

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. LA SUERTE TRADING & INDUSTRIAL CORPORATION, AS REPRESENTED BY EDWARD O. JOSON, RESPONDENT.

G.R. No. 164875. March 20, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated November 20, 2003 and the Resolution[2] dated August 6, 2004 of the Court of Appeals in CA-G.R. SP No. 73753.

The antecedent facts are as follows:

La Suerte Trading and Industrial Corporation (La Suerte) is the registered owner of five parcels of land located in Cabanatuan City covered by Transfer Certificates of Title Nos. T-34708,[3] T-34709,[4] T-34710,[5] T-34711[6] and T-37455.[7]

In 1994, Ricardo Joson, allegedly without authorization from the Board of Directors of La Suerte, mortgaged the said properties to Far East Bank and Trust Company (FEBTC). La Suerte discovered the mortgage only in 2001 when it received a notice[8] of the extra-judicial sale of the subject properties to be held on August 14, 2001.

On August 9, 2001, La Suerte, represented by its president Edward O. Joson, filed before the Regional Trial Court (RTC) of Cabanatuan City a complaint[9] against FEBTC, its successor-in-interest Bank of the Philippine Islands (BPI), and Numeriano T. Galang, Ex-Oficio Sheriff. It prayed for the nullification of the mortgage and for the issuance of injunction of the scheduled sale through the issuance of temporary restraining order (TRO), and thereafter, through a writ of preliminary injunction.

On August 10, 2001, the RTC, through an ex parte TRO,[10] enjoined BPI and Sheriff Galang from proceeding with the scheduled extra-judicial sale.

On August 31, 2001, BPI filed a motion to dismiss[11] the complaint on the ground of lack of jurisdiction over the person of the defendants, lack of cause of action and non-compliance with a condition precedent.

On September 4, 2001, the RTC set the preliminary injunction for hearing. During the hearing itself, however, the RTC decided to determine first if it has jurisdiction over the case and ordered La Suerte to file a comment or opposition to BPI's motion to dismiss. It then set for hearing both the motion to dismiss and preliminary injunction on October 11, 2001.[12]

During the October 11, 2001 hearing, the RTC, after noting that an opposition to the motion to dismiss and reply thereto were filed, considered the motion to dismiss submitted for resolution. The preliminary injunction, however, was not taken up.[13]

On May 23, 2002, the RTC issued an order granting a writ of preliminary injunction in favor of La Suerte. BPI moved to reconsider the order, contending that there was no hearing yet on the preliminary injunction in violation

of Section 5,[14] Rule 58 of the Rules of Court.

In an Order[15] dated August 26, 2002, the RTC denied BPI's motion, stating that the prayer for the issuance of the writ of preliminary injunction was set for hearing on September 4, 2001, but BPI failed to adduce evidence on why the writ should not be granted.

BPI elevated the matter to the Court of Appeals via a petition for certiorari. It argued that while the prayer for the issuance of the writ was set for hearing on September 4, 2001, the same was not taken up by the RTC because of the pendency of its motion to dismiss. Thus, no hearing was really conducted on La Suerte's prayer for the issuance of a writ of preliminary injunction.[16]

The Court of Appeals dismissed the petition. It held that from a perusal of the RTC's May 23, 2002 and August 26, 2002 Orders, it can be seen that the RTC heard the parties before the writ was issued. The RTC also ruled that BPI failed to present sufficient evidence such as transcript of stenographic notes (TSNs) to prove that no hearing was conducted on the preliminary injunction.

BPI moved to reconsider the dismissal of its petition. This time it attached the TSNs[17] of the September 4, 2001 and October 11, 2001 hearing before the RTC. The Court of Appeals, however, still denied the motion for reconsideration.

Hence the instant petition citing the following errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR REVIEW FILED BY THE PETITIONER BY HOLDING THAT THE PETITIONER WAS GIVEN THE OPPORTUNITY TO BE HEARD AND TO PRESENT ITS EVIDENCE IN SUPPORT OF [ITS] OPPOSITION AGAINST THE PRAYER FOR INJUNCTION OF THE RESPONDENT, WHEN IN FACT PETITIONER WAS DENIED DUE PROCESS AND WAS NOT GIVEN OPPORTUNITY BY THE COURT A QUO TO PRESENT ITS EVIDENCE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT WAS ENTITLED TO THE INJUNCTION ISSUED BY THE COURT A QUO ON THE BASIS MERELY OF THE ALLEGATIONS IN THE PLEADING/COMPLAINT AND NOTWITHSTANDING DENIAL OF DUE PROCESS UPON THE PETITIONER.

III.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE RESPONDENT WOULD BE DAMAGED AND STANDS TO LOSE ITS PROPERTY SHOULD THE PETITIONER PROCEED WITH THE FORECLOSURE AND CONSOLIDATE ON THE SUBJECT PROPERTY WHEN IN FACT IT WAS THE PETITIONER WHICH WAS DAMAGED AND PREJUDICED WHEN THE AUCTION SALE OF THE MORTGAGED PROPERTIES DID NOT PUSH THROUGH IN SPITE OF FAILURE OF THE RESPONDENT TO PAY ITS OBLIGATIONS WITH THE PETITIONER.[18]

Briefly stated, the present controversy boils down to this factual question: Did the RTC conduct a hearing on La Suerte's prayer for the issuance of a writ of preliminary injunction?

As we had stressed time and again, questions of fact are beyond the ambit of a petition for review under Rule 45, since only questions of law may be raised therein. However, there are several exceptions to the said rule, and one of which is present in the instant case, i.e. the findings of fact of the Court of Appeals are premised on the

supposed absence of evidence and contradicted by the evidence on record.[19]

The Court of Appeals could not be faulted in previously finding in its Decision dated November 20, 2003 that the RTC held a hearing on La Suerte's prayer for the issuance of a writ of preliminary injunction, considering BPI's failure to adequately prove its allegation that no hearing was conducted thereon last September 4, 2001. However, when BPI was able to indubitably show in its motion for reconsideration and the stenographic notes of the hearing dated September 4, 2001, that the scheduled hearing on the matter did not really push through because of a pending motion to dismiss, it was clear that the Court of Appeals erred in not invalidating the said writ since a prior hearing before the issuance of the same is absolutely required.[20]

WHEREFORE, the petition is GRANTED. The assailed Decision dated November 20, 2003 and Resolution dated August 6, 2004 of the Court of Appeals in CA-G.R. SP No. 73753 are hereby REVERSED AND SET ASIDE.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr. and Peralta JJ., concur.

[*] Designated member of Second Division per Special Order No. 587 in place of Associate Justice Arturo D. Brion who is on leave.

[1] Rollo, pp. 35-41. Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Josefina Guevara-Salonga and Rosalinda Asuncion-Vicente concurring.

[2] Id. at 42-43.

[3] CA rollo, p. 48.

[4] Id. at 49.

[5] Id. at 50.

[6] Id. at 51.

[7] Id. at 52.

[8] Id. at 56.

[9] Id. at 43-47. As amended.

[10] Id. at 30-31.

[11] Id. at 32-39.

[12] Rollo, p. 59.

[13] Id. at 68.

[14] Sec. 5. Preliminary injunction not granted without notice; exception. --No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be

granted. The court shall also determine, within the same period, whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance, but shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect, and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

The trial court, the Court of Appeals, the Sandiganbayan or the Court of Tax Appeals that issued a writ of preliminary injunction against a lower court, board, officer, or quasi-judicial agency shall decide the main case or petition within six (6) months from the issuance of the writ. (As amended by A.M. No. 07-7-12-SC, took effect on December 27, 2007.)

[15] Rollo, p. 80.

[16] CA rollo, p. 7.

[17] Id. at 95-105.

[18] Rollo, pp. 21-22.

[19] *Rosario v. PCI Leasing and Finance, Inc.*, G.R. No. 139233, November 11, 2005, 474 SCRA 500, 506.

[20] *Supra* note 14.

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