

PHILIPPINE NATIONAL BANK, PETITIONER, VS. FELINO M. TIMBOL AND EMMANUELA R. LAGUARDIA, RESPONDENTS.

G.R. NO. 157535. February 11, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

Being challenged in the present Petition for Review on Certiorari is the February 28, 2003 decision[1] of the Court of Appeals dismissing the Petition for Certiorari of herein petitioner, Philippine National Bank (PNB), which sought to set aside the September 8, 2000 Order[2] of Judge Zeus L. Abrogar of the Makati Regional Trial Court (RTC), Branch 150 granting herein private respondents' application for the issuance of a writ of preliminary injunction.

The following facts are not disputed:

Sometime in December 1996, the PNB International Finance Limited (PNB-IFL), a subsidiary of petitioner, granted Karrich Holdings Limited based in Hongkong and "owned" by respondent Felino Timbol, Jr., a Revolving Credit Line and/or for the Opening of Letters of Credit with Trust Receipt Financing in the total amount of US\$850,000.00. Karrich Auto Exchange (formerly Superkinis Auto Sales), a sole proprietorship based in the Philippines, also owned by Timbol, acted as co-borrower.

To secure the payment of the obligation, Timbol on his behalf and that of his wife Emmanuela R. Laguardia, executed three (3) separate Real Estate Mortgages (REMs). And respondent Timbol executed promissory notes for and on behalf of Karrich Holdings Ltd.

The first REM, which secured the amount of P13,056,600.00, covered the following first 7 titles; the second REM, which secured the amount of P7,593,850.00, covered the following 8[th] title; and the third REM, which secured the amount of P2,143,750.00, covered the following 9[th] title, to wit:

- TCT No. 196111 with an area of 44 sq. m., more or less[3]
- TCT No. 196112 with an area of 43 sq. m., more or less[4]
- TCT No. 196113 with an area of 39.50 sq. m., more or less[5]
- TCT No. 196114 with an area of 39 sq. m., more or less[6]
- TCT No. 196115 with an area of 40 sq. m., more or less[7]

- TCT No. 196116 with area of 40 sq. m., more or less[8]

- TCT No. 196117 with an area of 40.50 sq. m., more or less[9]

- TCT No. 177564 with an area of 293 sq. m., more or less[10]

- TCT No. 207636 with an area of 87.50 sq. m., more or less[11]

Thus, the aggregate amount of the obligation was P22,796,200.00 or its equivalent of US\$850,000.00.

The borrowers drew on the credit facilities.

The credit facilities were, by letter[12] of April 1, 1998, renewed, revised and reduced to US\$848,300.00 by the PNB.

As the borrowers defaulted in the payment of their obligation, petitioner, by letter of September 2, 1999,[13] informed Karrich Holdings Limited at its Hongkong address and the spouses Timbol at their 9626 Kamagong, Makati address that, as of July 15, 1999, their outstanding obligation stood at P36,088,173.69 inclusive of interest and penalties and demanded that they settle the same in full “or make acceptable arrangement for its settlement with our PNB-IFL immediately upon receipt hereof.” By the same letter, petitioner warned the borrowers that if they failed to heed the demand, it would be constrained to proceed with the foreclosure of the mortgages which secured their account.

Responding to the September 2, 1999 letter of petitioner, borrowers Karrich Holdings Ltd. and Timbol, by an undated letter[14] addressed to Atty. Reyes G. Geromo, Manager and Head, Foreclosure Group, Philippine National Bank, PNB Financial Center, Roxas Blvd., Metro Manila, bearing Timbol’s signature, which letter was received by the PNB Legal Department on October 27, 1999, stated as follows:

This is in reference to your letter of September 2, 1999 which was received only today, October 19, 1999.

We are well aware of our total outstanding obligation with you which stood at P33 (sic) Million as of July 15, 1999 including interest and penalties.

Given that our application for a new fully secured loan of US\$ 16 Million was recently turned down by PNB-IFL, we were constrained to apply with an alternative lender who can look sympathetically at our project and be considerate of our circumstances. The application is currently being processed against the issuance of a Guarantee Payment Bond being underwritten with the participation of PNB Insurance and GSIS, and we have reason to believe that it is only a matter of time before the facility is granted to us.

In view thereof, we would like to request for an additional time within which to secure our obligation with you. We would also like to request that our obligation be denominated in Philippine peso to avoid further foreign exchange losses.

Thank you for your kind understanding and consideration. (Emphasis in the original; underscoring supplied)[15]

It appears that the borrowers’ request for an additional time within which “to secure [their] obligation” was denied by petitioner for soon after it moved to extrajudicially foreclose the mortgages before a notary public.

Acting on the application for extrajudicial foreclosure of mortgages, Makati City Notary Public Ricardo M. Espina issued a Notice of Extrajudicial Sale which was published in three (3) issues of the Remate, a newspaper

of general circulation printed and published in Manila, Philippines, on October 19, 26, and November 2, 1999 following which Remate Vice President-Advertising executed an Affidavit of Publication dated November 3, 1999.[16]

On November 15, 1999, the extrajudicial foreclosure sale was conducted by Atty. Espina who issued a Certificate of Sale on even date[17] stating that the nine (9) properties subject of the REMs were sold for P35,669,000.00 at public auction to the highest bidder, petitioner which had submitted its Bid[18] for said amount.

More than 3 months shy of the one year period to redeem the foreclosed mortgages or on August 4, 2000, respondent Timbol, on his behalf and that of his co-mortgagor-wife-herein co-respondent Laguardia, filed before the RTC of Makati a complaint against petitioner, Atty. Ricardo F. Espina in his capacity as Makati City Notary Public, and the Makati Register of Deeds, for Annulment of Real Estate Mortgage, Foreclosure of Mortgage, Auction Sale and for Accounting, Damages and Temporary Restraining Order and/or Injunction.[19] The complaint was docketed as Civil Case No. 00-946.

In their complaint, respondents alleged that respondent Timbol signed blank REM forms and blank promissory note forms which were forwarded to him and, after signing them, he returned them to petitioner; that he was not furnished copies of the documents despite request therefor, hence, up to the time of the filing of the complaint he did not know what details were placed thereon by petitioner; that the foreclosure of the mortgages conducted by the notary public is “highly irregular, not valid and thus illegal” because (1) the extra judicial foreclosure was not filed in accordance with Administrative Order No. 3 dated October 24, 1984 of the Supreme Court; (2) the Notice of Notary Public’s Sale did not specify the newspaper of general circulation in which such notice was to be published; (3) the Notice of the Notary Public’s Sale was not published in 3 public places in Makati where the encumbered properties are located; (4) there was no showing that said notice was in fact and actually published in a newspaper of general circulation and if it was, it was not in accordance with law, the publication not having been raffled among newspapers; and (5) the notary public did not conduct an actual public bidding, hence, it was a “sham bidding which was not made within the time prescribed by law.”

Respondents further alleged that the Registry of Deeds of Makati City does not have a copy of any mortgage or other loan documents; and that the certificate of sale issued by the notary public was not registered or annotated on the original titles to the mortgaged properties.

Respondents furthermore alleged, inter alia, as follows:

18. But simply looking at the mortgage liens on said titles, the following would appear, viz:

Time Number Mortgage Loan

1. TCT No. 196111 P13,053,600.00
2. TCT No. 196112 P13,053,600.00
3. TCT No. 196113 P13,053,600.00
4. TCT No. 196114 P13,053,600.00
5. TCT No. 196115 P13,053,600.00
6. TCT No. 196116 P13,053,600.00
7. TCT No. 196117 P13,053,600.00
8. TCT No. 207636 P2,143,750.00

9. TCT No. 177564 P7,598,850.00

Total P101,117,800.00

19. Easily, by adding the foregoing amounts, the total obligations secured by the mortgaged properties would amount to a staggering P101,117,800.00! This amount is obviously way above the granted credit facilities which amounted only to US\$848,300.00. No wonder defendant PNB refused to give plaintiff Timbol/Karrich Auto Exchange/Karrich Holdings Limited, copies of the REM and Promissory Notes. (Underscoring supplied; emphasis in the original);[20]

and that petitioner “obviously, deliberately bloated the amount of the obligation . . . an act designed to prevent [the borrowers] from making (sic) getting back the properties mortgaged, which explains why PNB deliberately did not give copy of the REM to the borrowers.”

Respondents thus concluded that the REMs and promissory notes are null and void, the amounts placed thereon by defendant being “over and way above the obligation they incurred.”

In support of their prayer for the issuance of a writ of preliminary injunction, respondents alleged as follows:

- Unless restrained, the defendant PNB will proceed to annotate and/or consolidate its title to the mortgaged properties covered by and described in Transfer Certificates of Title Nos. 196111, 196112, 196113, 196114, 196115, 196116, 196117, 207636 and 117564 of the Registry of Deeds of Makati City. And the defendant Register of Deeds of Makati City will cancel the said titles and issue new ones in lieu thereof in the name of the defendant PNB which will certainly cause injustice and irreparable damages and injury to the plaintiffs herein.

- The plaintiffs are entitled to the reliefs demanded and the whole or part thereof consists in restraining the defendant PNB from consolidating its title to and ownership over the plaintiffs’ real properties sold to the defendant PNB on 15 November 1999 and the defendant Registry of Deeds from canceling the plaintiffs’ titles and from issuing new ones in lieu thereof.

- The said defendants are threatening to do some act in violation of the plaintiffs’ right respecting the subject matter of the action and the commission of the said act complained of by the said defendants during the pendency of this action will not only cause injustice and prejudice and injury to the plaintiffs but also complicate and multiply the issues in this case, and render the judgment that may be rendered herein ineffectual.

- Plaintiff is willing, ready and able to post a bond in an amount to be fixed by this Honorable Court executed in favor of the defendants to the effect that plaintiffs will pay to the defendants all damages which they may sustain by reason of the injunction if this Honorable Court shall decide finally that plaintiffs are not entitled thereto.

- As a consequence of the illegal acts of the defendants, bloating the amount of the obligations of plaintiff Timbol/Karrich Auto Exchange/Karrich Holdings Limited in the REM, in effecting the illegal foreclosure of the mortgaged properties, herein plaintiffs suffered and will suffer actual and compensatory damages for which the defendant PNB should be held liable in the sum of P500,000.00.

- Furthermore, plaintiffs, as a consequence thereof, were constrained to retain the services of counsel, to protect their interest, whom they had agreed to pay the sum of P100,000.00 as and for attorney’s fees. (Emphasis and

underscoring supplied)[21]

In its Answer with Compulsory Counterclaim[22] to the complaint, petitioner denied the allegation that respondent Timbol was made to sign blank REM forms and promissory note forms, it claiming that it is not a procedure of PNB-IFL to have borrowers/mortgagors sign the said documents in blank, and that at the time of the signing of the documents, they were already in printed form; and that the interest rate under the promissory notes was fixed at USD prime rate plus 2.5% in accordance with the agreement of the parties under “the Facility Letters dated November 15, 1996 and April 1, 1998” which Facility Letters and the General Agreement by Customer(s)[23] were duly executed and signed by Timbol.

Petitioner likewise denied respondents’ allegation in the complaint 1) that the Notice of Notary Public’s Sale was not duly posted, and that the REMs were not registered the truth being that they were annotated on the original copies of the titles on file with the Register of Deeds of Makati; and 2) that it bloated the amount of the obligation of respondents, the latter having erroneously added the amount of P13,053,600.00 annotated on each of the seven (7) titles which collectively secured said amount, as reflected in the REM encumbering those 7 titles, to wit:

x x x

WITNESSETH: That for and in consideration of certain credit accommodations obtained from the Mortgagee and to secure the payment of the same and those others that the Mortgagee may extend to the Debtors, including interest and expenses, and other obligations owing by the Debtors to the Mortgagee, whether direct or indirect, principal or secondary as appearing in the accounts, books and records of the Mortgagee, the Mortgagors hereby transfer and convey by way of mortgage unto the Mortgagee, its successors or assigns, the following:

Seven (7) real estate properties covered by TCT Nos. 196111, 196112, 196113, 196114, 196115, 196116, and 196117 with their technical descriptions detailed in the attached Annex A.

THE CONSIDERATION OF THIS MORTGAGE is hereby initially fixed at PHILIPPINE PESOS: THIRTEEN MILLION FIFTY THREE THOUSAND SIX HUNDRED (P13,053,600.00) or its United States Dollar equivalent thereof. (*Italics in the original; Emphasis and underscoring supplied*),[24]

x x x

while the two other mortgaged titles secured the payment of two separate obligations in the total amount of P22,796,200.00.

With respect to its alleged violation of Supreme Court Administrative Order No. 3 dated October 24, 1984, petitioner contended that the parties agreed in the REMs that Act No. 3135 shall be the controlling law, as stated in paragraph 5 of each of the REMs reading:

5. FORECLOSURE, POWER OF ATTORNEY, RECEIVERSHIP. If [at] any time the Mortgagors fail or refuse to pay the obligation herein secured, or any of the amortization of such indebtedness when due, or to comply with any of the conditions and stipulations herein agreed, or shall during the time this mortgage is in force, institute insolvency proceedings or be involuntarily declared insolvent, or shall use the proceeds of this loan or purposes other than those specified herein, or if the mortgage cannot be recorded in or the Mortgagors fail to register the same with the corresponding Registry of Deeds, then all the obligations of the Mortgagors secured by this mortgage and all the amortization thereof shall immediately become due, payable and defaulted and the Mortgagee, or its successor-in-interest, or its agent or assignee may immediately foreclose this mortgage judicially in accordance with the Rules of Court, or extrajudicially in accordance with Act No. 3135, as amended, and P.D. 385. For the purpose of extrajudicial foreclosure, the Mortgagors hereby appoint the Mortgagee and/or its agent as its Attorney-in-fact to sell the properties mortgaged under Act No. 3135, as

amended, to sign all documents and perform any act requisite and necessary to accomplish said purpose and to appoint its substitute as Attorney-in-Fact with the same powers as above specified. In case of judicial foreclosure, the Mortgagors hereby consent to the appointment of the Mortgagee or of any of its employees or agent as receiver, without any bond, to take charge of the Mortgaged Properties at once, and to hold possession of the same and the rents, benefits and profits derived from the Mortgaged Properties, before the sale, less the costs and expenses of the receivership. (Emphasis and italics supplied by petitioner; underscoring supplied)[25]

Ergo, petitioner, citing the case of *China Banking Corp .et al. v. Court of Appeals, et al.*, [26] concluded that a petition for foreclosure of real estate mortgage with a notary public is not within the contemplation of the above-said Supreme Court Administrative Order No. 3 and, in any event, such order which is an administrative directive cannot repeal a statute, Act No. 3135, as amended.

In the hearing of the application for the issuance of a writ of preliminary injunction, the parties presented their respective evidence.

Petitioner subsequently submitted its Position Paper (In Opposition to the Application for the Issuance of a Temporary Restraining Order [TRO])[27] wherein it argued that respondents' case did not warrant the issuance of a TRO, it amplifying its contention that Supreme Court Administrative Order No. 3 does not apply, the REMs having given it the option to foreclose them extrajudicially "in accordance with Act No. 3135, as amended, and P.D. 385," and that respondents' total obligation secured by the REMs is not P101,117,800.00 but "only P22,796,200.00 (representing the sum of P13,053,600.00, P2,143,750.00 and P7,598,850.00) or its US Dollar equivalent of US\$850,000.00 as of the time of the execution of the [REMs]."

In its order granting the issuance of a writ of preliminary injunction, the trial court, Br. 150 of the Makati RTC, summarized the evidence of the parties in this wise:

In court, Mr. Timbol testified that he inquired about the status of his loan because he wanted to pay it but was told that there was already a certificate of sale; that during the lifetime of the loan he was not given periodic statements of accounts but was only being notified of the interest that he should pay; that the public auction sale was conducted without his knowledge although he has not transferred residence in Makati nor moved his office in Hongkong. Plaintiff consistently denied claims from the defendants that he received the demand letter and notice of auction sale.

After plaintiffs presented their evidence, the parties entered into a gentlemen's agreement that status shall remain until such time that the issue of a temporary restraining order shall have been resolved and/or until further notice from the court.

On the other hand, defendants' loan witness is Anna Marie Quintos, employed in PNB International Finance Limitd, based in Hongkong, Ms. Quintos testified that there are three (3) real estate mortgages securing plaintiff's loan. The first one secured P13,053,600.00 and covered seven (7) parcels of land, the second secured P7,598,850.00 covering TCT No. 177564 and the last which covered TCT No. 207630 secured P2,143,750.00 so that plaintiff's total principal obligation with defendant Bank is US\$850,000.00, that they sent a demand letter to plaintiff Timbol at his residence address at 4626 Kamagong St., Makati City, Philippines and at his office address at Karrich Holdings Limited, 11/F DAH SING LIFE BLDG., 99 DES VOEUX ROAD, Central Hongkong but plaintiffs did not answer the letter and also did not pay their obligation, so they referred the matter to their legal [division] for collection; and consequently, plaintiffs' properties were extrajudicially foreclosed with PNB-International Finance Limited as the highest bidder. Witness also testified that the loan documents were properly filled up when Mr. Timbol signed the same and that he was furnished copies thereof, that after Mr. Timbol was declared in default he did not pay interest at all. She, however, admitted that she was not the account officer handling Mr. Timbol's account but it was one

Cathy de Guzman. (Underscoring supplied)[28]

In justifying the grant of the application for the issuance of a writ of preliminary injunction, the trial court stated:

After weighing the arguments advanced by the parties, the court holds that it would better serve the cause of justice if the consolidation of title shall in the meantime not proceed, for to do so would probably work injustice to the plaintiffs, considering their claim that the foreclosure of the mortgaged properties conducted by Atty. Ricardo M. Espina on November 15, 1999, was highly irregular and illegal as well as defendant PNB's act of bloating the amount of their obligation. Moreover, for defendant PNB to proceed with the intended consolidation of title with the principal case still to be resolved would tend to render the issue therein moot and academic; thus, the court deems it fit to maintain the status quo by issuing the writ of preliminary injunction applied for. (Emphasis and underscoring supplied)[29]

PNB filed a motion for reconsideration and a supplemental motion for reconsideration of the trial court's order of December 2, 2000, but they were denied, by Order of December 22, 2000[30] in this wise:

. . . [Defendant PNB] claims that contrary to the finding of the court, plaintiffs are not entitled to a preliminary injunction; that PNB-IFL did not bloat plaintiffs' loan obligation therewith; that the bank's witness was able to rebut plaintiffs' said allegations when she testified that plaintiffs' total principal loan obligation of P22,796,200.00 is secured by their nine (9) titles; that this fact is also clearly shown on the real estate mortgage contracts executed by the plaintiffs in defendant bank's favor; that the interest rates in the promissory notes were based on the facility letters signed by the plaintiffs and fixed at USD prime rate plus 2.5% in accordance with the agreement of the parties; that the requisite posting and publication of notice were properly obtained by the defendant bank prior to the public auction sale, furnishing a copy thereof to plaintiffs' representative and, therefore, PNB did not violate the provisions of PD 1079; and finally, defendant was of the impression that the hearing conducted on August 14 to 23, 2000 were for plaintiffs' Application for a TRO and not for a preliminary injunction.

In its supplemental motion for reconsideration, defendant PNB averred that its allegation that it never bloated plaintiffs' obligation was duly established by its witness and supported by documentary exhibits; that the required notice and publication of the notice of extra judicial sale were also complied with as evidenced by the court; that error is in losing sight of the well-established doctrine that the right to an injunctive relief must be clear, positive, existing and unmistakable and there is an urgent and permanent necessity for the writ to prevent serious damages; and that plaintiffs failed to show by clear and convincing evidence that they will suffer irreparable injury or injustice if defendant will consolidate title to the properties foreclosed.

Plaintiffs opposed the motion and advanced the argument that defendant PNB never presented sufficient evidence that would show that indeed it did not bloat their obligation. Also, they added that the findings of the court as contained in the assailed order are for purposes of preliminary injunctive writ only and that there is nothing new in the matters brought forth in the motion for reconsideration as the court had considered the matters in the present motion.

It is clear from the pronouncement of the court in the order sought to be reconsidered that the court deems it fit that status quo be maintained until the principal case is resolved, considering the nature of the instant case which is for annulment of Real Estate Mortgage, of Foreclosure of Mortgage, of Auction Sale, Accounting and Damages. This is precisely its main concern in granting the issuance of the preliminary writ of injunction upon plaintiffs' posting of a bond. In addition, whether it is a TRO or a preliminary injunction, the grounds for granting either relief will be the same. Moreover, in a preliminary injunction, the defendant stands protected by the injunction bond to be posted by the plaintiff in case it turned out that the latter is not entitled thereto.

Likewise, the court believes it would be better for all the parties concerned if pre-trial conference in this case be already set in order that full blown trial be immediately had, thus the grant of a preliminary injunction instead of a mere TRO. (Emphasis and underscoring supplied)[31]

Petitioner filed a petition for certiorari before the Court of Appeals. As adverted to earlier, the appellate court, by decision[32] of February 28 2003, dismissed petitioner's petition in this wise:

. . . [T]he issue concerning the defect in the notice and publication of the notice of sale in an extrajudicial foreclosure proceedings cannot be simply ignored for the rule is settled that non-compliance with the requirements of notice and publication in an extrajudicial foreclosure sale could constitute a jurisdictional defect that would invalidate the sale. Thus, we fully agree with the respondent court when it said:

After weighing the arguments advanced by the parties, the court holds that it would better serve the cause of justice if the consolidation of title shall in the meantime not proceed, for to do so would probably work injustice to the plaintiffs, considering their claim that the foreclosure of the mortgaged properties conducted by Atty. Ricardo M. Espina on November 15, 1999, was highly irregular and illegal as well as defendant PNB's act of bloating the amount of their obligation. Moreover, for defendant PNB to proceed with the intended consolidation of title with the principal case still to be resolved would tend to render the issue therein moot and academic; thus, the court deems it fit to maintain status quo by issuing the writ of preliminary injunction applied for.

Be that as it may, in a special action for certiorari, the burden is on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent. Again, by grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

Certainly, the issue of any irregularity in the foreclosure proceedings is a factual issue and therefore, not within this court's function to evaluate, given the limited scope of its review power, which is confined only to issues of jurisdiction or grave abuse of discretion. Granting *arguendo* that there was a mistake in the questioned findings and conclusions of the respondent judge, certiorari will not prosper. Needless to state, certiorari is not available to correct errors of procedure or mistakes in the judge's findings and conclusions. 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.

In conclusion, we are not convinced that the respondent court abused its discretion in a manner that is whimsical and arbitrary as to warrant our interference by the extraordinary writ of certiorari. (Emphasis and underscoring supplied)[33]

Its motion for reconsideration of the appellate court's decision having been denied, petitioner lodged the present petition for review on certiorari.

Proffering that while a petition for review on certiorari under Rule 45 shall raise only questions of law, the findings of fact by the court *a quo* being deemed conclusive, petitioner invokes the following exceptions to the general rule which were enunciated in *Fuentes v. Court of Appeals*[34] enumerating instances where the factual findings of the appellate court may be reviewed by this Court:

- (1) when the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) when the findings are grounded entirely on speculation, surmises, or conjectures;
- (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
- (4) when there is grave abuse of discretion in the appreciation of facts;

- (5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellate and appellee;
- (6) when the judgment of the Court of appeals is premised on a misapprehension of facts;
- (7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; (*Italics in the original*)[35]

Petitioner goes on to submit that a number of the above enumerated exceptions are present in this case. Thus it contends that the appellate court failed to notice relevant facts which, if considered properly, justifies a different conclusion, and that it premised its decision on a misapprehension of fact which, if likewise considered, will justify a different conclusion. It is in this light that petitioner concludes that the challenged decision is not in accord with the facts and the law of the case.

The petition is impressed with merit.

Respondents never denied that they defaulted in the payment of the obligation. They, however, prayed, in their complaint, for the issuance of a writ of preliminary injunction to restrain petitioner from proceeding to “annotate and/or consolidate its title to the mortgaged properties,” otherwise their titles to the properties would be cancelled and new ones issued in lieu thereof, causing them “injustice and irreparable damages and injury.”

Rule 58, Sec. 3 of the 1997 Rules of Civil Procedure provides:

SEC. 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person in doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

To be entitled to a writ of preliminary injunction, an applicant must show that (1) he has a right in esse or a right to be protected, and (2) the act against which injunction is to be directed is a violation of such right. That is settled.

From a considered scrutiny of the records of the case, the main thesis of respondents in praying for the issuance of a writ of preliminary injunction is that “[t]he foreclosure by [the] Notary Public is highly irregular, not valid and thus illegal” because “it was not in accordance with Administrative Order No. 3 of the Supreme Court dated 24 October 1984”, and the amount of their obligation was “deliberately bloated” to a “staggering” amount of P101,117,800.00, way above the granted credit facilities amounting to US\$848,300.00.

Respondents’ claim of irregularity in the extrajudicial foreclosure proceedings was belied, however, by the testimonial and documentary evidence of petitioner which correctly argued that Supreme Court Administrative Order No. 3 does not apply, the extrajudicial foreclosure having been conducted by a notary public to which mode of foreclosure respondents agreed in the REMs, hence, proper.[36]

As for respondents’ claim of deliberate bloating by petitioner of their obligation, the same was likewise belied by petitioner which demonstrated that, contrary to respondents’ representation that each of the first 7 above-listed

titles secured the amount of 7 obligations of P13,053,600.00 each, the 7 titles collectively secured the amount of P13,053,600.00. Such claim, despite respondent Timbol's admission in his October 27, 1999 letter to petitioner's counsel^[37] that he and his company's outstanding obligation was P33,000,000.00 is grossly misleading and is a gross misrepresentation. The same letter of respondent Timbol belies respondent Timbol's testimony, as noted by the trial court, that he denied the claims [of petitioner] that he received the demand letter." Parenthetically, respondents did not allege in their complaint that they did not receive any demand letter from petitioner.

The issuance by the trial court, therefore, of the Order granting a writ of preliminary injunction in order, so it declared, to "better serve the cause of justice" considering respondents' claim that the foreclosure was irregular and petitioner bloated their obligation, was attended with grave abuse of discretion.

It was, therefore, error for the appellate court to find no grave abuse of discretion in the issuance of the trial court's order and accordingly dismiss petitioner's petition for certiorari.

WHEREFORE, the assailed February 28, 2003 decision of the Court of Appeals and its Order denying a reconsideration thereof are hereby REVERSED and SET ASIDE and another rendered NULLIFYING and SETTING ASIDE the September 8, 2000 Order of Branch 150 of the Regional Trial Court of Makati in Civil Case No. 00-946.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona and Garcia, JJ., concur.

[1] Rollo at 39.

[2] Court of Appeals (CA) Rollo at 22.

[3] Annex "A" to petitioner's Petition before the CA, CA Rollo at 36.

[4] Ibid.

[5] Ibid.

[6] Ibid.

[7] Id. at 37.

[8] Ibid.

[9] Ibid.

[10] Id. at 38.

[11] Id. at 45.

[12] Id. at 58.

[13] Id. at 275.

[14] Id. at 278.

[15] Ibid.

[16] Rollo at 108.

[17] Id. at 110-113.

[18] Id. at 109.

[19] Id. at 114-128.

[20] Id. at 122.

[21] Id. at 124-125.

[22] Id. at 129-157.

[23] CA Rollo at 85-92.

[24] Rollo at 134.

[25] Id. at 139-140.

[26] 265 SCRA 327 (1997).

[27] Rollo at 146-157.

[28] CA Rollo at 115-116.

[29] Id. at 116.

[30] Id. at 123-126.

[31] Id. at 123-125.

[32] Rollo at 39.

[33] Id. at 44-45.

[34] 268 SCRA 703 (1997).

[35] Id. at 21.

[36] *Casano v. Magat*, 374 SCRA 508 (2002).

[37] Vide notes 14 and 15.

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