

CASENT REALTY & DEVELOPMENT CORPORATION, PETITIONER, VS. PREMIERE DEVELOPMENT BANK, RESPONDENT.

G.R. NO. 163902. January 27, 2006

Ponente: PUNO, J.

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PUNO, J.:

This is a Petition for Certiorari under Rule 45 of the Rules of Court assailing the decision of the Third Division of the Court of Appeals in CA-G.R. SP No. 80245 dated February 27, 2004, and its resolution dated May 25, 2004.

First, a brief overview of the facts.

On December 28, 1994, petitioner Casent Realty & Development Corporation (Casent Realty) obtained from respondent Premiere Development Bank (Premiere Bank) a commercial loan of Php40,000,000.00 secured by Promissory Note No. 235-Z and a real estate mortgage over a parcel of land covered by Transfer Certificate of Title No. 136244 of the Register of Deeds of Makati City. As the terms of the loan allowed Casent Realty to make balloon payments on the principal prior to its due date without pre-termination, it paid Php10,740,000.00 of the principal on August 24, 1995. This payment reduced the principal obligation to Php29,260,000.00. All other payments made by Casent Realty were applied to interest, penalties and other charges. To update interest payments on the said loan, two more commercial loans were obtained by Casent Realty in the amounts of Php7,860,000.00 and Php2,709,556.16, secured by Promissory Note Nos. 372-Z and 374-X, respectively, and by the same real estate mortgage over Transfer Certificate of Title No. 136244.[1]

In January 2001, Premiere Bank sent demand letters to Casent Realty involving the loans covered by Promissory Note Nos. 372-Z and 235-Z. In its desire to cut costs, Casent Realty decided to prepay its remaining obligations under Promissory Note No. 235-Z by selling some of its real properties not subject of the real estate mortgage. In addition, Casent Realty proposed a dacion en pago settlement. On several occasions, from March 2001 to July 2001, representatives of Casent Realty and Premiere Bank met in connection with the proposed settlement. In the course of the negotiations, Casent Realty sent letters to Premiere Bank asking for reconciliation of the application of payments over the loans.[2]

On August 2, 2001, Premiere Bank sent a letter to Casent Realty stating that the properties proposed by the latter for the dacion en pago were not acceptable. It further stated that, unless sufficient payment was made or a settlement be forged, it would file foreclosure proceedings against Casent Realty's collateral. In the same letter, Premiere Bank welcomed Casent Realty's request for a reconciliation of the outstanding balance of its loans.[3]

On August 28, 2001, Premiere Bank filed an application for extrajudicial foreclosure against the real estate mortgage executed by Casent Realty over the loans covered by Promissory Note Nos. 235-Z, 372-Z, and 374-X. In this connection, a Notice of Sheriff's Sale dated September 3, 2001 was issued setting the sale at public auction on October 17, 2001.[4]

Thus, on October 4, 2001, Casent Realty filed a complaint against Premiere Bank for injunction and damages with

prayer for preliminary injunction, temporary restraining order and accounting docketed as Civil Case No. 01-1477 with Branch 60 of the Regional Trial Court of Makati. After receipt of the summons and the copy of the complaint, Premiere Bank filed its answer with counterclaim.[5]

On October 15, 2001, the Regional Trial Court issued a temporary restraining order against the scheduled foreclosure proceeding. Afterwards, the court granted Casent Realty's prayer for preliminary injunction on February 27, 2002. It ruled that Premiere Bank's resort to foreclosure was premature due to the uncertainty of the actual amount of Casent Realty's unpaid obligation. Premiere Bank's motion for reconsideration was likewise denied.[6]

During the pre-trial conference on March 14, 2003, Premiere Bank rejected the amount offered by Casent Realty as settlement. At the next conference held on April 23, 2003, Premiere Bank manifested that it prepared a rough computation of the amount due based on a 15% annual interest rate after waiving all penalties. As Casent Realty disputed the accuracy of Premiere Bank's computation, the Regional Trial Court suggested that this be reviewed by an independent auditor. Both parties agreed to the procedure and each of the parties was ordered to submit a list of three independent accounting firms. From this list, the court chose Sycip Gorres Velayo and Co. as independent auditor. Thereafter, Casent Realty filed a Very Urgent Motion for Clarification on June 10, 2003 contending that the independent auditors could not conduct a review of Premiere Bank's computations to determine whether these were in compliance with banking standards and regulations as this would involve a pronouncement on the merits of the case. As an alternative, it proposed that the function of the independent auditors be limited to a historical review of the payments made and to determining whether the payments were applied properly.[7] The prayer of Casent Realty's motion reads, viz.:

WHEREFORE, it is most respectfully prayed that the functions of the independent auditor appointed by the Honorable Court as stated in the Order dated 26 May 2003 be clarified to refer merely to making a historical review of the payments made by plaintiff Casent Realty and the application thereof by defendant Premiere Bank, for the sole purpose of assisting the parties for a possible compromise agreement, without making any determination on matters affecting the merits of the instant case.

Other reliefs just and equitable are likewise prayed for.[8](Emphasis supplied)

A little over a month later or on July 21, 2003, the Regional Trial Court denied Casent Realty's Very Urgent Motion for Clarification but allowed it to file a manifestation that it was uninterested in having independent auditors assist the parties in arriving at an amicable settlement of the case so that pre-trial would proceed. The pertinent portions of the order are reproduced below:

[T]he issue before us is whether or not the independent auditor's task contemplates a review of the computation that would lead to the resolution of the issues in this case.

The court is of the belief that the independent auditor may undertake such a task but since the plaintiff apparently does not agree with the court, and the independent auditor is only being called in to assist the parties in arriving at a settlement and the court cannot compel the parties to agree to a settlement then necessarily, it cannot compel them to accept the assistance of the independent auditor whose task would have been to assist them on this matter.

In any case, the defendant was advised that in lieu of utilizing the independent auditor now, it may choose to utilize them when it is its turn to present evidence by filing the proper motion to have the issues subject of this case referred to a commissioner for resolution.

As for the plaintiff, considering that its counsel has manifested that it needs to be given time to consider the matters raised in the Order, it is given five days from today to file the said manifestation and the defendant is

given the same period from receipt thereof to file its own counter manifestation.

In the event the plaintiff decides to proceed with the pre-trial without utilizing the independent auditor, set the pre-trial of this case once again to Wednesday, August 13, 2003 at 10:00 in the morning.

SO ORDERED.[9]

Premiere Bank filed a Motion for Reconsideration of the order on July 24, 2003. It claimed that the relief granted was not within the scope of Casent Realty's motion for clarification as it merely questioned the extent of the independent auditors' functions.[10] On September 1, 2003, the Regional Trial Court denied Premiere Bank's motion for reconsideration on the ground that it could not compel the parties to arrive at an amicable settlement and accept the assistance of the independent auditor. [11]

From this denial, Premiere Bank filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure with the Court of Appeals dated October 28, 2003. The petition was docketed as C.A.-G.R. SP No. 80245 and raffled to the Third Division of the appellate court. In its petition, Premiere Bank contended that the Regional Trial Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its order dated July 21, 2003.[12]

On February 27, 2004, the Third Division of the Court of Appeals granted the petition. Though the appellate court agreed that it could not compel the parties to arrive at an amicable settlement, it deemed this principle inapplicable. Instead, the appellate court applied Rule 32 of the 1997 Rules of Civil Procedure and ruled that Casent Realty had agreed to the engagement of independent auditors by submitting its own list of proposed auditors.[13]

From this decision, Casent Realty filed a motion for reconsideration on March 25, 2004. It claimed that no agreement had been made as regards the appointment of independent auditors considering that the scope of work had yet to be agreed upon and argued that questions of this nature were not within the scope of a petition for certiorari.[14] Casent Realty's motion for reconsideration was denied by the Court of Appeals on May 25, 2004. The Third Division of the Court of Appeals ruled that grave abuse of discretion was involved as the trial court went beyond the relief sought and gave the option to Casent Realty to withdraw from the independent auditor arrangement. Casent Realty's argument that there was no written agreement was similarly brushed aside by the appellate court on the ground that only the scope of examination was questioned in its motion for clarification and not the validity of appointing independent auditors.[15]

Thus, the present petition for certiorari. Casent Realty raises the following errors of law: (1) the Court of Appeals erred in giving due course to Premiere Bank's petition for certiorari as the issue of whether the parties agreed to the appointment of an independent auditor is a question of fact; (2) the Regional Trial Court did not gravely abuse its discretion in granting Casent Realty the option to proceed to pre-trial without availing of the independent auditor; and (3) the Court of Appeals erred in ruling that Premiere Bank executed the written consent required by Section 1, Rule 32 of the 1997 Rules of Civil Procedure to refer issues to a commissioner.[16]

We rule for the petitioner.

In the absence of a prayer for general relief, the moving party usually is confined to the relief asked for in the motion or specified in its notice; at most, relief necessarily incident to what was asked for may be granted. On the other hand, where notice of the motion asks for specific relief, or for such other relief as may be just, the court may, under the alternative clause, afford any relief compatible with the facts presented. However, even under a prayer for general relief, only reliefs allied to, and not entirely distinct from, that specifically asked may be granted.[17] This rule has also been applied to pleadings. Thus, where a party has prayed only for specific relief

or reliefs as to a specific subject matter, usually no different relief may be granted. However, where a prayer for general relief is added to the demand of specific relief, the court may grant such other appropriate relief as may be consistent with the allegations and proofs.[18]

Though Casent Realty's motion for clarification contained a prayer for general relief,[19] we note that the motion did not question the propriety of appointing an independent auditor and merely sought to clarify the functions thereof. Considering that Casent Realty's motion focused solely on the functions of the independent auditor, the July 21, 2003 order of the Regional Trial Court was inconsistent with the allegations thereof.

However, the records are arid as to acts of the Regional Trial Court constituting grave abuse of discretion. It is basic that mere errors of law are not correctible via petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.[20] The grant of a Rule 65 petition for certiorari requires grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion exists where an act is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to 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 reason of passion or personal hostility.[21] For that reason, the Court of Appeals erred in granting Premiere Bank's Rule 65 petition for certiorari.

IN VIEW WHEREOF, the petition for review on certiorari is GRANTED. The decision of the Third Division of the Court of Appeals in CA-G.R. SP No. 80245 dated February 27, 2004, and its resolution dated May 25, 2004 are REVERSED and SET ASIDE. The July 21, 2003 order of Branch 60 of the Regional Trial Court of Makati permitting the petitioner to choose to proceed with pre-trial without utilizing an independent auditor, and the September 1, 2003 order denying respondent's motion for reconsideration are REINSTATED.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

[1] Rollo, p. 63.

[2] Id. at 63-64.

[3] Id at 64.

[4] Ibid.

[5] Ibid.

[6] Id. at 64-65.

[7] Id. at 65.

[8] Id. at 539.

[9] Id. at 542-543.

[10] Id. at 619-623.

[11] Id. at 65-66.

[12] Id. at 62-69.

[13] Ibid.

[14] Id. at 640-654.

[15] Id. at 75-76.

[16] Id. at 38-39.

[17] 60 C.J.S. Motions and Orders § 54 (2005).

[18] Spouses Gonzaga v. Court of Appeals, et al., 440 SCRA 397 (2004); See also 49 C.J.S. Judgments § 53 (2005), 71 C.J.S. Pleading § 112 (2005).

[19] Rollo, p. 539.

[20] Elks Club v. Rovira, 80 Phil. 272 (1948).

[21] Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, 170 SCRA 246 (1989); Tavera Luna Inc. v. Nable, 67 Phil. 340 (1939); Alafritz v. Nable, 72 Phil. 278 (1941).

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