ZOMER DEVELOPMENT COMPANY, INC. PETITIONER, VS. INTERNATIONAL EXCHANGE BANK AND SHERIFF IV ARTHUR R. CABIGON, RESPONDENTS.

G.R. No. 150694. March 13, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On August 25, 1997, the Board of Directors of Zomer Development Company, Inc. (petitioner) approved a resolution authorizing it to apply for and obtain a credit line with respondent International Exchange Bank (IEB) in the amount of P60,000,000 as well as temporary excesses or permanent increases thereon as may be approved by IEB from time to time.[1] The Board of Directors also authorized petitioner to assign, pledge, or mortgage its properties as security for this credit line; and to secure and guarantee the term loan and other credit facility of IDHI Prime Aggregates Corporation (Prime Aggregates) with IEB.[2]

Prime Aggregates obtained on August 26, 1997 a term loan from IEB in the amount of P60,000,000.[3] On September 2, 1997, petitioner, through its Treasurer Amparo Zosa (Amparo) and its General Manager Manuel Zosa, Jr. (Zosa), executed a real estate mortgage covering three parcels of land (the real estate mortgage) in favor of IEB to secure

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> The payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or hereinafter obtained by the MORTGAGOR and/or by IDHI Prime Aggregates Corporation (hereinafter referred to as DEBTOR)

- The payment of all interests, charges, penalties, reimbursements and other obligations owing by the MORTGAGOR and/or DEBTOR to the MORTGAGEE whether direct or indirect, principal or secondary; absolute or contingent as appearing in the accounts, books and records of the MORTGAGEE.

- The payment of all obligations of the MORTGAGOR and/or DEBTOR of whatever kind or nature whether such obligations have been contracted before, during, or after the constitution of [the] MORTGAGE.

- In case the MORTGAGOR and/or DEBTOR incurs subsequent obligations of whatever kind or nature whether such obligations, as extension thereof, or as new loans or is given any other kind of accommodations, the payment of said obligations, and/or accommodations without the necessity of executing new agreements.

- The faithful and strict performance and compliance by the MORTGAGOR and/or DEBTOR of all the terms and conditions of the MORTGAGE, the credit agreements, promissory notes and other loan documents and agreements evidencing the loan, overdrafts, credit lines and other credit accommodations granted to the MORTGAGOR and/or DEBTOR; including all amendments thereon, such as but not limited to changes in the interest rates, penalties, charges, or fees; acceleration of payments; and the like.

x x x x[4] (Emphasis, italics and underscoring supplied)

Prime Aggregates subsequently obtained several loans from IEB from September 1997 until September 1998.[5]

Prime Aggregates failed to settle its outstanding obligation which stood at P90,267,854.96 and US$211,547.12[6] as of September 15, 2000, drawing IEB to file a petition for extra-judicial foreclosure of mortgage before the Regional Trial Court (RTC) of Cebu City.

Respondent Sheriff IV Arthur R. Cabigon (Cabigon) having issued on October 18, 2000 a Notice of Extra-Judicial Foreclosure and Sale[7] scheduled on November 28, 2000, petitioner filed a complaint[8] for Injunction with application for writ of preliminary injunction/temporary restraining order before the Cebu City RTC, alleging that the real estate mortgage was null and void because Amparo and Zosa were authorized to execute it to secure only one obligation of Prime Aggregates. Petitioner thus prayed

> x x x that after due notice and hearing, judgment be rendered declaring the real estate mortgage and its extrajudicial foreclosure sale as null and void and that defendant bank be sentenced to pay plaintiff the sum of P100,000.00 as attorney's fees and P100,000.00 as litigation expenses.
>
> In the meantime, it is most respectfully prayed that a writ of preliminary injunction/TRO be issued enjoining the extrajudicial foreclosure sale of plaintiff's properties scheduled on November 28, 2000 or December 5, 2000.
>
> . . . that after trial, the writ of preliminary injunction be made permanent. x x x[9] (Emphasis and underscoring supplied)

The complaint, docketed as Civil Case No. CEB-25762, was amended on November 15, 2000.

Branch 9 of the Cebu City RTC denied petitioner's prayer for a writ of preliminary injunction.[10] Petitioner filed a Motion for Reconsideration[11] and a Motion for Admission of a Second Amended Complaint,[12] albeit it later filed a Motion to Withdraw Second Amended Complaint and to admit Third Amended Complaint.[13] The trial court denied petitioner's Motion for Reconsideration.[14]

Petitioner assailed the trial court's orders denying its prayer for the issuance of a writ of preliminary injunction before the Court of Appeals via certiorari,[15] docketed as CA-G.R. SP No. 64390 (certiorari case), alleging, in the main, that the real estate mortgage it executed was null and void for being ultra vires[16] as it was not empowered to mortgage its properties as security for the payment of obligations of third parties; and that Amparo and Zosa were authorized to mortgage its properties to secure only a P60,000,000 term loan and one credit facility of Prime Aggregates.[17]

In the meantime, Branch 15 of the Cebu City RTC to which Civil Case No. CEB-25762 was re-raffled after the Presiding Judge of Branch 9 inhibited himself in the case, dismissed petitioner's Third Amended Complaint[18] by Order of September 10, 2001. Petitioner appealed this Order to the Court of Appeals which docketed it as CA-G.R. CV No. 73063.

By Decision[19] of October 30, 2001, the appellate court, acting on the certiorari case filed by petitioners, denied it due course as it found that the trial court committed no grave abuse of discretion in denying petitioner's prayer for preliminary injunction.[20] It brushed aside petitioner's arguments that the real estate mortgage was ultra vires and that Amparo and Zosa were only authorized to mortgage petitioner's properties to secure the P60,000,000 term loan and one credit facility of Prime Aggregates.

Hence, the present petition[21] for review faulting the Court of Appeals in

> I - X X X NOT HOLDING THAT THE JUDGE WHO DENIED PETITIONER'S APPLICATION FOR

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INJUNCTION WAS A BIASED AND PARTIAL JUDGE AS RESPONDENTS WERE GIVEN A COPY OF THE ORDER ON MARCH 2, 2001 WHEN IT WAS SIGNED BY THE JUDGE BUT BEFORE ITS OFFICIAL RELEASE ON MARCH 5, 2001.

II - X X X USING THE DECISION OF THIS HONORABLE COURT IN THE CASE OF UNION BANK V. COURT OF APPEALS, ET. AL., 311 SCRA 795 IN SAYING THAT PETITIONER IS NOT ENTITLED TO A WRIT OF PRELIMINARY INJUNCTION INSTEAD OF USING THE CASE OF REPUBLIC V. COURT OF APPEALS, 324 SCRA 569 WHEREIN THIS HONORABLE COURT HELD THAT EVEN P.D. 385 CANNOT BE USED AS A SHIELD TO STOP BY INJUNCTION THE FORECLOSURE OF A MORTGAGE WHERE THE VERY PROPRIETY OF SAID FORECLOSURE IS IN SERIOUS DOUBT WHICH IS THE SAME ISSUE RAISED IN THE CASE AT BAR.

III - X X X HOLDING THAT [PRIME AGGREGATES] IS A SUBSIDIARY OF PETITIONER IN THE ABSENCE OF A FINDING THAT PETITIONER OWNS ANY SHARE IN [PRIME AGGREGATES].

IV - X X X NOT HOLDING THAT THE SECRETARY'S CERTIFICATE OF PETITIONER WAS NULL AND VOID FOR NOT PUTTING ANY LIMITATION OF THE AMOUNT OF THE OBLIGATION OF [PRIME AGGREGATES] TO BE SECURED BY A THIRD PARTY MORTGAGE OF ITS PROPERTIES

V - X X X NOT HOLDING THAT THE THIRD PARTY REAL ESTATE MORTGAGE EXECUTED BY THE AGENTS OF PETITIONER IN FAVOR OF PRIVATE RESPONDENT IS NULL AND VOID BECAUSE THEY EXCEEDED THEIR AUTHORITY IN SIGNING THE SAME.

VI - X X X NOT CONSTRUING STRICTLY AGAINST PRIVATE RESPONDENT THE SECRETARY'S CERTIFICATE AND THIRD PARTY REAL ESTATE MORTGAGE WHICH WERE ALL DOCUMENTS OF ADHESION AND ALL PREPARED BY IT AND TO EFFECT THE LEAST TRANSMISSION OF RIGHTS PURSUANT TO ARTICLE 1378 OF THE NEW CIVIL CODE SINCE THE THIRD PARTY REAL ESTATE MORTGAGE IS A GRATUITOUS CONTRACT WHICH WAS EXECUTED PURELY FOR ACCOMODATION OF [PRIME AGGREGATES].

VII - X X X NOT LAYING THE BLAME ON PRIVATE RESPONDENT IN MAKING THE AGENTS OF PETITIONER SIGN AN ILLEGAL CONTRACT SINCE IT WAS VERY WELL AWARE OF THEIR AUTHORITY AS ALL THE DOCUMENTS WERE ITS FORMS, PRE-PRINTED AND PREPARED BY IT.

VIII - X X X HOLDING THAT THE PETITIONER RATIFIED BY INACTION THE ILLEGAL CONTRACT EXECUTED BY ITS AGENTS SINCE THE PRIVATE RESPONDENT WAS VERY WELL AWARE OF THE EXTENT OF THEIR AUTHORITY.

IX - MAKING CONFLICTING FINDINGS OF FACTS.[22]

Respondents, in their Comment[23] dated February 27, 2002, move for the dismissal of the petition for being moot and academic, alleging that:

On October 8, 2001 [sic], [petitioner's] principal action for annulment of real estate mortgage was dismissed by the trial court and that said action is now on appeal with the Court of Appeals x x x [.]

On November 19, 2001, [petitioner's] mortgaged properties were foreclosed by [IEB]. In fact, as the highest bidder in the said foreclosure sale and in view of the passage of the new General Banking Law (which allows banks to consolidate its [sic] title within a shorter period if the mortgagor of a foreclosed property is a corporation), iBank had consolidated its title on the mortgaged properties.

[Petitioner's] application for issuance of writ of preliminary injunction, the subject of the instant appeal purportedly under Rule 45 of the Rules of Court, cannot survive the dismissal of its principal action as well as the foreclosure and consolidation in [IEB] name of its mortgaged properties.[24] (Emphasis and underscoring

supplied)

In its Reply,[25] petitioner argues that when Branch 15 of the Cebu City RTC dismissed the Third Amended Complaint in Civil Case No. CEB-25762 on September 10, 2001, it no longer had jurisdiction over it because said Branch had on August 14, 2001 been designated as a drug court.

Petitioner goes on to argue that even if the acts sought to be restrained have already been committed, since they are continuing in nature and in derogation of its rights at the outset, preliminary mandatory injunction may still be availed of to restore the status quo, citing Manila Electric Railroad and Light Company v. del Rosario and Jose.[26]

Acting on petitioner's appeal from the dismissal by Branch 15 of its Third Amended Complaint, the appellate court, by Decision of April 14, 2005, set aside the trial court's order of dismissal and ordered the reinstatement of said complaint to the docket of Branch 15 of the Cebu City RTC.

The records show that, indeed, petitioner's mortgaged properties were already foreclosed, as shown by the Certificate of Sale issued by Cabigon on November 19, 2001.[27] And they also show that ownership of the lands-subject of the real estate mortgage had been consolidated and transfer certificates of title had been issued in IEB's name.[28] It is on this score that the Court finds petitioner's prayer for a writ of preliminary injunction moot and academic. This leaves it unnecessary for the Court to still dwell on petitioner's argument that it was not, under its By-Laws, empowered to mortgage its properties to secure the obligation of a third party. In any event, the Court finds well-taken the appellate court's following disposition of such argument:

> We do agree that the Petitioner, under its "By-Laws," is not empowered to mortgage its properties as a security for the payment of the obligations of third parties. This is on the general premise that the properties of a corporation are regarded as held in trust for the payment of corporate creditors and not for the creditors of third parties. However, the Petitioner is not proscribed from mortgaging its properties as security for the payment of obligations of third parties. In an opinion of the Securities and Exchange Commission, dated April 15, 1987, it declared that a private corporation, by way of exceptions, may give a third party mortgage:
> "1. When the mortgage of corporate assets/properties shall be done in the furtherance of the interest of the corporation and in the usual and regular course of its business; and
>
> 2. To secure the debt of a subsidiary."

While admittedly, the "Opinion" of the Securities & Exchange Commission may not be conclusive on the Respondent Court, however, admittedly the same is of persuasive effect.

In the present recourse, the Respondent Court found that not only is Prime Aggregates a subsidiary of the Petitioenr but that the Petitioner appeared to be a "family" corporation:

> "a. The plaintiff appears to be a family corporation. The incorporators and stockholders and the membership of the board of directors are Zosa family. x x x
>
> b. Francis and Rolando Zosa are directors of [Prime Aggregates] and of plaintiff corporation x x x
>
> c. The REM was executed by Amparo Zosa who was the treasurer of plaintiff and Manuel Zosa, the General Manager, both are directors/stockholders of the plaintiff. Amparo Zosa is the biggest stockholder and is the mother of practically all the other stockholders of plaintiff. Manuel Zosa, Jr. is the General Manager and a son of Amparo.
>
> d. The Corporate Secretary of plaintiff and [Prime Aggregates] are members of the Zosa family. The Corporate Secretary of [Prime Aggregates] is also the daughter of Francis Zosa, president of plaintiff.

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> e. The President of plaintiff corporation, Francis Zosa and the president of [Prime Aggregates], Rolando Zosa, are brothers (aside from being common directors of both corporations.)

We agree with the Respondent Court.

The Petitioner's shrill incantations that the "Resolution", approved by its Board of Directors, authorizing its Treasurer and General Manager to execute a "Real Estate Mortgage" as security for the payment of the account of Prime Aggregates, a sister corporation, is not for its best interest, is a "puzzlement" xxx. Since when is a private corporation, going to the aid of a sister corporation, not for the best interest of both corporation? For in doing so, the two (2) corporations are enhancing, boosting and promoting a common interest, the interest of "family" having ownership of both corporations. In the second place, Courts are loathe to overturn decisions of the management of a corporation in the conduct of its business via its Board of Directors x x x.

x x x x

There is no evidence on record that the "Real Estate Mortgage" was executed by the Petitioner and the Private Respondent to prejudice corporate creditors of the Petitioner or will result in the infringement of the trust fund doctrine or hamper the continuous business operation of the Petitioner or that the Prime Aggregates was insolvent or incapable of paying the Private Respondent. Indeed, the latter approved Prime Aggregates' loan availments and credit facilities after its investigation of the financial capability of Prime Aggregates and its capacity to pay its account to the Private respondent.[29]

x x x x

[U]nder the "Resolution" of the Board of Directors, it authorized its Treasurer and General Manager to execute a "Real Estate Mortgage" over its properties as security for the "term loan and credit facility" of Prime Aggregates. The maximum amounts of such term loan and credit facility were not fixed in the "Resolution". The term "credit facility" is a broad term in credit business transactions to denote loans, pledges, mortgages, trust receipt transactions and credit agreements. And then, again, such term loan and/or credit facility may be granted, by the Private Respondent, in favor of Prime Aggregates, in trenches or in staggered basis, each disbursement evidenced by separate agreements depending upon the needs of Prime Aggregates for the establishment of its sand and gravel plant and port facilities and the purchase of equipments and machinery for said project. Hence, the "Long Term Agreements" and "Credit Agreements" executed by Prime Aggregates and the Private Respondent, with the Petitioner's properties, as collateral therefore, were envisaged in the terms "term loan and credit facility" in the "Resolution" of the Board of Directors of the Petitioner.

The intention of the Members of the Board of Directors of the Petitioner, in approving the "Resolution," may be ascertained xxx also from the contemporaneous and subsequent acts of the Petitioner, the Private Respondent and Prime Aggregates. Given the factual milieu in the present recourse, as found and declared by the Respondent Court, there can be no equivocation that, indeed the Petitioner conformed to and ratified, and hence, is bound by the execution, by its Treasurer and General Manager, of the "Real Estate Mortgage" in favor of the Private respondent, with its properties used as securities for the payment of the credit and loan availments of Prime Aggregates from the Private Respondent on the basis of the "Resolution" approved by its Board of Directors. As our Supreme Court declared, ratification and/or approval by the corporation of the acts of its agents/officers may be ascertained through x x x the acquiescence in his acts of a particular nature, with actual or constructive thereof, whether within or beyond the scope of his ordinary powers.

As it was, the Petitioner finally awoke from its slumber when the Private Respondent filed its "Petition" for the extra-judicial foreclosure of the "Real Estate Mortgage", with the Sheriff, and assailed the authority of its Board of Directors to approve the said "Resolution" and of its Treasurer and General Manager to execute the deed and

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brand the said "Resolution" and the said deed as "ultra vires" and hence, not binding on the Petitioner, and hurried off to the Respondent Court and prayed for injunctive relief. Before then, the Petitioner maintained a stoic silence and adopted a "hands off" stance. We find the Petitioner's stance grossly inequitable. We must take heed and pay obeisance to the equity rule that if one maintains silence when, in conscience he ought to speak, equity will debar him from speaking when, in conscience, he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he ought to be silent. More, the transactions between the Petitioner and the Private Respondent over its properties are neither malum in se or malum prohibitum. Hence, the Petitioner cannot hide behind the cloak of "ultra vires" for a defense.

x x x x

The plea of "ultra vires" will not be allowed to prevail, whether interposed for or against a corporation, when it will not advance justice but, on the contrary, will accomplish a legal wrong to the prejudice of another who acted in good faith.[30] (Underscoring and emphasis in the original)

WHEREFORE, the petition is DISMISSED.

Costs against petitioner.

SO ORDERED.

Quisumbing, Tinga, Velasco, Jr., and Brion, JJ., concur.

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[1] Exhibit "B," records, p. 11.

[2] Ibid.

[3] Exhibit "3," id. at 103-105.

[4] Exhibit "C," id. at 13.

[5] CA rollo, pp. 105-159.

[6] Exhibit "62," rollo, p. 255.

[7] Exhibit "A," id. at 10.

[8] Id. at 1-9.

[9] Id. at 7-8.

[10] Id. at 348-357.

[11] Id. at 361-374.

[12] Id. at 378-385.

[13] Id. at 425-435.

[14] Id. at 418-421.

[15] CA rollo, pp. 2-28.

[16] Id. at 7-8.

[17] Ibid.

[18] Records, pp. 505-510.

[19] Penned by then-Court of Appeals Associate Justice Romeo J. Callejo, Sr. with the concurrence of Associate Justices Remedios Salazar-Fernando and Josefina Guevara-Salonga. Rollo, pp. 45-66.

[20] Id. at 53-54.

[21] Id. at 3-44.

[22] Id. at 11-12.

[23] Id. at 391-425.

[24] Id. at 405.

[25] Id. at 462-486.

[26] 22 Phil. 433 (1912).

[27] Rollo, p. 451.

[28] Id. at 452-454.

[29] Id. at 55-57.

[30] Id. at 61-63.

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