

SPS. LUIS K. S. LIM AND CHUA SIAM, EVARISTO LIM AND FEDERAL MEDICAL & PHARMACEUTICALS, INC., PETITIONERS, VS. THE COURT OF APPEALS, BANK OF THE PHILIPPINE ISLANDS AND LEVY DUKA, ...

G.R. NO. 134617. February 13, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

By this petition[1] for review on certiorari with prayer for a temporary restraining order and writ of preliminary injunction, petitioners seek the reversal and setting aside of the decision[2] dated July 10, 1998 of the Court of Appeals (CA) in CA-G.R. SP No. 47085, sustaining an earlier order of the Regional Trial Court (RTC) of Manila, Branch 55, denying petitioners' application for a writ of preliminary injunction in its Civil Case No. 97-86459.

In its Resolution[3] of February 15, 1999, as reiterated in its subsequent Resolution[4] of February 9, 2000, the Court, thru its Third Division, denied the prayer for a temporary restraining order.

The facts:

Herein petitioners, the spouses Luis K.S. Lim and Chua Siam and Evaristo Lim are the principal stockholders of co-petitioner Federal Medical & Pharmaceuticals, Inc., a corporation engaged in the sale of medical equipment and supplies.

In the pursuit of their business, petitioners secured and obtained several loans from respondent Bank of the Philippine Islands (BPI) amounting to P11,000,000.00, to secure which the spouses Luis K.S. Lim and Chua Siam executed a real estate mortgage over their property covered by Transfer Certificate of Title No. 29518. Petitioners defaulted in the payment of their loan obligation which had ballooned to P18,865,509.00, inclusive of interest and surcharges. Hence, in a letter dated September 15, 1997, BPI demanded of the petitioners to pay in full their overdue account. Responding thereto, petitioners sent two (2) letters to BPI submitting proposals to settle their matured obligation. Evidently, BPI rejected petitioners' offer because it filed with the respondent Sheriff of Manila, Levy Duka, a petition for the extrajudicial foreclosure of the real estate mortgage.

On December 8, 1997, petitioners, obviously to prevent the extrajudicial foreclosure proceedings from taking place, filed with the RTC, Manila a complaint[5] for Damages and Injunction With Prayer for a Temporary Restraining Order against BPI and the respondent sheriff. Docketed in said court as Civil Case No. 97-86459 and raffled to Branch 55 thereof, the complainants prayed, inter alia, for a writ of preliminary injunction to stop the foreclosure proceedings. On the same date - December 8, 1997 - the trial court issued a temporary restraining order enjoining the foreclosure sale of the mortgaged property scheduled on December 9, 1997, and set the hearing on the application for a writ of preliminary injunction to December 12, 1997.

In an Order[6] dated December 16, 1997, the trial court denied petitioners' application for preliminary injunction and lifted its earlier temporary restraining order, saying:

The writ of preliminary injunction prayed for should be DENIED. The plaintiffs' [petitioners'] evidence simply consisted of proposals to settle the loans, or request for the re-structuring of the same. Plaintiffs did not deny that the loans were already due and that they have defaulted in the payment therefor. The foreclosure of the mortgage thus becomes a matter of right on the part of the defendant [respondent] bank, for such is the security of the loans and its foreclosure is a condition of the document. Of course, requests for extension to pay, or proposals for re-structuring of the loans, do not novate a contract and suspend its execution. This is academic and fundamental. The principles of offer and acceptance must be recalled. The fundamental requisites for the existence of an enforceable contract must be remembered.

Plaintiffs have not thus established, so far, a clear legal right to the relief prayed for. Their right to the suspension of the foreclosure is not in esse, free from doubt and dispute. Necessarily, this Court cannot grant them the relief. (Word in bracket ours; Emphasis in the original).

With their motion for reconsideration having been denied by the trial court in its subsequent Order[7] of March 6, 1998, petitioners went to the CA on a petition for certiorari, thereat docketed as CA-G.R. SP No. 47085, insisting that the trial court committed grave abuse of discretion in issuing its orders of December 16, 1997 and March 6, 1998, *supra*, and claiming that they were deprived of due process because they received a copy of BPI's petition for extrajudicial foreclosure only on November 24, 1997 and that on the following day - November 25, 1997 – they received the respondent sheriff's Notice to Parties of Sheriff's Auction Sale[8] setting the auction sale on December 9, 1997. Petitioners thus argued that they had no opportunity to comment on BPI's foreclosure petition, adding that they were misled by BPI when the latter assured them that it would study their proposals when in fact a petition for extrajudicial foreclosure was already filed with the respondent sheriff.

As stated at the threshold hereof, the CA, in its decision[9] dated July 10, 1998, upheld the trial court's questioned orders and accordingly dismissed petitioners' recourse thereto. Partly says the CA in its assailed decision:

...This Court finds the respondent court's reasoning on this point to be unassailable. Thus:

The writ of preliminary injunction prayed for should be DENIED. The plaintiffs' evidence simply consisted of proposals to settle the loans, or a request for the re-structuring of the same. Plaintiffs did not deny that the loans were already due and that they have defaulted in the payment therefor. The foreclosure of the mortgage thus becomes a matter of right on the part of the defendant bank, for such is the security of the loans and its foreclosure is a condition of the document. Of course, requests for extension to pay, or proposals for re-structuring of the loans do not novate a contract and suspend its execution. This is academic and fundamental. The principles of offer and acceptance must be recalled. The fundamental requisites for the existence of an enforceable contract must be remembered.

Plaintiffs have not thus established, so far, a clear legal right to the relief prayed for. Their right to the suspension of the foreclosure is not in esse, free from doubt and dispute. Necessarily, this Court cannot grant them the relief.

But even assuming that said Orders were wrong, the petition would be dismissed just the same because the writ of certiorari is unavailing in a situation like the one at bench. The sole office of the prerogative writ of certiorari is to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack of jurisdiction. (*Flores v. NLRC*, 253 SCRA 494) Thus, certiorari is not issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by a special civil action of certiorari. (*Commissioner of BIR v. Court of Appeals*, 257 SCRA 200)

One last point. Again, even if hypothetically, said orders are erroneous, this Court cannot see in them nor in the annexes of the petition any streak of arbitrariness, capriciousness or any shred of oppressiveness, partiality, or

prejudice on the part of the respondent court. Therefore, there was no grave abuse of discretion and this petition must fall.

Hence, this recourse by the petitioners.

The petition lacks merit.

As in the CA, petitioners made much of their claim that respondent BPI misled and deprived them of any opportunity to question the extrajudicial foreclosure proceedings instituted by it with the respondent sheriff.

The Court is not persuaded.

The requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.[10]

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations.[11] Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.[12]

Here, petitioners failed to show their right to injunctive relief against BPI. There is no clear showing of a right claimed which necessitates their entitlement to an injunctive writ. As aptly pointed out by both the CA and the trial court, petitioners' evidence simply consisted of proposals to settle the loans or a request for a restructuring of the same. Petitioners not once denied that their loans were already due and that they have defaulted in the payment thereof. Thus, the foreclosure of the mortgage becomes a matter of right on the part of BPI, for such is the purpose of security of the loans. To be sure, petitioners' requests for extensions to pay and proposals for restructuring of the loans, without BPI's acceptance, remain as that. Without more, those proposals neither novated the parties' mortgage contract nor suspended its execution. In fine, petitioners failed to establish a clear and unmistakable right to be protected by the injunctive writ they seek.

Accordingly, the Court finds no reversible error on the part of the CA when it upheld the challenged RTC orders. WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioners.

SO ORDERED.

Puno, (Chairperson) and Azcuna, JJ., concur.

Sandoval-Gutierrez, J., on sick leave

Corona, J., on leave.

[1] In the petition, the Court of Appeals was impleaded as respondent. This was not necessary since this is a petition for review under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Hilarion L. Aquino (ret.), with Associate Justice Arturo B. Buena (later member of this Court, ret.), and Associate Justice Ramon U. Mabutas (ret.), concurring; Rollo, pp. 16-19.

[3] Rollo, p. 125.

[4] Rollo, p. 177.

[5] Rollo, pp. 39-45.

[6]Rollo, pp. 32-33.

[7]Rollo, p. 37.

[8] Rollo, p. 61.

[9]See Note #2, supra.[10]Toyota Motor Philippines Corporation Workers' Association vs. Court of Appeals, 412 SCRA 69, 86 (2003).[11]Sabalones vs. Court of Appeals, 230 SCRA 79 (1994).[12]Knecht vs. Court of Appeals, 228 SCRA 1 (1993).

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