

EQUITABLE PCI BANK, INC., PETITIONER, VS. MARIA LETICIA FERNANDEZ AND ALICE SISON VDA. DE FERNANDEZ, RESPONDENTS.

G.R. No. 163117. December 18, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the 29 October 2003[2] and 1 April 2004[3] Resolutions of the Court of Appeals in CA-G.R. SP No. 79804. In its 29 October 2003 Resolution, the Court of Appeals dismissed petitioner Equitable PCI Bank, Inc.'s (EPCIB)[4] petition for certiorari and affirmed the 28 January 2003[5] Order of the Regional Trial Court of Urdaneta City, Branch 45 (trial court), granting respondents Maria Leticia Fernandez and Alice Sison Vda. de Fernandez's (respondents) application for a writ of preliminary injunction. In its 1 April 2004 Resolution, the Court of Appeals denied EPCIB's motion for reconsideration.

The Facts

From 1998 to 2000, EPCIB extended several loans to respondents totaling P26,200,000. The loans were evidenced by several promissory notes executed by respondents in favor of EPCIB.[6] The loans were also secured by real estate mortgages over five parcels of land covered by Transfer Certificate of Title Nos. 182321, 182866 and 182867, registered in the name of respondents, and Transfer Certificate of Title Nos. 224062 and 224063, registered in the name of Alice Sison Vda. de Fernandez.[7]

The promissory notes matured and, despite demands by EPCIB, respondents failed to pay the loans. On 22 October 2002, pursuant to the provisions of the Deeds of Real Estate Mortgage, EPCIB filed a petition for the extra-judicial foreclosure of the mortgaged properties before the Office of the Clerk of Court, Urdaneta City.[8] After due notice and publication, the foreclosure sale was scheduled on 16 December 2002.[9]

On 11 December 2002, respondents filed with the trial court a complaint for annulment of real estate mortgages, notice of extra-judicial sale and foreclosure proceedings with application for a temporary restraining order or writ of injunction against EPCIB and Sheriff IV Crisanto M. Parajas.[10]

On 16 December 2002, the trial court issued a 20-day temporary restraining order to enjoin the foreclosure sale.[11] The trial court also set the hearing of respondents' application for a writ of preliminary injunction on 6 January 2003.

On 28 January 2003, the trial court issued the writ of preliminary injunction enjoining the foreclosure of respondents' properties pending the final disposition of the case. The trial court's 28 January 2003 Order provides:

WHEREFORE, let a Writ of Preliminary Injunction be issued ordering the defendants bank and Sheriff and all persons acting under them to cease and desist from conducting the extrajudicial foreclosure with sale of the properties of the plaintiffs covered by TCT Nos. 224062, 224063, 182321, 182866 and 182867 and from

undertaking disposition of said properties until further orders from the Court.

Pursuant to Section 4, Rule 58 of the New Rules of Court, the plaintiffs are hereby directed to file an injunction bond in the amount of P200,000.00 for said plaintiffs to pay such amount to the defendant bank, which they may sustain by reason of the injunction of the Court should it finally decide that the plaintiffs are not entitled thereto.

Said injunction bond shall be filed by the plaintiffs within fifteen (15) days receipt of a copy of this Order.

In the meantime, set the pre-trial of this case to March 3, 2003 at 8:30 o'clock in the morning.

SO ORDERED.[12]

EPCIB filed a motion for reconsideration. In its 16 July 2003 Resolution,[13] the trial court denied the motion.

On 10 October 2003, EPCIB filed a petition for certiorari before the Court of Appeals. EPCIB argued that the trial court issued the 28 January 2003 Order and 16 July 2003 Resolution without any factual or legal basis.

In its 29 October 2003 Resolution, the Court of Appeals dismissed EPCIB's petition for lack of merit.

EPCIB filed a motion for reconsideration. In its 1 April 2004 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The 28 January 2003 Order of the Trial Court

According to the trial court, the issuance of a writ of preliminary injunction rests upon the sound discretion of the court.[14] The trial court declared that the foreclosure of respondents' properties would affect respondents' rights over the properties which, according to respondents, were already worth P100,000,000 as opposed to the loan of only P26,200,000.[15] The trial court ruled that, pending the determination of the merits of the principal case, the foreclosure of the real estate mortgage should be held in abeyance.

The 29 October 2003 Resolution of the Court of Appeals

According to the Court of Appeals, EPCIB failed to show that the trial court acted with grave abuse of discretion when it issued the order granting the writ of preliminary injunction. The Court of Appeals said an order granting a writ of preliminary injunction is an interlocutory order and as such, it cannot by itself be subject of an appeal or a petition for certiorari. The Court of Appeals added that the proper remedy of a party aggrieved by such an order is to bring an ordinary appeal from an adverse judgment in the main case, citing therein the grounds for assailing the interlocutory order. While the Court of Appeals admitted that there were some cases where the Supreme Court allowed a party to file a petition for certiorari where the assailed orders were patently erroneous and an appeal would not afford adequate and expeditious relief, the Court of Appeals declared that said circumstances were not present in this case.

The Issue

EPCIB raises the sole issue that:

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN SUMMARILY DISMISSING PETITIONER BANK'S PETITION FOR CERTIORARI BECAUSE THE TRIAL COURT BLATANTLY ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ISSUED THE ASSAILED ORDERS.[16]

The Ruling of the Court

The petition has merit.

While EPCIB admits that an interlocutory order cannot be the subject of an appeal or a petition for certiorari, EPCIB argues that where the interlocutory order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction, such order may be questioned before the court on a petition for certiorari.

We agree with the Court of Appeals that interlocutory orders, because they do not dispose of the case on the merits, are not appealable.[17] Likewise, the extraordinary writ of certiorari is generally not available to challenge an interlocutory order of the trial court. In such a case, the proper remedy of the aggrieved party is an ordinary appeal from an adverse judgment, incorporating in the appeal the grounds for assailing the interlocutory order.[18] However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court may allow certiorari as a mode of redress.[19]

EPCIB maintains that the trial court issued the writ of preliminary injunction without any factual or legal basis. EPCIB adds that respondents failed to show that they have a right which will be violated should the mortgaged properties be foreclosed. EPCIB also points out that respondents failed to establish that the foreclosure will cause grave and irreparable injury to them which cannot be compensated in the ordinary course of law.

For the issuance of a writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage.[20] In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.[21]

In this case, respondents failed to show that they have a right to be protected and that the acts against which the writ is to be directed are violative of the said right. The records of the case, the Orders of the trial court and the Resolutions of the Court of Appeals make no mention of respondents' said right. In fact, respondents do not deny their indebtedness to EPCIB.[22]

Foreclosure is valid where the debtor is in default in the payment of an obligation.[23] The essence of a contract of mortgage indebtedness is that a property has been identified or set apart from the mass of the property of the debtor-mortgagor as security for the payment of money or the fulfillment of an obligation to answer the amount of indebtedness, in case of default in payment.[24] Foreclosure is but a necessary consequence of non-payment of the mortgage indebtedness.[25] In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.[26]

On the face of respondents' clear admission that they were unable to settle their obligations which were secured by the mortgages, EPCIB has a clear right to foreclose the mortgages.[27] We fail to see any reason why the foreclosure of the mortgages should be enjoined, and the issuance of the preliminary injunction constitutes grave abuse of discretion.

WHEREFORE, we GRANT the petition. We REVERSE and SET ASIDE the 29 October 2003 and 1 April 2004 Resolutions of the Court of Appeals in CA-G.R. SP No. 79804. We NULLIFY the writ of preliminary injunction issued by the Regional Trial Court of Urdaneta City, Branch 45.

SO ORDERED.

Leonardo-De Castro[*], Bersamin[**], Del Castillo, and Abad, JJ., concur.

[*] Designated additional member per Special Order No. 776.

[**] Designated additional member per Raffle dated 14 December 2009.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 31-32. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Eloy R. Bello, Jr. and Arturo D. Brion (now Associate Justice of this Court), concurring.

[3] Id. at 40.

[4] Formerly Equitable Banking Corporation.

[5] Rollo, pp. 33-38.

[6] Annexes "D" to "D-4," records, pp. 101-108. The following are the promissory notes executed by respondents:

- Promissory Note No. 000471 granted on 19 June 2000 for P1,260,000 and due on 11 November 2000;
- Promissory Note No. 990294 granted on 21 June 1999 for P2,000,000 and due on 31 December 2001;
- Promissory Note No. 1072595 granted on 18 August 2000 for P740,000 and due on 31 January 2001;
- Promissory Note No. 990439 granted on 18 April 2000 for P18,000,000 and due on 9 June 2000; and
- Promissory Note No. 990440 granted on 18 April 2000 for P4,200,000 and due on 12 October 2000.

[7] Annexes "A" to "A-2," id. at 10-24. The following are the Deeds of Real Estate Mortgage executed by respondents:

- Real Estate Mortgage dated 26 January 1998 for a loan of P2,000,000 with TCT Nos. 224062 and 224063 as collateral;
- Real Estate Mortgage dated 13 February 1998 for a loan of P20,000,000, supplemented by Real Estate Mortgage dated 18 May 2000 for a loan of P6,000,000, with TCT Nos. 182321, 182866 and 182867 as collateral.

[8] Id. at 59-61.

[9] Rollo, pp. 140-142.

[10] Id. at 58-65.

[11] Id. at 93-94.

[12] Id. at 38.

[13] Id. at 113-115.

[14] Citing *Urbanes, Jr. v. Court of Appeals*, 407 Phil. 856 (2001).

[15] Rollo, p. 37.

[16] Id. at 252.

[17] Arabesque Industrial Philippines, Inc. v. Court of Appeals, G.R. No. 101431, 14 December 1992, 216 SCRA 602.

[18] Salcedo-Ortañez v. Court of Appeals, G.R. No. 110662, 4 August 1994, 235 SCRA 111.

[19] Id.

[20] Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank, G.R. No. 161004, 14 April 2008, 551 SCRA 183; Suico Industrial Corporation v. Court of Appeals, 361 Phil. 160 (1999).

[21] Suico Industrial Corporation v. Court of Appeals, supra; Spouses Arcega v. Court of Appeals, 341 Phil. 166 (1997).

[22] Rollo, p. 60. In their complaint, respondents admitted that they were still indebted to EPCIB. Respondents stated that:

7. It appears that plaintiffs (herein respondents) paid more than P7,470,853.22 in interest covered by the above promissory notes mentioned in par. 4a and paragraph 6 above and there is a need for accounting to determine the total amounts paid in interest imperatively necessitating a conference table by the parties to that effect.

[23] State Investment House, Inc. v. Court of Appeals, G.R. No. 99308, 13 November 1992, 215 SCRA 734.

[24] China Banking Corporation v. Court of Appeals, G.R. No. 121158, 5 December 1996, 265 SCRA 327.

[25] Producers Bank of the Philippines v. Court of Appeals, 417 Phil. 646 (2001).

[26] Union Bank of the Philippines v. Court of Appeals, 370 Phil. 837 (1999).

[27] China Banking Corporation v. Court of Appeals, supra note 24.

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