

DUVAZ CORPORATION, PETITIONER, VS. EXPORT AND INDUSTRY BANK, RESPONDENT.

G.R. No. 163011. June 07, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court is the Decision[1] dated March 26, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 75903, nullifying an earlier Order of the Regional Trial Court (RTC) of Makati City, Branch 143, which granted petitioner's prayer for a writ of preliminary injunction in its Civil Case No. 02-1029, an action for reformation of instrument thereat instituted by the petitioner against the herein respondent, Export and Industry Bank (EIB).

The relevant facts, pertaining to the sole issue of whether the CA gravely erred when it nullified the RTC's order granting petitioner's prayer for a writ of preliminary injunction in Civil Case No. 02-1029, are as follows:

During the period 1994-1995, RDR Property Holdings, Inc. (RDR), which was a subsidiary of petitioner Duvaz Corporation (Duvaz) until it was eventually absorbed by the latter, obtained various loans from the then Urban Banking Corporation (Urban Bank) to finance its real estate business. These loans were secured by real estate mortgages on seventeen (17) condominium units and thirty (30) parking slots at The Peak Condominium situated at 107 Alfaro St., Salcedo Village, Makati City.

Sometime after it declared a bank holiday on April 25, 2000, Urban Bank was acquired and merged with respondent EIB.

Meanwhile, as a consequence of RDR being absorbed by petitioner Duvaz, the latter acquired all the assets and liabilities of the former, more specifically RDR's loan obligations with Urban Bank, which loan obligations were later transferred to respondent EIB as a result of the corporate merger of the two banks.

With the 1997 Asian financial crisis sending the Philippine economy into turmoil, petitioner Duvaz defaulted in the payment of its loan obligations with Urban Bank as they fell due. On record, petitioner and Urban Bank mutually agreed to the restructuring of the former's indebtedness. By virtue of said loan restructuring, petitioner executed in favor of Urban Bank twelve (12) promissory notes for P20 Million each and one (1) promissory note for P23 Million, or a total of P263 Million, with a uniform interest rate of 18.75% per annum, and all to mature on October 31, 2000.

Respondent EIB took over the operations of Urban Bank sometime before maturity of the restructured loans. Eventually, the restructured loans matured and became due and demandable. Because the loans remained unpaid, however, respondent EIB required petitioner Duvaz to submit a mutually acceptable plan for the payment of the loan which, as of June 30, 2002, already amounted to P562,157,530.02 inclusive of interest and penalty charges. However, instead of submitting any proposal for a plan of payment, as required by respondent, petitioner protested the total amount of obligation being demanded upon.

On August 8, 2002, respondent EIB sent a final demand letter to petitioner to settle its obligations.

It was on account of said demand letter that on August 29, 2002, in the RTC of Makati City, petitioner Duvaz filed against respondent EIB a complaint for reformation of instrument with prayer for a temporary restraining order and/or writ of preliminary injunction to enjoin EIB, as defendant in the suit, from commencing any foreclosure proceedings on the mortgaged properties of the petitioner as plaintiff. In its complaint, docketed in the same court as Civil Case No. 02-1029 and raffled to Branch 143 thereof, Duvaz alleged that its real agreement of dacion en pago with Urban Bank (EIB's predecessor-in-interest), which true agreement was intended for the full and complete settlement of its entire obligation, was not reflected in the loan-restructuring agreement that was entered into in 1998, hence, the need to modify the terms thereof to reflect the parties' true intention.

Pending determination of the merit of petitioner's prayer for a writ of preliminary injunction, the parties mutually agreed to maintain the status quo ante. The trial court, therefore, found no need to issue any temporary restraining order.

Eventually, however, via an Order^[2] dated September 25, 2002, the court granted the preliminary injunction prayed for by Duvaz, to wit:

WHEREFORE, in the interest of justice and equity, the Court GRANTS the injunction prayed for and accordingly orders defendant [to refrain] from initiating any foreclosure proceedings until further orders from this Court. Bond is fixed at TEN MILLION PESOS (P10,000,000.00). (Words in brackets added.)

SO ORDERED.

In time, EIB moved for reconsideration but its motion was denied by the court in its subsequent order of January 8, 2003.

Therefrom, EIB went to the CA on a petition for certiorari, thereat docketed as CA-G.R. SP No. 75903.

As stated at the threshold hereof, the CA, in its herein assailed Decision of March 26, 2004, nullified the challenged orders of the trial court pertaining to the preliminary injunction it issued in favor of Duvaz, thus:

WHEREFORE, premises considered, the instant petition for certiorari is hereby GRANTED. Accordingly, the assailed orders are ANNULLED AND SET ASIDE and a new one issued DENYING [petitioner's] prayer for a writ of preliminary injunction.

SO ORDERED.

In granting EIB's certiorari petition and nullifying the questioned orders of the trial court, the appellate court notes Duvaz' failure to show in its complaint and at the hearing of its application for preliminary injunction the indubitable existence of its right to the injunctive relief. In the precise words of the CA:

In the case at bar, [petitioner] sought to enjoin [respondent] from foreclosing its mortgage properties on the ground that their alleged agreement entered into in 1998 is in reality a dacion en pago and not a loan-restructuring agreement which is the written contract. In short, [petitioner's] alleged right emanates from an alleged dacion en pago which is yet to be proven in Court. This right is, therefore, contingent and future which cannot be protected by a writ of preliminary injunction. Moreover, the parol evidence rule proscribes the varying of the terms of a written agreement except in certain cases. [Petitioner] claims that its case falls under the exception, but then this is harping on the exception, not the rule, which is yet to be proven during trial. If indeed, there is such an agreement as dacion en pago, then only at that time can we say that [petitioner] possesses the right to be protected. But of course, this is merely conjectural and a future proposition, if not assumption, which is, however, insufficient to support the grant of a writ of preliminary injunction. (Words in brackets supplied.)

Hence, this recourse by petitioner Duvaz, it being its submission that the CA gravely erred -

- xxx in failing to recognize that Duvaz has an actual, existing right in esse that may properly be protected by writ of preliminary injunction.
- xxx when it reversed the lower court, because it failed to comprehend the trial court's basis and rationale in granting the injunctive writ. The appellate court committed serious error in finding that Duvaz's "alleged right emanates from an alleged dacion en pago which is yet to be proven in court," and that such right, being "contingent and future, xxx cannot be protected by a writ of preliminary injunction." In fact, Duvaz has more than one clear legal right in esse to protect.
- xxx in holding that "the parole evidence rule proscribing the varying of the terms of a written agreement, except in certain cases," applies in this instance, as to bar Duvaz from proving the existence of the agreement for dacion en pago by parole evidence.
- xxx in granting [EIB's] petition and lifting the preliminary injunction against EIB's foreclosure of the mortgaged properties of Duvaz, because the challenged Decision effectively allows EIB to carry out extrajudicial foreclosure based on a sham and simulated agreement made in contravention of law, thereby enabling respondent bank to unjustly enrich itself at petitioner's expense to the tune of hundreds of millions of pesos; this will consequently result in substantial, permanent, irreparable and irreversible damage being unjustly inflicted upon petitioner. Moreover, the challenged Decision will inequitably and inevitably result in preventing Duvaz from enforcing its just and lawful claim against respondent bank, and in denying Duvaz its day in court.
- xxx in granting EIB's Petition, which was not only premature, but also constituted flagrant forum shopping, and should have been dismissed outright, with corresponding imposition of sanctions on account thereof.

We DENY.

With the recognition of the fact that the present petition only involves the propriety of the RTC's issuance of the writ of preliminary injunction and not the merit of the main action for reformation of instrument, the issues presently raised by the petitioner may be reduced to only two: first, whether there exists a right in esse on petitioner's part which may rightfully be the basis for the issuance of a writ of preliminary injunction; and second, whether EIB's recourse to the CA in CA-G.R. SP No. 75903 from the orders of the trial court in the matter of preliminary injunction constitutes forum shopping. The rest of the issues raised by the petitioner may be properly argued in the main case before the trial court.

Anent the first issue, the requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the plaintiff is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violation. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.[3]

In Almeida v. Court of Appeals,[4] the Court stressed how important it is for the applicant for an injunctive writ to establish his right thereto by competent evidence:

Thus, the petitioner, as plaintiff, was burdened to adduce testimonial and/or documentary evidence to establish her right to the injunctive writs. It must be stressed that injunction is not designed to protect contingent or future rights, and, as such, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. A clear and positive right especially calling for judicial protection must be

established. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an action which did not give rise to a cause of action. There must be an existence of an actual right. Hence, where the plaintiff's right or title is doubtful or disputed, injunction is not proper.

An injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation. The possibility of irreparable damage without proof of an actual existing right would not justify injunctive relief in his favor.

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x x x. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. As the Court had the occasion to state in *Olalia v. Hizon*, 196 SCRA 665 (1991):

It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it. (Emphasis supplied.)

We are in full accord with the CA when it struck down, for having been issued with grave abuse of discretion, the RTC's Order of September 25, 2002, granting petitioner's prayer for a writ of preliminary injunction during the pendency of the main case, Civil Case No. 02-1029. The reason therefor is that the right sought to be protected by the petitioner in this case through the writ of preliminary injunction is merely contingent and not in esse. It bears stressing that the existing written contract between petitioner and respondent was admittedly one of loan restructuring; there is no mention whatsoever or even a slightest reference in that written contract to a supposed agreement of *dacion en pago*. In fine, it is still necessary for petitioner to establish in the main case its rights on the alleged *dacion en pago* before those rights become in esse or actual and existing. Only then can the injunctive writ be properly issued. It cannot be the other way around. Otherwise, it will be like putting the cart before the horse.

Besides, conformably to the Parol Evidence Rule, which is the general rule, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, as between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. This poses another big obstacle to a favorable finding of petitioner's right in esse under the alleged *dacion en pago* agreement. Again, petitioner must first establish that alleged agreement in the main case where it bears the burden of duly proving by competent evidence that the written loan restructuring agreement failed to express the true intent of the parties. Until and unless this has been successfully carried out, there is no right in esse to speak of. And with EIB denying petitioner's allegation of a right arising from an alleged *dacion en pago* agreement supposedly entered into by it not with EIB itself, but with Urban Bank, petitioner's burden becomes doubly cumbersome.

It must be stressed that a clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. There must be a patent showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right.[5] In the present case, we find no such actual and existing right in favor of the petitioner that demands protection by the office of

preliminary injunction. To stress, the written contract admittedly existing between petitioner and respondent's predecessor-in-interest (Urban Bank) is a loan restructuring agreement which is completely silent about the dacion en pago arrangement being harped upon by petitioner.

With the reality that EIB very much puts in issue in the main case the existence of the alleged dacion en pago contract relied upon by the petitioner in its complaint, we rule and so hold, as did the CA, that the issuance by the trial court of the writ of preliminary injunction to protect a right asserted by the petitioner under the disputed dacion en pago arrangement truly constitutes grave abuse of discretion.

This brings us to the second issue of whether, in invoking the CA's jurisdiction to rectify the trial court's grave abuse of discretion, respondent EIB thereby ventured into forum shopping.

We hold in that there is no forum shopping in this case.

There is forum shopping when any party litigant repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court. It has also been defined as an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of certiorari, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[6]

Here, EIB assailed the trial court's order directing the issuance of the writ of preliminary injunction by filing a petition for certiorari with the CA. Seeking a reversal of an adverse judgment or order by appeal or certiorari does not constitute forum shopping. Such remedies are sanctioned and provided for by the rules. There will only be forum shopping when a party seeks a favorable opinion, other than by appeal or certiorari, in another forum.[7] There is simply no rhyme nor reason to tag as forum shopping EIB's availment of a remedy provided under the rules in a situation where, as here, the RTC clearly gravely abused its discretion.

Besides, the function of certiorari before the CA is only to annul the assailed interlocutory order of the trial court and nothing else. The CA cannot go beyond the said assailed interlocutory order and dismiss the main action which has not yet been resolved with finality.

WHEREFORE, the instant petition is DENIED and the assailed CA Decision dated 26 March 2004 is AFFIRMED in toto.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), on official leave.

Sandoval-Gutierrez, (Acting Chairperson), Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Mariano C. Del Castillo and Vicente Q. Roxas, concurring; Rollo, pp. 82-87.

[2] Id. at 284-288.

[3] Lim v. Court of Appeals, G.R. No. 134617, February 13, 2006, 482 SCRA 326.

[4] G.R. No. 159124, January 17, 2005, 448 SCRA 681.

[5] Levi Strauss & Co. v. Clinton Apparelle, Inc., G.R. No. 138900, September 20, 2005.

[6] Canuto v. NLRC, 412 Phil. 467 (2001).

[7] Silahis International Hotel, Inc. v. NLRC, GR. No. 104513, August 4, 1993, 225 SCRA 94.

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