

BENGUET MANAGEMENT CORPORATION, PETITIONER, VS. COURT OF APPEALS, KEPPEL BANK PHILIPPINES, INC., AS TRUSTEE FOR METROPOLITAN BANK AND TRUST COMPANY, UNITED COCONUT PLANTERS BANK...

G.R. No. 153571. September 18, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition for certiorari under Rule 65 of the Revised Rules of Court is the Resolution of the Court of Appeals in CA-G.R. SP No. 69503 dated April 5, 2002,[1] which denied petitioner's application for the issuance of a temporary restraining order, as well as its May 28, 2002[2] Resolution denying the motion for reconsideration.

The antecedent facts reveal that on November 29, 1994, petitioner Benguet Management Corporation (BMC) and Keppel Bank Philippines, Inc. (KBPI),[3] acting as trustee of the other respondent banks, entered into a Loan Agreement and Mortgage Trust Indenture (MTI) whereby BMC, in consideration of the syndicated loan of P190,000,000.00, constituted in favor of KBPI a mortgage on several lots located in Alaminos, Laguna and Iba, Zambales.

On September 28, 2001, for failure of BMC to pay in full the installments due on the Loan Agreement and Mortgage Trust Indenture, KBPI filed an application[4] for extra-judicial foreclosure of mortgage before the Office of the Clerk of Court of the Regional Trial Court of Iba, Zambales. On October 29, 2001, a similar application[5] for extra-judicial foreclosure of mortgage was filed by KBPI with the Office of the Clerk of Court of the Regional Trial Court of San Pablo City, docketed as EJP No. Sp-2546 (01). Accompanying the latter application was a certification[6] from the Clerk of Court of the Regional Trial Court of Iba, Zambales, stating that KBPI had paid the corresponding foreclosure fees covering BMC's properties situated in Zambales and Laguna.

On October 31, 2001, BMC filed with the Office of the Executive Judge of the Regional Trial Court of San Pablo City a "Request Not To Give Due Course To The Application for Extra-Judicial Foreclosure..."[7] in EJP No. Sp-2546 (01). BMC claimed that the application should be denied because it is insufficient in form and substance and there is no need to proceed with the foreclosure of its properties situated in Laguna because it was willing to execute a dacion en pago in place of the mortgaged properties. Subsequently, BMC filed a "Compliance and Supplementary Grounds to Disapprove Application for Extra-judicial Foreclosure of Real Estate Mortgage"[8] and a Memorandum.[9] BMC contended that the application for foreclosure should be denied because KBPI included unauthorized penalties in the statement of accounts and it did not comply with its obligation to give BMC a 60-day grace period. BMC further claimed that the MTI securing the principal loan of P190 Million cannot be foreclosed because it was not registered with the Register of Deeds.

KBPI opposed the letter-request of BMC on the ground, inter alia, of wrong remedy and forum shopping.[10]

Meanwhile, on November 7, 2001, BMC filed with the Regional Trial Court of Iba, Zambales, Branch 70, a complaint for damages, accounting and nullification of foreclosure of its properties in Zambales, with prayer for the issuance of a temporary restraining order, docketed as Civil Case No. RTC-1852-I.[11] BMC averred that the foreclosure of its properties should be annulled because KBPI imposed unauthorized penalties, interest and charges. Assuming that the amount claimed is due and demandable, BMC maintained that the same cannot be enforced because KBPI did not comply with the 60-day grace period. BMC added that dacion en pago should be preferred over the foreclosure of the collaterals because the other respondent banks are agreeable to such proposal.

On the same date, the Regional Trial Court of Iba, Zambales issued a temporary restraining order enjoining the sale at public auction of BMC's properties in Zambales.[12]

On February 6, 2002, KBPI's application for extrajudicial foreclosure of mortgage was found to be sufficient in form and substance, and was granted.[13] BMC filed a motion for reconsideration, which was denied on March 4, 2002.[14]

Hence, BMC filed a petition for certiorari with the Court of Appeals,[15] reiterating its arguments in EJP No. Sp-2546 (01) and assailing the validity of the foreclosure of its properties in Laguna. It prayed for the issuance of a preliminary injunction and/or temporary restraining order to enjoin the scheduled sale of its properties in Laguna on March 19, 2002 at 10:00 pm. Since no injunction or restraining order was issued by the Court of Appeals, the auction sale proceeded as scheduled with KBPI as the highest bidder.

To restrain the registration of the certificate of sale,[16] BMC filed a Supplemental Petition[17] which was favorably acted upon by the Court of Appeals on March 22, 2002.[18] On the same day, a temporary restraining order enjoining the registration of the certificate of sale was issued by the appellate court, albeit, late as the certificate was already registered at 2:15 p.m. of March 22, 2002.

Subsequently, BMC filed with the appellate court an Amended Supplemental Petition,[19] followed by an Urgent Manifestation[20] praying for the issuance of a writ of preliminary injunction and/or temporary restraining order to enjoin the consolidation of titles over the foreclosed properties in the name of respondent banks. BMC contended that the foreclosure sale should be annulled because – (1) the bid price was grossly inadequate; (2) the sale was conducted in violation of Sections 2 and 3 of Act No. 3135 on the requirements of place of sale and posting of notice; and (3) the other creditor banks are amenable to the proposed dacion en pago instead of the foreclosure.

In its Resolution dated April 5, 2002, the Court of Appeals denied BMC's prayer to restrain the consolidation of title in the name of KBPI, thus:

The petitioner's filing of an Amended Supplemental Petition dated March 25, 2002, and an Urgent Manifestation dated March 27, 2002 is hereby noted.

However, we see no justifiable reason to grant an injunctive relief at this point in time, since the acts sought to be restrained or enjoined are positive rights of a buyer in a foreclosure sale. Unless the petitioner could prove the nullity of such sale, there is no reason to stop the Register of Deeds concerned from performing its ministerial duty under the law.

WHEREFORE, the application for temporary restraining order in the Amended Supplemental Petition is hereby DENIED.

The respondents are directed to also file their comment thereto within ten (10) days from notice hereof. Should the parties prefer, the case shall be set for hearing to enable the parties to prove their respective positions as to

issues in the petition as well as subsequent Supplemental Petition and Amended Supplemental Petition.

In the meantime, the Chief of the Mailing Section is directed to investigate and report to us within fifteen (15) days from notice, how and who made the unauthorized insertion of the "Register of Deeds of Laguna" to the Court's Notice of Resolution of March 22, 2002.

SO ORDERED.[21]

BMC filed a motion for reconsideration claiming, among others, that Section 47 of the General Banking Act (Republic Act No. 8791), which reduced the period of redemption for extra-judicially foreclosed properties of juridical persons from one year to – "until, but not after, the registration of the certificate of foreclosure sale...which in no case shall be more than three (3) months after foreclosure, whichever is earlier," is unduly discriminatory and therefore unconstitutional.

On May 28, 2002, the Court of Appeals denied BMC's motion for reconsideration.[22] Hence, BMC filed the instant petition, contending that -

I

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S APPLICATION FOR TRO TO RESTRAIN THE CONSOLIDATION OF TITLES AFTER IT HAD EARLIER RESTRAINED, ALBEIT TOO LATE, THE REGISTRATION OF THE SHERIFF'S CERTIFICATE OF SALE, DEMONSTRATIVELY HAVING BEEN CONVINCED OF THE MERIT OF THE LEGAL GROUNDS RAISED BY THE PETITIONER IN SUPPORT OF THE APPLICATION FOR TEMPORARY RESTRAINING ORDER.

II

THE NEW LAW (GENERAL BANKING LAW OF 2000) ABROGATING THE RIGHT TO ONE YEAR REDEMPTION PERIOD OF CORPORATE MORTGAGORS IS UNCONSTITUTIONAL.

III

ASSUMING THAT THE NEW LAW IS CONSTITUTIONAL, IT SHOULD BE GIVEN PROSPECTIVE APPLICATION.

IV

THE BID PRICE OF ONLY P162,354,329.46 FOR THE FOUNDRY PROJECT WITH A FAIR MARKET VALUE OF P444,184,000.00, SOUND VALUE OF P493,732,000.00 COST OF REPRODUCTION OF P989,605,000.00 IS SO GROSSLY INADEQUATE AS TO RENDER THE SALE NULL AND VOID IN LAW AND IN EQUITY.

V

THE AUCTION SALE CONDUCTED IN SAN PABLO CITY IS NULL AND VOID FOR BEING IN VIOLATION OF SECTION 2 OF ACT 3135, AS AMENDED AND THE EXPRESS PROVISION OF THE MORTGAGE TRUST INDENTURE THAT: IN ANY EXTRA-JUDICIAL FORECLOSURE UNDER ACT 3135, AS AMENDED...THE AUCTION SALE SHALL TAKE PLACE IN THE CITY OR CAPITAL OF THE PROVINCE WHERE THE COLLATERAL IS SITUATED.

VI

THE REQUIREMENTS OF SECTION 3 OF ACT 3135, AS AMENDED, FOR POSTING OF NOTICES WERE NOT COMPLIED WITH IN THE FORECLOSURE PROCEEDINGS IN QUESTION.

VII

THE INTEREST BASED ON THE FLOATING RATE STIPULATED IN THE PROMISSORY NOTES IS NULL AND VOID FOR BEING POTESTATIVE IN CHARACTER AND FOR BEING VIOLATIVE OF THE PRINCIPLE OF MUTUALITY OF CONTRACT, HENCE THE FORECLOSURE MAY PROCEED ONLY ONCE THE CORRECT LEGAL AMOUNT OF THE LOAN IS DETERMINED AND ONLY IF THE MORTGAGOR CANNOT PAY FOLLOWING THAT DETERMINATION.[23]

On June 26, 2002, a status quo order was issued enjoining the cancellation of titles over the mortgaged properties in the name of BMC as well as the issuance of new titles and the consolidation thereof in the name of private respondent banks[24]

We deem it proper to resolve the issue of forum shopping raised by private respondents.

Under the Procedure on Extra-Judicial Foreclosure of Mortgage (A.M. No. 99-10-05-0),[25] the applicant in an extra-judicial foreclosure covering properties located in different provinces is required to pay only one filing fee regardless of the number of properties to be foreclosed so long as the application covers only one transaction or indebtedness. The venue, however, of the extra-judicial foreclosure proceedings is the place where each of the mortgaged property is located. Pertinent portion thereof states -

Where the application concerns the extrajudicial foreclosure of mortgages of real estates and/or chattels in different locations covering one indebtedness, only one filing fee corresponding to such indebtedness shall be collected. The collecting Clerk of Court shall, apart from the official receipt of the fees, issue a certificate of payment indicating the amount of indebtedness, the filing fees collected, the mortgages sought to be foreclosed, the real estates and/or chattels mortgaged and their respective locations, which certificate shall serve the purpose of having the application docketed with the Clerks of Court of the places where the other properties are located and of allowing the extrajudicial foreclosures to proceed thereat.

In *Spouses Caviles v. Court of Appeals*,[26] we recognized the predicament that confronts a mortgagor seeking to restrain the extra-judicial foreclosure of mortgages arising from a single transaction but concerning properties found in different provinces. Thus -

...[W]e find it necessary to dwell on the issue of whether or not the act of petitioners in filing three civil actions - one with the RTC of Makati, another with the RTC of Biñan, Laguna (Branch 24) and the third one, with the Biñan Assisting Court, constitutes forum shopping.

The problem of petitioners is an off-shoot of the express provisions of B.P. Blg. 129, to wit:

"Sec. 21. Original jurisdiction in other cases. - Regional Trial Courts shall exercise original jurisdiction:

"(1) In the issuance of writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction which may be enforced in any part of their respective regions; (Emphasis, supplied)

and Section 3, Rule 2 of the Rules of Court which provides that a party may not institute more than one suit for a single cause of action. (Emphasis supplied)

In the said case, the mortgagors filed separate actions for breach of mortgage contract with injunction to restrain the extra-judicial foreclosure proceedings commenced by the mortgagee in Makati and Biñan, Laguna where the properties were situated. The Court did not find the mortgagors guilty of forum shopping insofar as the cases filed with the Makati and Biñan, Laguna (Branch 24) courts were concerned. The obvious reason is that since injunction is enforceable only within the territorial limits of the trial court, the mortgagor is left without remedy as to the properties located outside the jurisdiction of the issuing court, unless an application for injunction is made with another court which has jurisdiction over the latter properties.

In the case at bar, BMC is not guilty of forum shopping precisely because the remedy available to them under the law was the filing of separate injunction suits. It is mandated to file only one case for a single cause of action, e.g., breach of mortgage contract, yet, it cannot enforce any injunctive writ issued by the court to protect its properties situated outside the jurisdiction of said court. Besides, BMC was honest enough to inform the Zambales court in the certification[27] of its complaint that it has a pending request not to give due course to the foreclosure proceedings with the San Pablo court, in the same manner that its petition for certiorari with the Court of Appeals notified the appellate court of the pendency of its complaint with the Zambales court.[28] It would therefore be unfair to dismiss the cases filed by BMC on the ground of forum shopping where under the circumstances the law gives it no other remedy.

The issues involved in the instant petition for certiorari are not only limited to the propriety of the Court of Appeals' denial of BMC's prayer to enjoin the consolidation of title of the foreclosed properties in the name of private respondents. There are likewise raised factual issues, i.e., the validity of the foreclosure and the sale at public auction of its properties, which are yet to be resolved by the Court of Appeals. Since this Court is not a trier of facts, the remand of this case to the appellate court is necessary.

Anent the constitutional issue raised by BMC, we have repeatedly held that the constitutionality of a law may be passed upon by the Court, where there is an actual case and that the resolution of the constitutional question must be necessary in deciding the controversy.[29] In this case, the resolution of the constitutionality of Section 47 of the General Banking Act (Republic Act No. 8791) which reduced the period of redemption of extra-judicially foreclosed properties of juridical persons is not the very *lis mota* of the controversy. BMC is not asserting a legal right for which it is entitled to a judicial determination at this time inasmuch as it may not even be entitled to redeem the foreclosed properties. Until an actual controversy is brought to test the constitutionality of Republic Act No. 8791, the presumption of validity, which inheres in every statute, must be accorded to it.

WHEREFORE, in view of all the foregoing, the petition is **PARTLY GRANTED**. The Resolutions of the Court of Appeals dated April 5, 2002 and May 28, 2002, in CA-G.R. SP No. 69503, insofar as they denied BMC's application for temporary restraining order, are **REVERSED** and **SET ASIDE**. The status quo order issued by the Court on June 26, 2002 shall stand until further order of the Court, and the instant case is **REMANDED** to the Court of Appeals for determination of the case on its merits. Petitioner BMC is ordered to inform the appellate court of the present status of Civil Case No. RTC-1852-I, then pending with the Regional Trial Court of Iba, Zambales, Branch 70, and if it had been decided and the decision is on appeal in the Court of Appeals, the latter may consider its consolidation with CA-G.R. SP No. 69503 if warranted.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.
Azcuna, J., no part.

[1] Penned by Associate Justice Delilah Vidallon-Magtolis, and concurred in by Associate Justices Eliezer R. Delos Santos and Juan Q. Enriquez, Jr. (Rollo, p. 223).

[2] Rollo, p. 234.

[3] Formerly Keppel Monte Bank & Monte de Piedad and Savings Bank.

[4] Rollo, p. 64.

- [5] Rollo, p. 60.
- [6] Rollo, p. 62.
- [7] Rollo, p. 128.
- [8] Rollo, p. 132.
- [9] Rollo, p. 144.
- [10] Rollo, p. 153.
- [11] Rollo, p. 374.
- [12] Rollo, p. 386.
- [13] Rollo, p. 50.
- [14] Rollo, p. 59.
- [15] Rollo, p. 29.
- [16] Rollo, pp. 175-177.
- [17] Rollo, p. 165.
- [18] Rollo, p. 181.
- [19] Rollo, p. 184.
- [20] Rollo, p. 218.
- [21] Rollo, pp. 223-224.
- [22] Rollo, p. 234.
- [23] Rollo, pp. 8-10.
- [24] Rollo, p. 336.
- [25] Dated December 14, 1999 and further amended by the Resolutions of 30 January 2001 and 7 August 2001. (See *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 125838, 10 June 2003).
- [26] G.R. No. 126857, 18 September 2002.
- [27] Rollo, p. 381.
- [28] Rollo, p. 43.
- [29] *Ty v. Trampe*, 321 Phil. 81, 103 (1995), citing *Macasiano v. National Housing Authority*, G.R. No. 107921, 1 July 1993, 224 SCRA 236; *Laurel v. Garcia*, G.R. Nos. 92013 & 92047, 25 July 1990, 187 SCRA 797, *Tan v. People*, G.R. No. 115507, 19 May 1998, 290 SCRA 117, 126.

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