 2, 1994 reiterating its affirmative defenses.[10]

On December 13, 1994, Civil Case No. 94-1688 was reraffled from Branch 66 to Branch 139.[11]

On December 21, 1994, petitioner filed a Motion to Set Affirmative Defenses for Preliminary Hearing which was denied.[12] A subsequent motion for reconsideration filed by petitioner was also denied.[13]

Petitioner then went to the Court of Appeals, on a petition[14] under Rule 65 of the Rules of Court alleging that: (a) the complaint of herein private respondents states no cause of action against it, hence, an ancillary and provisional remedy such as a writ of preliminary injunction may not be enforced against it; (b) the pendency of a motion to dismiss was a prejudicial question to the resolution of respondents' application for a writ of preliminary injunction; (c) private respondents have not shown any ground for the issuance of the writ of preliminary injunction; (d) Branch 66 of the Regional Trial Court of Makati may not enjoin the processes of Branch 141, a co-equal branch of the court; (e) execution pursuant to a judicial foreclosure of mortgaged property may be made independently of the receivership proceedings; and (f) the cases cited in the questioned order are not applicable in the case at bar.[15]

On March 17, 1997, the Court of Appeals, rendered its decision[16] denying the petition for the following reasons:

While petitioner may have secured an enforceable judgment against Philfinance, such judgment cannot now be carried out. This is one instance where the exception to the general rule comes to the fore. Ordinarily, the final and executory judgment obtained by petitioner would have been entitled to enforcement through a writ of execution. But the dissolution of Philfinance is an event subsequent thereto, which would render execution unjust. Philfinance's creditors deserve to share in the proceeds to be recovered from the allegedly remaining asset of the said dissolved corporation.

...

All things studiedly reviewed in proper perspective, We are of the irresistible conclusion that the respondent court did not commit grave abuse of discretion in denying the motion to dismiss interposed below.[17]

A subsequent motion for reconsideration was also denied.[18]

Hence, the present petition filed before this Court, brought under Rule 45 of the Rules of Court seeking the reversal of the said decision[19] and the resolution denying petitioner's motion for reconsideration with a prayer that the decision of the Court of Appeals be set aside and a new one rendered dismissing the complaint before the Regional Trial Court of Makati in Civil Case No. 94-1688, or lifting or setting aside the writ of preliminary injunction issued therein.[20]

On March 29, 2000, the First Division of this Court issued a Resolution requiring both parties to submit their respective memoranda.[21] Prior to submitting its memorandum, petitioner submitted a Manifestation and Motion dated July 17, 2000 stating that the property subject matter of its present petition had already been titled in its name through a sale conducted by the City Government of Makati for realty tax delinquencies. Thus it submits that the case might have been rendered moot and academic for which a memorandum would be a redundancy. Nonetheless, petitioner expressed that this Court may still decide the case to resolve the issues raised.[22]

Private respondents submitted their Memorandum dated July 24, 2000[23] while petitioner submitted its Memorandum dated October 30, 2000.[24]

On November 17, 2003, the Court required private respondents to comment on the Manifestation and Motion of petitioner. In respondent's Comment, they claim that they and the Court were not notified by petitioner of the tax delinquency sale; bad faith may be imputed upon petitioner as there ought to be an implied trust over the property in their favor; private respondents deserve to share in the proceeds to be received from subject property of Philfinance which is under receivership or liquidation; and praying that the case be resolved on the merits.

The Court is not persuaded. With the Manifestation and Motion of petitioner itself, its petition had become moot and academic. An issue is said to have become moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value.[25]

In *Gancho-on vs. Sec. of Labor and Employment*,[26] the Court pronounced:

It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic...[t]here is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition"[27]

The prayer in the present petition was for the writ of preliminary injunction issued by Branch 66 of the Regional Trial Court of Makati to be lifted so that the writ of execution may be enforced and the foreclosure of the real estate mortgage constituted in petitioner's favor may finally be undertaken. With the subsequent titling of the real property in the name of petitioner, by virtue of an auction sale conducted by the City Government of Makati, the petition may be considered moot and academic.

Considering that it is petitioner that filed herein petition for review on certiorari for the ultimate purpose of enforcing the final and executory decision of the Regional Trial Court of Makati, Branch 141, in Civil Case No. 1494, and considering that the subject property had been acquired by petitioner in view of the auction sale conducted by the City Government of Makati for realty tax delinquencies, the issues raised in the petition had become moot and academic.

If there is any problem with the proceeds of the sale of the subject property insofar as Philfinance and its creditors are concerned, the latter may raise and claim their respective rights to the proceeds of the sale in an appropriate case and in the right forum, not in the present petition.

WHEREFORE, the petition is dismissed for having become moot and academic.

SO ORDERED.

Quisumbing, (Acting Chairman), Callejo, Sr., and Tinga, JJ., concur.
Puno, (Chairman), J., , on leave.

[1] Docketed as Civil Case No. 1494, entitled "Banco Filipino Savings and Mortgage Bank vs. Philippine Underwriter Finance Corporation and City Bank, N.A.".

[2] Rollo, p. 43.

[3] Records, p. 162.

[4] Rollo, pp. 43-44, Records, p. 162.

[5] Records, p. 162.

[6] Entitled “MIGUEL ANGEL CANO, in his own behalf, and NONATA LIZARES, LOUISA LIZARES, CONGREGACION DE LAS HIJAS DE LA CARIDAD, DAUGHTERS OF CHARITY, all herein represented by their attorney-in-fact, MIGUEL ANGEL CANO, versus, BANCO FILIPINO SAVINGS and MORTGAGE BANK, REYES DAWAY LIM BERNARDO LINDO ROSALES LAW OFFICE, as LIQUIDATOR, PHILIPPINE UNDERWRITERS FINANCE CORPORATION (PHILFINANCE), presently under liquidation, and DEPUTY SHERIFF EDGARDO C. CRUZ”. (Emphasis supplied).

[7] Rollo, pp. 79-87.

[8] Id., at pp. 95-99.

[9] Id., pp. 111-113.

[10] Id., pp. 114-120.

[11] Records, p. 162.

[12] Rollo, pp. 124-126.

[13] Id., pp. 127-130.

[14] Docketed as CA-G.R. SP. No. 41066.

[15] Rollo, p. 66.

[16] Penned by Justice Fidel P. Purisima, and concurred in by Justices Angelina Sandoval Gutierrez and Conrado M. Vasquez, Jr. (former Second Division), rollo, pp. 42-51.

[17] Id., at pp. 49-51.

[18] Id., p. 53.

[19] Entitled “Banco Filipino Savings and Mortgage Bank vs. Hon. Florentino A. Tuazon, Jr., Miguel Cano, Nonata Lizares, Louisa Lizares, Congregacion de las Hijas de la Caridad and Daughters of Charity.

[20] Rollo, p. 37.

[21] Id., p. 241.

[22] Id., p. 257.

[23] Id., pp. 260-287.

[24] Id., pp. 299-314.

[25] Philippine Airlines vs. Pascua, G.R. No. 143258, August 15, 2003.

[26] G.R. No. 108033, 337 Phil 654 (1997).

[27] Id., at p. 658.

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