

FAR EAST BANK AND TRUST COMPANY, PETITIONER, VS.SHEMBERG MARKETING CORPORATION, MACKIE INDUSTRIES CORPORATION, BENSON INDUSTRIES, INC., KAMARO ENTERPRISES CORP., POLYSACCHARIDE ...

G.R. NO. 163878. December 12, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari assailing the Decision[2] and Resolution[3] of the Court of Appeals dated February 16, 2004 and May 28, 2004 in CA-G.R. SP No. 67270.

Far East Bank & Trust Company (FEBTC), petitioner, is a domestic banking corporation organized and existing under Philippine laws. It is now managed and operated by the Bank of the Philippine Islands with main office in Makati City.

Shemberg Marketing Corporation, Mackie Industries Corporation, Benson Industries Incorporated, Kamaro Enterprises Corporation, Polysaccharide Corporation, Prime Crafts Incorporated, Cebu United Polymer Corporation, Shemberg Natures Craft Inc., respondents herein, are all duly registered domestic corporations based in Pakna-an, Mandaue City. The individual respondents, all surnamed Dacay, are directors and corporate officers of the said corporations.

Respondents are the registered owners of several realties located in Mandaue City described as follows:

LOT NOS. AREA (in square meters) REGISTERED OWNER(S) TRANSFER CERTIFICATES OF TITLE (TCT) NOS.

2209-A 6,384 Henry Dakay, Benson Dakay, Ernesto Dakay, Jr., Ramon Dakay 14231

2230 6,677 Mackie Industries Corp. (19073)-5795

2231 5,563 Mackie Industries Corp. (T-21005)-6216

2232 16,139 Mackie Industries Corp. (T-19451)-5929

2207 8,847 Mackie Industries Corp. (T-19208)-5857

3 11,224 Shemberg Marketing Corp. 26079

2266-A 3,112 Shemberg Marketing Corp. 19942

7 1,322 Shemberg Marketing Corp. 26938

4 3,685 Shemberg Marketing Corp. 26080

Prior to 1998, respondents entered into several credit transactions with petitioner secured by several real estate

mortgages, thus:

DATES OF MORTGAGE MORTGAGORS SIGNATORIES AMOUNTS

December 6, 1977 Mackie Industries Corp. Mary U. Dacay P3,000,000.00

February 21, 1979 Mackie Industries Corp. Ernesto Dakay, Sr., and Mary U. Dakay P500,000.00

March 21, 1979 Mackie Industries Corp. Ernesto Dakay, Sr., and Mary U. Dacay P1,000,000.00

June 25, 1982 Mackie Industries Corp. Mary U. Dacay P292,000.00

October 27, 1982 Shemberg Marketing Corp. Mary U. Dacay P3,708,000.00

August 14, 1984 Shemberg Marketing Corporation Ernesto Dacay, Jr., Benson Dacay, Ramon Dacay, Mary Dacay, Ernesto Dacay, Sr., and Henry U. Dacay P10,000,000.00

May 7, 1990 Shemberg Marketing Corp, Benson Dakay P3,976.000.00

May 10, 1990 Shemberg Marketing Corp. & Mackie Industries Corp. Henry Dakay, Benson Dakay, Rosemary Tan Dakay, Ernesto Dakay, Jr., and Ramon Dakay P1,565,000.00

September 25, 1991 Mackie Industries Corp., Henry Dakay, Benson Dakay, Ernesto Dakay, Ramon Dakay, and Mario Dakay Henry Dakay, Benson Dakay, Ernesto Dakay, and Ramon Dakay, P1,927,500.00

July 27, 1992 Mackie Industries Corp. & Shemberg Marketing Corp. Henry Dakay, Benson Dakay, Rosemary Tan Dakay, Ernesto Dakay, Jr., Ramon Dakay, and Mario Dakay P227,313.00

November 23, 1995 Mackie Industries Corp. & Shemberg Marketing Corp, Henry Dakay, Ramon Dakay, and Mario Dakay Henry Dakay, Benson Dakay, Ernesto Dakay, Jr., and Ramon Dakay P13,040,000.00

In their respective mortgage contracts, duly annotated on respondents' titles, the parties stipulated that upon failure or refusal of the mortgagor to pay the obligations when due, the entire principal, interest, penalties and other charges shall be immediately demandable and payable without need of notice or demand; and the mortgagee shall have the absolute discretion to foreclose the mortgage extrajudicially pursuant to Act No. 3135, as amended.

Pursuant to the parties' agreements, petitioner released to respondents the principal amounts of the loans as evidenced by various promissory notes, thus:

Note Nos. Dates Amounts Signatories

TLC-2-060-970509 April 8, 1997 P4,700,000.00 Mary U. Dacay

TLC-2-060-970518 July 31, 1997 P3,500,000.00 Mary U. Dacay

TLC-2-060-970115 September 8, 1997 P11,000,000.00 Mary U. Dacay

TLC-2-060-970153 December 4, 1997 P5,000,000.00 Mary U. Dacay

TLC-2-060-970155 December 15, 1997 P10,000,000.00 Mary U. Dacay

TLC-2-060-970156 December 15, 1997 P10,000,000.00 Mary U. Dacay

TLC-2-060-970157 December 15, 1997 P5,000,000.00 Mary U. Dacay

TLC-2-060-985002 January 12, 1998 P13,290,000.00 Mary U. Dacay

TLC-1-060-98512 February 6, 1998 P8,270,000.00 Mary U. Dacay
TLC-2-060-98563 February 27, 1998 P9,342,899.00 Mary U. Dacay
TLC-2-060-985640 March 20, 1998 P6,632,500.00 Mary U. Dacay Henry U. Dacay
TLC 2-060-986024 April 27, 1998 P19,450,000.00 Mary U. Dacay
TLC 2-060-986025 April 27, 1998 P13,968,990.00 Mary U. Dacay
TLC 2-060-986026 April 27, 1998 P8,558,000.00 Mary U. Dacay
TLC 2-060-986029 April 28, 1998 P7,216,000.00 Mary U. Dacay
TLC 2-060-986030 April 28, 1998 P37,600,000.00 Mary U. Dacay
TLC 2-060-986031 April 28, 1998 P16,436,000.00 Mary U. Dacay
TLC 2-060-986032 April 28, 1998 P20,658,860.00 Mary U. Dacay
TLC-2-060-986297 July 20, 1998 P13,691,490.00 Mary U. Dacay
TLC-2-060-986298 July 20, 1998 P14,511,807.04 Mary U. Dacay
TLC-2-060-986299 July 20, 1998 P74,109,900.00 Mary U. Dacay
TLC-2-060-986300 July 20, 1998 P98,094,243.30 Mary U. Dacay
TLC-2-060-970161 July 20, 1998 P5,239,000.00 Ernesto Dacay, Jr. Mary U. Dacay

However, respondents failed to pay the loans which matured on February 14, 2001. Thus, petitioner sought to foreclose the mortgages extrajudicially.

On February 28, 2001, respondents filed with the Regional Trial Court, Branch 56, Mandaue City, a Complaint[4] for Declaratory Relief, Injunction, Damages, Annulment of Promissory Notes, Documents, and Contracts against petitioner, docketed as Civil Case No. MAN-4045. The complaint alleges that prior to 1998, respondents obtained credit accommodations from petitioner. The latter required respondents' representatives to sign "standard pre-printed bank forms in fine print, such as Credit Line Agreements (CLA), Promissory Notes (PN), Real Estate Mortgages (REM), Chattel Mortgages (CM), Trust Receipts (TR), Surety Agreements (JSS) and other bank forms and documents." Respondents complied since they trusted petitioner. However, it turned out that petitioner's employees filled the blanks with "false and inaccurate entries." Respondents deny and dispute the genuineness and due execution of the documents and pray for the following reliefs:

- Immediately upon filing, to issue ex parte a 72-hour temporary restraining order and thereafter upon summary hearing, to issue a temporary restraining order for a maximum period of twenty (20) days restraining and enjoining defendants, their agents, representatives or any other persons acting on their behalf from doing or proceeding with the following:

- a) proceeding with the auction sale of the properties under the REMs,
- b) execution of Certificate of Sale;
- c) registering Certificate of Sale with the Registry of Deeds;
- d) execution of the Deed of Final Sale and other consolidation documents;
- e) publication of Notices of Sale;
- f) posting of Notices of Sale;
- g) using the questioned documents, like the TRs, to seek administrative, civil, or criminal remedies;

h) disturbing the status quo prior to the litigation.

- After due notice and hearing, a Preliminary Injunction be issued upon posting of a bond enjoining defendant, its employees, agents, representatives, or any other persons acting on its behalf from doing the above acts complained against;

- After trial, it is prayed that judgment be rendered in favor of plaintiffs and against defendant as follows:

a) Declaring null and void the CLA, REMs, CMs, PNs, JSS, TRs, and other related documents, the notices of sale, the entire foreclosure proceedings, including the auction sale, the amount claimed by the bank to be the outstanding account, the amount claimed by the bank to be the principal, the interest unilaterally imposed by the bank, the penalties imposed by the bank and the PNs made basis for default and foreclosure;

b) Declaring the CLA, REMs, CMs, PNs, JSS, TRs, and other related documents as without consideration, invalid, inoperative, ineffective, unenforceable, null and void and to cancel the same;

c) To make the injunction permanent;

d) To order the bank to comply with its commitments, assurances and representations to help in the rehabilitation of the Dacay Group and the restructuring of its obligations, if any;

e) To award to plaintiffs moral damages of P300,000.00, exemplary damages of P200,000.00, attorney's fees of P200,000.00 plus P1,000.00 per billable hour, and litigation expenses of P300,000.00;

f) Declaring that the defendant cannot validly do, perform or suffer to be done the acts complained of.

On March 9, 2001, the trial court issued an Order[5]granting respondents' prayer for the issuance of a temporary restraining order (TRO), thus:

In resolving the petition for the issuance of a TRO the court, without going into the merits of the case has taken into consideration:

a) the fact that petitioners/plaintiffs are presently in the process of rehabilitating their business concerns and for which purpose, a consortium of banks/creditors has been put into existence and that Far East Bank and Trust Company (FEBTC) even had initially approved and led such effort as indicated by the participation of one of its Senior Vice Presidents Ricardo G. Lazatin;

b) the admission by respondent/defendant, in open court, that it has already initiated foreclosure proceedings against petitioners/plaintiffs and that it has in fact scheduled on March 30, 2001 the auction sale of petitioners' properties subject matter of the foreclosure proceedings, as well as the consequent damage resultant thereto;

c) the purpose of a temporary restraining order (TRO) which is merely to suspend proceedings until there may be an opportunity to inquire whether any injunction should be granted. In resolving the petition for the issuance of a TRO the court, without going into the merits of the case has taken into consideration:

a) the fact that petitioners/plaintiffs are presently in the process of rehabilitating their business concerns and for which purpose, a consortium of banks/creditors has been put into existence and that Far East Bank and Trust Company (FEBTC) even had initially approved and led such effort as indicated by the participation of one of its Senior Vice Presidents Ricardo G. Lazatin;

b) the admission by respondent/defendant, in open court, that it has already initiated foreclosure proceedings against petitioners/plaintiffs and that it has in fact scheduled on March 30, 2001 the auction sale of petitioners' properties subject matter of the foreclosure proceedings, as well as the consequent damage resultant thereto;

c) the purpose of a temporary restraining order (TRO) which is merely to suspend proceedings until there may be an opportunity to inquire whether any injunction should be granted.

WHEREFORE, foregoing premises considered and in the interest of substantial justice, the defendant is hereby ordered to cease and desist and/or its agents, representatives or any other person acting in its behalf to immediately stop foreclosure proceedings of plaintiffs' properties subject matter of the said foreclosure proceedings, including but not being limited to publication for foreclosure and subsequent auction sale of the said properties.

SO ORDERED.

Petitioner filed its Answer with Affirmative Defenses, Counterclaim, and Vigorous Opposition to the Order directing the issuance of a TRO and/or preliminary mandatory injunction. Likewise, petitioner filed a Motion to Dismiss Based On Affirmative Defenses alleging that: (1) the venue is improperly laid; (2) the trial court did not acquire jurisdiction over the case for non-payment of proper docket fees; (3) there is non-joinder of indispensable parties; and (4) the trial court has no jurisdiction to enjoin the foreclosure proceedings.

On March 27, 2001, the trial court issued an Order^[6] denying petitioner's motion to dismiss, thus:

This resolves defendant's Motion to Dismiss.

Defendant in his motion insists that the case should be dismissed on the following affirmative defenses: (a) venue is improperly laid; (b) lack of jurisdiction considering the non-payment of docketing fees; (c) non-joinder of indispensable parties and (d) lack of jurisdiction or authority to enjoin foreclosure proceedings.

VENUE

Records show that the office address of plaintiffs is in Mandaue City. In fact, defendant's annexes to its answer (Annex "I" and "L") admit that plaintiffs' business address and principal place of business are at Pakna-an, Mandaue City. Likewise similarly situated are the properties sought to be foreclosed. Apparently, foregoing considered, venue has been properly laid.

JURISDICTION

It is to be noted that the question of jurisdiction has not been raised by defendant except with the cause of action regarding annulment of mortgages on defendant's insistence that the tax declaration attached is not the latest. Considering however that annulment of mortgage is incapable of pecuniary estimation the court feels that jurisdiction is proper.

What determines the nature of an action and the court which has jurisdiction over it are the allegations made by the plaintiff. *Sandel v. Court of Appeals*, 262 SCRA 101,

A court's jurisdiction cannot be made to depend upon defenses set up in the answer or in a motion to dismiss but upon the allegations of the complaint. *Sandel v. Court of Appeals*, 262 SCRA 101,

INDISPENSABLE PARTY

Evidence has not been introduced, to the satisfaction of the court that indeed Far East Bank and Trust Company (FEBTC) no longer exists and BPI has taken over its assets and liabilities. Besides, the commercial linkage was between FEBTC and Shemberg as records show.

AUTHORITY

It is an inherent power of the court concomitant to its very existence to issue provisional remedies, like injunction, to protect the rights and interest of parties pending litigation.

Premises considered, the court feels and finds no basis to grant defendant's motion. Accordingly, the Motion to Dismiss is, as it is hereby, DENIED.

SO ORDERED.

Likewise on the same day, March 27, 2001, the trial court issued another Order[7] directing the issuance of a writ of preliminary injunction in favor of respondents, thus:

WHEREFORE, let a writ of injunction issue enjoining defendant, its employees, agents or representatives, and all those who may be acting in their behalf, from:

- (1) Taking further actions to foreclose the real estate and chattel mortgage collaterals of plaintiffs;
- (2) To maintain the status quo during the pendency of the proceedings and to refrain from performing the acts complained of including but not being limited to the publication and notice of sale, conducting any foreclosure auction sale and other similar acts which will violate the status quo.

The Clerk of Court is hereby directed to issue the writ prayed for.

Plaintiffs are ordered to put a bond of One Million Pesos (P1,000,000.00)

SO ORDERED.

Petitioner then filed with the trial court the following: (a) Motion to Resolve the Motion to Dismiss; (b) Motion to Dissolve Preliminary Mandatory Injunction; (c) Motion for Reconsideration of the Order Dated March 27, 2001; and (d) Opposition to the Sufficiency of Bond.

On August 16, 2001, the trial court issued the following Order:[8]

For consideration by the court are the defendant's (1) Motion for Reconsideration of the Denial of the Motion to Dismiss and (2) the Motion for Reconsideration of the Grant of Preliminary Mandatory Injunction.

After a careful and exhaustive consideration of the arguments adduced in Movant's Motion for Reconsideration of the Denial of its Motion to Dismiss, the court finds that the arguments advanced for consideration had already been treated and passed upon by this court.

The same finding also holds true with respect to defendant's Motion for Reconsideration of the Grant of Preliminary Mandatory Injunction.

Accordingly, both motions are hereby DENIED.

SO ORDERED.

Petitioner then filed with the Court of Appeals a petition for certiorari, prohibition, and mandamus, docketed as CA-G.R. SP No. 67270, contending that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the following: (1) Order dated March 9, 2001 granting respondents' prayer for a TRO; (2) Order dated March 27, 2001 ordering the issuance of a writ of preliminary injunction; (3) Order also dated March 27, 2001 denying its motion to dismiss; and (4) Order dated August 16, 2001 denying its motion for reconsideration of the Order denying its motion to dismiss and motion for reconsideration of the Order granting respondents' application for a preliminary injunction.

On February 16, 2004, the Court of Appeals promulgated its Decision dismissing the petition for certiorari.

The appellate court held that as the trial court has jurisdiction over the case, its orders or decisions upon all

questions therein, cannot be corrected by the extraordinary writ of certiorari.

Petitioner filed a motion for reconsideration but it was denied by the Court of Appeals in its Resolution of May 28, 2004.

Hence, the instant petition raising the following issues: (a) whether the trial court has jurisdiction over Civil Case No. MAN-4045; and (b) whether petitioner bank is entitled to the writs of certiorari, prohibition, and mandamus.

On the first issue, petitioner contends that in real actions, the assessed value of the property or if there is none, the estimated value thereof, must be alleged in the complaint, and shall serve as the basis for computing the fees. Nowhere in the complaint in Civil Case No. MAN-4045 did respondents allege the assessed values of their realties. Hence, there is no adequate basis for computing the proper filing fees. It necessarily follows that the fees paid are deficient. The trial court, therefore, did not acquire jurisdiction over the case.

Respondents counter that a perusal of the complaint in Civil Case No. MAN-4045 shows that the suit primarily involves cancellation of mortgages, an action incapable of pecuniary estimation. Consequently, petitioner's contention that there is a deficiency in the payment of docket fees is without merit.

A court acquires jurisdiction over a case only upon the payment of the prescribed fees.[9] The importance of filing fees cannot be gainsaid for these are intended to take care of court expenses in the handling of cases in terms of costs of supplies, use of equipment, salaries and fringe benefits of personnel, and others, computed as to man-hours used in the handling of each case.[10] Hence, the non-payment or insufficient payment of docket fees can entail tremendous losses to the government in general and to the judiciary in particular.

Is an action for cancellation of mortgage incapable of pecuniary estimation?

Under Section 19 (1) of Batas Pambansa Blg. 180, as amended by Republic Act No. 7691, Regional Trial Courts have sole, exclusive, and original jurisdiction to hear, try, and decide "all civil actions in which the subject of the litigation is incapable of pecuniary estimation."

In *Singsong v. Isabela Sawmill*,^[11] this Court laid the test for determining whether the subject matter of an action is incapable of pecuniary estimation, thus: Ascertain the nature of the principal action or remedy sought. If the action is primarily for recovery of a sum of money, the claim is considered capable of pecuniary estimation. Whether the trial court has jurisdiction would depend upon the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is only incidental or a consequence of the principal relief sought, the action is incapable of pecuniary estimation.

Here, the primary reliefs prayed for by respondents in Civil Case No. MAN-4045 is the cancellation of the real estate and chattel mortgages for want of consideration. In *Bumayog v. Tumas*,^[12] this Court ruled that where the issue involves the validity of a mortgage, the action is one incapable of pecuniary estimation. In the more recent case of *Russell v. Vestil*,^[13] this Court, citing *Bumayog*,^[14] held that an action questioning the validity of a mortgage is one incapable of pecuniary estimation. Petitioner has not shown adequate reasons for this Court to revisit *Bumayog* and *Russell*. Hence, petitioner's contention can not be sustained. Since respondents paid the docket fees, as computed by the clerk of court, consequently, the trial court acquired jurisdiction over Civil Case No. MAN-4045.

Concerning to the second issue, it should be noted that CA-G.R. SP No. 67270 is a petition for certiorari, prohibition, and mandamus alleging that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the following Orders: (1) Order dated March 9, 2001 granting respondents' prayer for a TRO; (2) Order dated March 27, 2001, directing the issuance of a writ of preliminary injunction; (3) Order

also dated March 27, 2001 denying petitioner's motion to dismiss; and (4) Order dated August 16, 2001 denying petitioner's motion for reconsideration of the denial of the motion to dismiss and motion for reconsideration of the grant of preliminary injunction.

This Court holds that the Court of Appeals did not commit grave abuse of discretion in issuing the questioned Orders.

There is grave abuse of discretion where the acts complained of amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reasons of passion or personal hostility.[15] It is such whimsical and capricious exercise of judgment as is equivalent to lack of jurisdiction.

The Court of Appeals found that the trial court acted in fair, reasonable, and expeditious manner, thus:

Thus, on the 6th of March 2001, His Honor held a hearing on the application for temporary restraining order. He conducted at least three trial-type hearings on the 19th, 20th, and 23rd of March 2001, complete with direct examination, cross-examination, re-direct examination, re-cross examination and marking and offer of exhibits vis-à-vis the application for the issuance of a writ of preliminary injunction. Four witnesses testified during the hearings – two for the Dacay Group and two for the bank. Both parties were even required to submit memoranda.

Indeed, the records are bereft of any indication that the trial court committed grave abuse of discretion in issuing the challenged Orders. Verily, the Court of Appeals correctly held that certiorari will not lie, the sole office of the writ being to correct grave abuse of discretion. Where a court has jurisdiction over the person and the subject matter of the action, as in the instant case, its decisions on all questions arising from the case are but exercises of such jurisdiction.[16] If its findings are not correct, these would at best be questions of law, not abuse of discretion correctible by the extraordinary remedy of certiorari.[17]

WHEREFORE, this Court DENIES the petition. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 67270 are AFFIRMED. Costs against petitioner, now the Bank of the Philippine Islands.¹²³

SO ORDERED.

Puno, C.J., Sandoval-Gutierrez, Corona, Azcuna and Garcia, JJ., concur.

[1] Also spelled "Dakay" in some parts of the record.

[2] Rollo, pp. 419-444. Penned by Associate Justice Renato C. Dacudao and concurred in by Presiding Justice Cancio C. Garcia (now a member of this Court) and Associate Justice Danilo B. Pine (retired).

[3] Id, pp. 522-523.

[4] Id. at 317-349.

[5] Id., pp. 385-386.

[6] Id., pp. 387-388.

[7] Id., pp. 389-394.

[8] Id., pp. 410.

[9] Manchester Development Corporation v. Court of Appeals, G.R. No. 75919, May 7, 1987, 149 SCRA 562.

[10] Pilipinas Shell Petroleum Corp. v. Court of Appeals, G.R. No. 76119, April 10, 1989, 171 SCRA 674, 680.

[11] G.R. No. 27343, February 28, 1979, 88 SCRA 623.

[12] 106 Phil. 715 (1959).

[13] G.R. No. 119347, March 17, 1999, 304 SCRA 738.

[14] Supra.

[15] Ala-Martin v. Sultan, G.R. No. 117512, October 2, 2001, 366 SCRA 316, 321, citing Azores v. Securities and Exchange Commission, 252 SCRA 387 (1996).

[16] Platinum Tours and Travel, Inc. v. Panlilio, G.R. No. 133365, September 16, 2003, 411 SCRA 142, 146.

[17] Okabe v. Gutierrez, G.R. No. 150185, May 27, 2004, 429 SCRA 685, 705, citing Lalican v. Vergara, 276 SCRA 518 (1997).

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