

KOREA EXCHANGE BANK, PETITIONER, VS. FILKOR BUSINESS INTEGRATED, INC., KIM EUNG JOE, AND LEE HAN SANG, RESPONDENTS.

G.R. No. 138292. April 10, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition assails the order[1] dated April 16, 1999 of the Regional Trial Court of Cavite City, Branch 88, in Civil Case No. N-6689. Said order denied petitioner's partial motion for reconsideration of the trial court's order[2] dated March 12, 1999 whereby respondents were ordered to pay petitioner various sums of U.S. dollars as payment of the former's various loans with interest but omitted to state that the property mortgaged as security for said loans be foreclosed and sold at public auction in case respondents fail to pay their obligations to petitioner ninety days from entry of judgment.

The facts are summarized from the findings of the trial court.

On January 9, 1997, respondent Filkor Business Integrated, Inc. (Filkor), borrowed US\$140,000 from petitioner Korea Exchange Bank, payable on July 9, 1997. Of this amount, only US\$40,000 was paid by Filkor.[3]

In addition, Filkor executed nine trust receipts in favor of petitioner, from June 26, 1997 to September 11, 1997. However, Filkor failed to turn over to petitioner the proceeds from the sale of the goods, or the goods themselves as required by the trust receipts in case Filkor could not sell them.[4]

In the period from June 9, 1997 to October 1, 1997, Filkor also negotiated to petitioner the proceeds of seventeen letters of credit issued by the Republic Bank of New York and the Banque Leumi France, S.A. to pay for goods which Filkor sold to Segerman International, Inc. and Davyco, S.A. When petitioner tried to collect the proceeds of the letters of credit by presenting the bills of exchange drawn to collect the proceeds, they were dishonored because of discrepancies.[5]

Prior to all the foregoing, in order to secure payment of all its obligations, Filkor executed a Real Estate Mortgage on February 9, 1996. It mortgaged to petitioner the improvements belonging to it constructed on the lot it was leasing at the Cavite Export Processing Zone Authority.[6] Respondents Kim Eung Joe and Lee Han Sang also executed Continuing Suretyships binding themselves jointly and severally with respondent Filkor to pay for the latter's obligations to petitioner.[7]

As respondents failed to make good on their obligations, petitioner filed Civil Case No. N-6689 in the Regional Trial Court of Cavite City, docketed as "Korea Exchange Bank vs. Filkor Business Integrated, Inc." In its complaint, petitioner prayed that (a) it be paid by respondents under its twenty-seven causes of action; (b) the property mortgaged be foreclosed and sold at public auction in case respondents failed to pay petitioner within ninety days from entry of judgment; and (c) other reliefs just and equitable be granted.[8]

Petitioner moved for summary judgment pursuant to Section 1, Rule 35 of the 1997 Rules of Civil Procedure. On

March 12, 1999, the trial court rendered its order granting petitioner's motion, reasoning as follows:

x x x

It appears that the only reason defendants deny all the material allegations in the complaint is because the documents attached thereto are mere photocopies and not the originals thereof. Section 7, Rule 8 of the Rules of Court allows copies of documents to be attached to the pleading as an exhibit. Defendants are, therefore, deemed to have admitted the genuineness and due execution of all actionable documents attached to the complaint inasmuch as they were not specifically denied, pursuant to Section 8 of the Rule 8 of the Rules of Court.

In the case at bar, there is clearly no substantial triable issue, hence, the motion for summary judgment filed by plaintiff is proper.

A summary of judgment is one granted by the court upon motion by a party for an expeditious settlement of the case, there appearing from the pleadings, depositions, admissions and affidavits that there are no important questions or issues of fact involved (except as to the amount of damages) and that, therefore, the moving party is entitled to a judgment as a matter of law (Sections 1, 2, 3, Rule 35, 1997 Rules of Civil Procedure).

The court having taken into account the pleadings of the parties as well as the affidavits attached to the motion for summary judgment and having found that there is indeed no genuine issue as to any material fact and that plaintiff is entitled to a summary of judgment as a matter of law, hereby renders judgment for the plaintiff and against the defendants, ordering said defendants jointly and severally to pay plaintiff, as follows...[9]

The trial court then rendered judgment in favor of petitioner, granting its prayers under all its twenty-seven causes of action. It, however, failed to order that the property mortgaged by respondent Filkor be foreclosed and sold at public auction in the event that Filkor fails to pay its obligations to petitioner.

Petitioner filed a motion for partial reconsideration of the trial court's order, praying that the aforesaid relief of foreclosure and sale at public auction be granted. In an order dated April 16, 1999, the trial court denied petitioner's motion, ruling as follows:

Plaintiff, in opting to file a civil action for the collection of defendants obligations, has abandoned its mortgage lien on the property subject of the real estate mortgage.

The issue has already been resolved in *Danao vs. Court of Appeals*, 154 SCRA 446, citing *Manila Trading and Supply Co. vs. Co Kim, et al.*, 71 Phil. 448, where the Supreme Court ruled that:

The rule is now settled that a mortgage creditor may elect to waive his security and bring, instead, an ordinary action to recover the indebtedness with the right to execute a judgment thereon on all the properties of the debtor including the subject matter of the mortgage, subject to the qualification that if he fails in the remedy by him elected, he cannot pursue further the remedy he has waived.

WHEREFORE, the Partial Motion for Reconsideration filed by the plaintiff of the Court's Order dated March 12, 1999 is hereby denied for lack of merit.

SO ORDERED.[10]

Hence, the present petition, where petitioner ascribes the following error to the trial court.

THE REGIONAL TRIAL COURT OF CAVITE CITY ERRED IN RULING THAT PETITIONER HAD ABANDONED THE REAL ESTATE MORTGAGE IN ITS FAVOR, BECAUSE IT FILED A SIMPLE COLLECTION CASE.[11]

The resultant issue is whether or not petitioner's complaint before the trial court was an action for foreclosure of a

real estate mortgage, or an action for collection of a sum of money. In addition, we must also determine if the present appeal was correctly lodged before us rather than with the Court of Appeals.

In petitioner's complaint before the trial court, Paragraph 183 thereof alleges:

183. To secure payment of the obligations of defendant Corporation under the First to the Twenty-Seventh Cause of Action, on February 9, 1996, defendant Corporation executed a Real Estate Mortgage by virtue of which it mortgaged to plaintiff the improvements standing on Block 13, Lot 1, Cavite Export Processing Zone, Rosario, Cavite, belonging to defendant Corporation covered by Tax Declaration No. 5906-1 and consisting of a one-story building called warehouse and spooling area, the guardhouse, the cutting/sewing area building and the packing area building. (A copy of the Real Estate Mortgage is attached hereto as Annex "SS" and made an integral part hereof.)[12]

This allegation satisfies in part the requirements of Section 1, Rule 68 of the 1997 Rules of Civil Procedure on foreclosure of real estate mortgage, which provides:

SECTION 1. Complaint in action for foreclosure. – In an action for the foreclosure of a mortgage or other encumbrance upon real estate, the complaint shall set forth the date and due execution of the mortgage; its assignments, if any; the names and residences of the mortgagor and the mortgagee; a description of the mortgaged property; a statement of the date of the note or other documentary evidence of the obligation secured by the mortgage, the amount claimed to be unpaid thereon; and the names and residences of all persons having or claiming an interest in the property subordinate in right to that of the holder of the mortgage, all of whom shall be made defendants in the action.

In Paragraph 183 above, the date and due execution of the real estate mortgage are alleged. The properties mortgaged are stated and described therein as well. In addition, the names and residences of respondent Filkor, as mortgagor, and of petitioner, as mortgagee, are alleged in paragraphs 1 and 2 of the complaint.[13] The dates of the obligations secured by the mortgage and the amounts unpaid thereon are alleged in petitioner's first to twenty-seventh causes of action.[14] Moreover, the very prayer of the complaint before the trial court reads as follows:

WHEREFORE, it is respectfully prayed that judgment be rendered:

x x x

2. Ordering that the property mortgaged be foreclosed and sold at public auction in case defendants fail to pay plaintiff within ninety (90) days from entry of judgment.

x x x[15]

Petitioner's allegations in its complaint, and its prayer that the mortgaged property be foreclosed and sold at public auction, indicate that petitioner's action was one for foreclosure of real estate mortgage. We have consistently ruled that what determines the nature of an action, as well as which court or body has jurisdiction over it, are the allegations of the complaint and the character of the relief sought.[16] In addition, we find no indication whatsoever that petitioner had waived its rights under the real estate mortgage executed in its favor. Thus, the trial court erred in concluding that petitioner had abandoned its mortgage lien on Filkor's property, and that what it had filed was an action for collection of a sum of money.

Petitioner's action being one for foreclosure of real estate mortgage, it was incumbent upon the trial court to order that the mortgaged property be foreclosed and sold at public auction in the event that respondent Filkor fails to pay its outstanding obligations. This is pursuant to Section 2 of Rule 68 of the 1997 Rules of Civil Procedure, which provides:

SEC. 2. Judgment on foreclosure for payment or sale.- If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment. (*Italics supplied.*)

Accordingly, the dispositive portion of the decision of the trial court dated March 12, 1999, must be modified to comply with the provisions of Section 2 of Rule 68 of the 1997 Rules of Civil Procedure. This modification is subject to any appeal filed by respondents of said decision.

On the propriety of the present appeal, we note that what petitioner impugns is the determination by the trial court of the nature of action filed by petitioner, based on the allegations in the complaint. Such a determination as to the correctness of the conclusions drawn from the pleadings undoubtedly involves a question of law.^[17] As the present appeal involves a question of law, petitioner appropriately filed it with this Court, pursuant to Section 1 of Rule 45 of the 1997 Rules of Civil Procedure, which provides:

SECTION 1. Filing of petition with Supreme Court. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth. (*Italics supplied.*)

There is no dispute with respect to the fact that when an appeal raises only pure questions of law, this Court has jurisdiction to entertain the same.^[18]

WHEREFORE, the petition is GRANTED. The Order dated March 12, 1999, of the Regional Trial Court of Cavite City, Branch 88, in Civil Case No. N-6689 is hereby MODIFIED, to state that the mortgaged property of respondent Filkor be ordered foreclosed and sold at public auction in the event said respondent fails to pay its obligations to petitioner within ninety (90) days from entry of judgment.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.

[1] Rollo, p. 155.

[2] *Id.* at 141-151.

[3] *Id.* at 141.

[4] *Id.* at 141-142.

[5] *Id.* at 142-145.

[6] *Id.* at 146.

[7] *Ibid.*

[8] *Id.* at 56-61.

[9] Id. at 147-148.

[10] Id. at 155.

[11] Id. at 4.

[12] Id. at 54.

[13] Id. at 12.

[14] Id. at 13-54.

[15] Id. at 56-61.

[16] *Union Bank of the Philippines vs. Court of Appeals*, G.R. No. 131729, 290 SCRA 198, 218 (1998); *Javelosa vs. Court of Appeals*, G.R. No. 124292, 265 SCRA 493 (1996); *Amigo vs. Court of Appeals, et al.*, G.R. No. 102833, 253 SCRA 382 (1996); *Cañiza vs. Court of Appeals*, G.R. No. 110427, 268 SCRA 640 (1997); *Bernarte vs. Court of Appeals, et al.*, G.R. No. 107741, 263 SCRA 323 (1996); *Bernardo Sr., et al. vs. Court of Appeals, et al.*, G.R. No. 120730, 263 SCRA 660 (1996).

[17] Martin, *RULES OF COURT OF THE PHILIPPINES*, Vol. 1, 945 (1989 ed.).

[18] *Far East Marble (Phils.), Inc. vs. Court of Appeals*, G.R. No. 94093, 225 SCRA 249, 255 (1993).

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