

## **TECNOGAS PHILIPPINES MANUFACTURING CORPORATION, PETITIONER, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.**

*G.R. No. 161004. April 14, 2008*

Ponente: QUISUMBING, J.

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### **QUISUMBING, J.:**

For review under Rule 45 are the Decision [1] and the Resolution [2] dated July 24, 2003 and November 5, 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 73822. The Court of Appeals reversed the Orders dated October 8, 2001 [3] and September 11, 2002 [4] of the Regional Trial Court (RTC) of Parañaque City, Branch 274, granting petitioner's application for a writ of preliminary injunction in Civil Case No. 01-0330.

The antecedent facts are as follows:

On December 3, 1991, petitioner Tecnogas Philippines Manufacturing Corporation (Tecnogas) obtained from respondent Philippine National Bank (PNB) an Omnibus Line of P35 million and a 5-year Term Loan of P14 million. To secure the loan, Tecnogas executed a Real Estate Mortgage [5] (REM) over its parcel of land in Parañaque City, covered by Transfer Certificate of Title (TCT) No. 122533 [6] and registered in the Registry of Deeds of Parañaque City.

The REM authorized PNB to extrajudicially foreclose the mortgage as the duly constituted attorney-in-fact of Tecnogas [7] in case Tecnogas defaults on its obligations. It also provided that the mortgage will stand as a security for any and all other obligations of Tecnogas to PNB, for whatever kind or nature, and regardless of whether the obligations had been contracted before, during or after the constitution of the mortgage. [8]

On several occasions, Tecnogas' loan had been increased, renewed and restructured upon its requests whenever it could not pay its obligations on their due dates. Finally, when the loan matured, PNB sent collection letters [9] to Tecnogas, but the latter only proposed to pay its obligations by way of dacion en pago conveying TCT No. 122533. [10] As of April 15, 2001, petitioner's loan obligation was P205,025,743.59, inclusive of interest and penalties. [11]

On August 16, 2001, PNB filed a petition for extrajudicial foreclosure of the REM in the RTC of Parañaque City. The auction sale was set on September 20, 2001.

A day before the auction sale, Tecnogas filed with the Parañaque City RTC a complaint [12] for annulment of extrajudicial foreclosure sale, with application for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction docketed as Civil Case No. 01-0330. On the same date, the RTC issued a TRO valid for 72 hours. [13] On September 21, 2001, the RTC granted extension of the TRO for 17 days. [14]

On October 8, 2001, the RTC granted Tecnogas' application and issued a writ of preliminary injunction enjoining the extrajudicial foreclosure sale of the mortgaged property. [15] PNB sought reconsideration with a motion to dissolve the writ. But its motions were denied by the court in its Order [16] dated September 11, 2002.

On November 29, 2002, PNB filed a petition for certiorari with the Court of Appeals, seeking the annulment of the October 8, 2001 and September 11, 2002 Orders of the RTC.

On July 24, 2003, the Court of Appeals issued the assailed decision and ruled that the trial court committed grave abuse of discretion in enjoining the extrajudicial foreclosure sale. It held that Tecnogas' proposal to pay through dacion en pago did not constitute payment as it was not accepted by PNB. Thus, injunction was not proper as the extrajudicial foreclosure of the REM was a necessary consequence of Tecnogas' default in its loan obligations. Tecnogas sought reconsideration, but it was denied. Hence, this petition.

Meanwhile, the auction sale was set on August 17 and 24, 2004. Tecnogas filed an Urgent Motion for the Issuance of a TRO/Injunction. The August 17, 2004 auction sale was postponed to permit Tecnogas to settle its obligations, but it failed to do so. Thus, the auction sale proceeded on August 24, 2004.

In its memorandum, Tecnogas raises the following issues:

I.

WHETHER OR NOT THE TWO (2) RTC JUDGES A QUO COMMITTED GRAVE ABUSE OF DISCRETION WHICH IS CORRECTIBLE BY CERTIORARI UNDER RULE 65[.]

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN PRE-EMPTING THE MERITS OF THE MAIN CASE[.]

III.

WHETHER OR NOT THERE WERE ERRORS OF JUDGEMENT COMMITTED BY THE TWO (2) RTC JUDGES A QUO.

IV.

WHETHER OR NOT THE INSTANT PETITION HAS BEEN RENDERED MOOT AND ACADEMIC BY THE FORECLOSURE SALE[.] [17]

Simply, the issues are: (1) Did the Court of Appeals err in ruling that Tecnogas was not entitled to an injunctive relief? (2) Did the foreclosure sale render the petition moot?

Tecnogas admits its liability and that its proposal to pay by way of dacion en pago was not accepted by PNB. But Tecnogas avers that its proposal constitutes a valid tender of payment. It further avers that the Court of Appeals, in issuing the assailed decision, preempted the merits of the main case in Civil Case No. 01-0330. It finally avers that the foreclosure sale did not render the petition moot. [18]

PNB counters that the proposal to pay by way of dacion en pago did not extinguish Tecnogas' obligation; thus, the extrajudicial foreclosure sale was proper. It also contends that the Court of Appeals did not preempt the resolution of the main case in Civil Case No. 01-0330, as its findings were necessary to resolve the issue on injunction. It finally contends that the foreclosure of the REM rendered the petition moot. [19]

Considering the submissions and contentions of the parties, we are in agreement that the petition lacks merit.

A writ of preliminary injunction may be issued only upon clear showing by the applicant of the existence of the following: (1) a right in esse or a clear and unmistakable right to be protected; (2) a violation of that right; and (3) an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. [20]

Dacion en pago is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking is really one of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. It is only when the thing offered as an equivalent is accepted by the creditor that novation takes place, thereby, totally extinguishing the debt. [21]

On the first issue, the Court of Appeals did not err in ruling that Tecnogas has no clear legal right to an injunctive relief because its proposal to pay by way of dacion en pago did not extinguish its obligation. Undeniably, Tecnogas' proposal to pay by way of dacion en pago was not accepted by PNB. Thus, the unaccepted proposal neither novates the parties' mortgage contract nor suspends its execution as there was no meeting of the minds between the parties on whether the loan will be extinguished by way of dacion en pago. Necessarily, upon Tecnogas' default in its obligations, the foreclosure of the REM becomes a matter of right on the part of PNB, for such is the purpose of requiring security for the loans.

By disallowing Tecnogas' prayer for injunctive relief, the Court of Appeals did not preempt the resolution of the main case in Civil Case No. 01-0330 for annulment of extrajudicial foreclosure sale. In said case, the trial court still needs to resolve the issues of whether Tecnogas observed the procedures prescribed by Act No. 3135, [22] as amended, on extrajudicial foreclosure of REM, and whether it suffered damage as a result of PNB's acts. These issues are still unresolved questions which have to be passed upon by the trial court after hearing the evidence of both parties so that an adjudication of the rights of the parties can be had. [23]

On the second issue, the holding of the extrajudicial foreclosure sale did not render this case moot. A case becomes moot only when there is no more actual controversy between the parties, or when no useful purpose can be served in passing upon the merits. [24] In this case, the decision of the Court of Appeals annulling the grant of preliminary injunction in favor of Tecnogas has not yet become final on August 24, 2004. The preliminary injunction, therefore, issued by the trial court remains valid until the decision of the Court of Appeals annulling the same attains finality, and violation thereof constitutes indirect contempt which, however, requires either a formal charge or a verified petition. [25]

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed Decision and Resolution dated July 24, 2003 and November 5, 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 73822 are hereby AFFIRMED. Costs against petitioner.

### **SO ORDERED.**

Carpio-Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

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\* Technogas Philippines Manufacturing Corp. in some parts of the records.

[1] Rollo, pp. 28-36. Penned by Associate Justice Bernardo P. Abesamis, with Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza concurring.

[2] Id. at 38. Penned by Associate Justice Jose Catral Mendoza, with Associate Justices Eloy R. Bello, Jr. and Jose L. Sabio, Jr. concurring.

[3] Records, Vol. I, p. 299. Penned by Pairing Judge Helen Bautista-Ricafort.

[4] Id. at Vol. II, pp. 630-633. Penned by Presiding Judge Fortunito L. Madrona.

[5] CA rollo, pp. 72-76.

[6] Id. at 77. TCT No. 122533 is a transfer from TCT No. 409316 (13293)/ T-67.

[7] Id. at 73.

[8] Id. at 72. . . . In case the Mortgagor/s execute subsequent promissory note or notes either as a renewal of the former note, as an extension thereof, or as a new loan, or is given any other kind of accommodations such as overdrafts, letters of credit, acceptances and bills of exchange, releases of import shipments on Trust Receipts, etc., this mortgage shall also stand as security for the payment of the said promissory note or notes and/or accommodations without the necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes and/or accommodations were existing on the date hereof. This mortgage shall also stand as security for said obligations and any and all other obligations of the Mortgagor/s to the Mortgagee of whatever kind and nature, whether such obligations have been contracted before, during or after the constitution of this mortgage.... (Emphasis supplied.)

[9] Id. at 136-139. Dated November 7, 2000, December 7, 2000, December 28, 2000, and February 28, 2001.

[10] Id. at 300.

[11] CA rollo, pp. 145-146.

[12] Records, Vol. I, pp. 8-47.

[13] Id. at 4.

[14] Id. at 143.

[15] Id. at p. 299. Issued by Pairing Judge Helen Bautista-Ricafort.

[16] Id. at Vol II, pp. 630-633. Issued by Presiding Judge Fortunito L. Madrona.

[17] Rollo, p. 296.

[18] Id. at 283-289.

[19] Id. at 308-311.

[20] *Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282, 299.

[21] *Philippine Lawin Bus, Co. v. Court of Appeals*, G.R. No. 130972, January 23, 2002, 374 SCRA 332, 338, citing *Filinvest Credit Corp. v. Phil. Acetylene, Co., Inc.*, No. L-50449, January 30, 1982, 111 SCRA 421, 427-428.

[22] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

[23] See *Philippine National Bank v. Court of Appeals*, G.R. No. 121251, June 26, 1998, 291 SCRA 271, 278.

[24] Id.

[25] See *Lee v. Court of Appeals*, G.R. No.147191, July 27, 2006, 496 SCRA 668, 686-687.

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