

EQUITABLE PCI BANK, INC., PETITIONER, VS. OJ-MARK TRADING, INC. AND SPOUSES OSCAR AND EVANGELINE MARTINEZ, RESPONDENTS.

G.R. No. 165950. August 08, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is a petition for review on certiorari filed by petitioner under Rule 45 of the 1997 Rules of Civil Procedure, as amended, praying for the reversal of the Decision[1] dated October 29, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 77703, which denied its petition for certiorari assailing the trial court's orders granting respondents' application for a writ of preliminary injunction.

The factual antecedents:

Respondent-spouses Oscar and Evangeline Martinez obtained loans from petitioner Equitable PCI Bank, Inc. in the aggregate amount of Four Million Forty-Eight Thousand Eight Hundred Pesos (P4,048,800.00). As security for the said amount, a Real Estate Mortgage (REM) was executed over a condominium unit in San Miguel Court, Valle Verde 5, Pasig City, Metro Manila where the spouses are residing. Respondent Oscar Martinez signed the REM both as principal debtor and as President of the registered owner and third-party mortgagor, respondent OJ-Mark Trading, Inc. The REM was annotated on Condominium Certificate of Title No. PT-21363 of the Registry of Deeds of Pasig City.[2]

Respondent-spouses defaulted in the payment of their outstanding loan obligation, which as of October 31, 2002 stood at P4,918,160.03.[3] In a letter dated May 15, 2002, they offered to settle their indebtedness "with the assignment to the Bank of a commercial lot of corresponding value" and also requested for recomputation at a lower interest rate and condonation of penalties.[4] While petitioner's officers held a meeting with respondent Oscar Martinez, the latter however failed to submit the required documents such as certificates of title and tax declarations so that the bank can evaluate his proposal to pay the mortgage debt via dacion en pago.[5] Consequently, petitioner initiated the extrajudicial foreclosure of the real estate mortgage by filing an ex parte petition before the Office of the Executive Judge, Regional Trial Court (RTC) of Pasig City.[6]

On January 23, 2003, respondents filed Civil Case No. 69294 for "Temporary Restraining Order ('TRO'), Injunction and Annulment of Extrajudicial Foreclosure Sale" in the RTC of Pasig City. On January 27, 2003, the trial court granted a TRO effective for twenty (20) days.

In their Complaint With Application for Temporary Restraining Order,[7] respondents sought to enjoin the impending foreclosure sale alleging that the same was hasty, premature, unreasonable and unwarranted, and also claiming defects in the execution of the REM. Respondents imputed bad faith on the part of petitioner who did not officially inform them of the denial or disapproval of their proposal to settle the loan obligation by "dacion via assignment of a commercial property." Respondents maintained that aside from the REM being illegally notarized, incomplete and unenforceable, the obligation subject thereof had been extinguished by the dacion

proposal considering that the value of the property offered was more than sufficient to pay for the mortgage debt. It was further averred that the subject property is being used and occupied by respondent-spouses as a family home.

In his Order dated February 17, 2003, Judge Mariano M. Singzon, Jr. granted the application for a writ of preliminary injunction.[8] Petitioner filed a motion for reconsideration which was denied under the Order dated April 21, 2003.[9]

Petitioner questioned the issuance of preliminary injunction before the CA arguing that the respondents are not entitled to injunctive relief after having admitted that they were unable to settle their loan obligations. By Decision dated October 29, 2004, the appellate court sustained the assailed orders, holding that:

...respondent spouses have sufficiently shown that they have a right over the condominium unit which is subject of the mortgage. This proprietary right over the condominium is what they are trying to protect when they applied for preliminary injunction. As respondent spouses have alleged in their complaint, the issuance of notice of foreclosure sale is at most premature as there are still several factual issues that need to be resolved before a foreclosure can be effected. Such already constitute the ostensible right which respondent spouses possess in order for the foreclosure sale to be temporarily enjoined.[10]

Hence, this petition raising the following grounds:

I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE ASSAILED WRIT OF PRELIMINARY INJUNCTION

II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT INDIVIDUAL RESPONDENTS SPS. MARTINEZ HAVE PROPRIETARY RIGHT OVER THE MORTGAGED CONDOMINIUM UNIT

III

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT SUCH PURPORTED PROPRIETARY RIGHT OF RESPONDENTS SPS. MARTINEZ DESERVES THE PROTECTIVE MANTLE OF A WRIT OF PRELIMINARY INJUNCTION DESPITE THEIR CLEAR AND UNEQUIVOCAL ADMISSION OF THE OUTSTANDING LOANS AND THEIR DELINQUENCY

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE ARE STILL SEVERAL FACTUAL ISSUES TO BE RESOLVED IN A FULL-BLOWN TRIAL BEFORE PETITIONER EPCIB COULD EXERCISE ITS STATUTORY AND EQUITABLE RIGHT TO FORECLOSE[11]

The sole issue to be resolved is whether or not the respondents have shown a clear legal right to enjoin the foreclosure and public auction of the third-party mortgagor's property while the case for annulment of REM on said property is being tried.

Petitioner argued that the appellate court's conclusion that respondents possess proprietary right over the mortgaged property subject of foreclosure is utterly baseless, for the following reasons: first, while the

condominium unit is supposedly a family home, it is admittedly owned by respondent corporation and not by the conjugal partnership or absolute community of respondent-spouses; and second, even assuming that OJ-Mark Trading, Inc. is a family corporation, respondents' stance contravenes the established rule that properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members or stockholders.[12]

As to the alleged proposal of respondent Oscar Martinez to assign commercial lots by dacion en pago to settle their loan obligations, petitioner pointed out that the properties offered for dacion are not owned, and much less to be owned by him, but purportedly owned by another corporation (developer), the president of which supposedly owes him a sum of money. Respondent Oscar Martinez likewise admitted during the hearings before the trial court his unpaid loan with petitioner. Moreover, with the filing of a petition for extrajudicial foreclosure of the real estate mortgage by petitioner, it serves more than a formal rejection of respondents' dacion en pago offer.[13]

On their part, the respondents contended that the petition raises factual issues not proper in an appeal by certiorari under Rule 45. They asserted that the trial court correctly found sufficient legal basis to grant the writ of preliminary injunction after conducting a summary hearing in which both parties actively participated and submitted oral and documentary evidence. Such evidence adduced by respondents, as well as the Affidavit dated January 24, 2003 of Atty. Oscar Martinez (adopted in the February 7, 2003 hearing) fully supported their application and hence the trial court did not act precipitately or arbitrarily in granting injunctive relief.[14]

Respondents argued that they appear to be entitled to the relief demanded by their Complaint "because petitioner was in bad faith when it proceeded to foreclose while there was still a pending written proposal to pay." They stand to lose a prime property, and thus made a serious and sincere offer by way of dacion en pago. To show good faith and as required by petitioner to continue the negotiations for dacion, respondent Atty. Oscar Martinez even paid P100,000.00 in October 2002, which petitioner accepted. But petitioner maliciously, fraudulently and hastily proceeded to foreclose the renovated mortgaged property, apparently motivated by its discovery after re-appraisal that the floor area of the townhouse and number of its rooms had doubled (from 180.750 sq. m. with three [3] bedrooms, it is now 350 sq. m. with six [6] bedrooms). Respondents contended that as creditor, it was petitioner's duty not to sit on respondents' dacion offer and should have informed them in writing that said offer is rejected. By hanging on the dacion talks, petitioner thus prevented the respondents' repayment of the loan, in malicious haste to acquire the condominium unit as asset.[15]

Respondents further claimed that the extrajudicial foreclosure will cause grave injustice and irreparable injury to respondent-spouses and their four (4) young children because their family home, in which they were residing since 1997, at least insofar as the unencumbered area in excess of 180.750 sq. m., is exempt from forced sale or execution under Article 155 of the Family Code. Petitioner, on the other hand, will not suffer any loss if the foreclosure will not proceed.[16]

With respect to the commercial lots offered in dacion, respondents fault the petitioner in deliberately ignoring the fact that the Blue Mountains Subdivision located at Antipolo City was already approved by the Land Registration Authority; although the subdivided lots have already been applied, the individual titles had not yet been issued. It was therefore impossible for respondents to deliver these titles to petitioner by October 21, 2002 considering the normal time it takes to secure land titles. Respondents deplored the sudden filing of the petition for extrajudicial foreclosure, which was unfair as the negotiations had already reached the stage when petitioner scheduled an ocular inspection for the appraisal of the lots. However, for unknown reasons, petitioner did not push through with the inspection.[17]

We grant the petition.

Section 3, Rule 58 of the Rules of Court provides that:

SEC. 3. Grounds for issuance of preliminary injunction.--A preliminary injunction may be granted when it is established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

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 violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.[18] 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.[19]

The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse.[20] For the issuance of the 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. In the absence of a clear legal right, the issuance of a writ of injunction constitutes grave abuse of discretion.[21]

The possibility of irreparable damage without proof of actual existing right is no ground for an injunction.[22] Hence, it is not sufficient for the respondents to simply harp on the serious damage they stand to suffer if the foreclosure sale is not stayed. They must establish such clear and unmistakable right to the injunction. In *Duvaz Corporation v. Export and Industry Bank*,[23] we emphasized that it is necessary for the petitioner to establish in the main case its rights on an alleged dacion en pago agreement before those rights can be deemed actual and existing, which would justify the injunctive writ. Thus:

In *Almeida v. Court of Appeals*, 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....

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.[24] [emphasis supplied.]

In the case at bar, 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. On the face of their clear admission that they were unable to settle their obligations which were secured by the mortgage, petitioner has a clear right to foreclose the mortgage.[25] Foreclosure is but a necessary consequence of non-payment of a mortgage indebtedness.[26] 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.[27]

This Court has denied the application for a Writ of Preliminary Injunction that would enjoin an extrajudicial foreclosure of a mortgage, and declared that foreclosure is proper when the debtors are in default of the payment of their obligation. Where the parties stipulated in their credit agreements, mortgage contracts and promissory notes that the mortgagee is authorized to foreclose the mortgaged properties in case of default by the mortgagors, the mortgagee has a clear right to foreclosure in case of default, making the issuance of a Writ of Preliminary Injunction improper.[28] In these cases, unsubstantiated allegations of denial of due process and prematurity of a loan are not sufficient to defeat the mortgagee's unmistakable right to an extrajudicial foreclosure.[29]

We cannot agree with respondents' position that petitioner's act of initiating extrajudicial foreclosure proceeding while they negotiated for a *dacion en pago* was illegal and done in bad faith. As respondent-spouses themselves admitted, they failed to comply with the documentary requirements imposed by the petitioner for proper evaluation of their proposal. In any event, petitioner had found the subdivision lots offered for *dacion* as unacceptable, not only because the lots were not owned by respondents - as in fact, the lots were not yet titled - but also for the reason that respondent Oscar Martinez's claimed right therein was doubtful or inchoate, and hence not in esse.

Requests by debtors-mortgagors for extensions to pay and proposals for restructuring of the loans, without acceptance by the creditor-mortgagee, remain as that. Without more, those proposals neither novated the parties'

mortgage contract nor suspended its execution.[30] In the same vein, negotiations for settlement of the mortgage debt by dacion en pago do not extinguish the same nor forestall the creditor-mortgagee's exercise of its right to foreclose as provided in the mortgage contract.

As we held in *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*[31] --

Dacion en pago is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking is really one of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. It is only when the thing offered as an equivalent is accepted by the creditor that novation takes place, thereby, totally extinguishing the debt.

On the first issue, the Court of Appeals did not err in ruling that Tecnogas has no clear legal right to an injunctive relief because its proposal to pay by way of dacion en pago did not extinguish its obligation. Undeniably, Tecnogas' proposal to pay by way of dacion en pago was not accepted by PNB. Thus, the unaccepted proposal neither novates the parties' mortgage contract nor suspends its execution as there was no meeting of the minds between the parties on whether the loan will be extinguished by way of dacion en pago. Necessarily, upon Tecnogas' default in its obligations, the foreclosure of the REM becomes a matter of right on the part of PNB, for such is the purpose of requiring security for the loans. [emphasis supplied.]

Respondent-spouses' alleged "proprietary right" in the mortgaged condominium unit appears to be based merely on respondents' averment that respondent OJ-Mark Trading, Inc. is a family corporation. However, there is neither allegation nor evidence to show prima facie that such purported right, whether as majority stockholder or creditor, was superior to that of petitioner as creditor-mortgagee. The rule requires that in order for a preliminary injunction to issue, the application should clearly allege facts and circumstances showing the existence of the requisites. It must be emphasized that an application for injunctive relief is construed strictly against the pleader.[32]

We note that the claim of exemption under Art. 153 of the Family Code, thereby raising issue on the mortgaged condominium unit being a family home and not corporate property, is entirely inconsistent with the clear contractual agreement of the REM.[33] Assuming arguendo that the mortgaged condominium unit constitutes respondents' family home, the same will not exempt it from foreclosure as Article 155 (3) of the same Code allows the execution or forced sale of a family home "for debts secured by mortgages on the premises before or after such constitution." Respondents thus failed to show an ostensible right that needs protection of the injunctive writ. Clearly, the appellate court seriously erred in sustaining the trial court's orders granting respondents' application for preliminary injunction.

Anent the grave and irreparable injury which respondents alleged they will suffer if no preliminary injunction is issued, this Court has previously declared that all is not lost for defaulting mortgagors whose properties were foreclosed by creditors-mortgagees, viz:

In any case, petitioners will not be deprived outrightly of their property. Pursuant to Section 47 of the General Banking Law of 2000, mortgagors who have judicially or extrajudicially sold their real property for the full or partial payment of their obligation have the right to redeem the property within one year after the sale. They can redeem their real estate by paying the amount due, with interest rate specified, under the mortgage deed; as well as all the costs and expenses incurred by the bank.

Moreover, in extrajudicial foreclosures, petitioners have the right to receive any surplus in the selling price. This right was recognized in *Sulit v. CA*, in which the Court held that "if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus.[34]

WHEREFORE, the petition is GRANTED. The Decision dated October 29, 2004 of the Court of Appeals in CA-G.R. SP No. 77703 is hereby REVERSED and SET ASIDE. Respondents' application for a writ of preliminary injunction is DENIED.

No costs.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Abad,[*] JJ., concur.

[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

[1] Rollo, pp. 102-111. Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justice (now Presiding Justice) Andres B. Reyes, Jr. and Associate Justice Rosmari D. Carandang.

[2] Id. at 53-56, 323-325.

[3] Id. at 57.

[4] Id. at 322.

[5] Id. at 112-113.

[6] Id. at 57-59.

[7] Id. at 60-96.

[8] Id. at 98-99.

[9] Id. at 100-101.

[10] Id. at 108-109.

[11] Id. at 27-28.

[12] Id. at 30-33.

[13] Id. at 34-40.

[14] Id. at 130-152, 202-212.

[15] Id. at 166-167, 212-224.

[16] Id. at 223-227.

[17] Id. at 228-230.

[18] Borromeo v. Court of Appeals, G.R. No. 169846, March 28, 2008, 550 SCRA 269, 280-281, citing Lim v. Court of Appeals, G.R. No. 134617, February 13, 2006, 482 SCRA 326, 331.

[19] Lim v. Court of Appeals, supra.

[20] Reyes v. Court of Appeals, G.R. No. 129750, December 21, 1999, 321 SCRA 368, 374, citing Saulog v. Court of Appeals, G.R. No. 119769, September 18, 1996, 262 SCRA 51, 59 and Inter-Asia Services Corp. (International) v. Court of Appeals, G.R. No. 106427, October 21, 1996, 263 SCRA 408, 415.

[21] Suico Industrial Corporation v. CA, 361 Phil. 160, 169 (1999); Sps. Arcega v. CA, 341 Phil. 166, 171 (1997),

citing *Syndicated Media Access Corp. v. CA*, G.R. No. 106982, March 11, 1993, 219 SCRA 794, 797 and *Vinzons-Chato v. Natividad*, G.R. No. 113843, June 2, 1995, 244 SCRA 787, 794-795.

[22] *Sps. Arcega v. CA*, *supra*.

[23] G.R. No. 163011, June 7, 2007, 523 SCRA 405.

[24] *Id.* at 413-415.

[25] *Equitable PCI Bank, Inc. v. Fernandez*, G.R. No. 163117, December 18, 2009, 608 SCRA 433, 441, citing *China Banking Corporation v. Court of Appeals*, G.R. No. 121158, December 5, 1996, 265 SCRA 327, 343.

[26] *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 111584, September 17, 2001, 365 SCRA 326, 335.

[27] *Equitable PCI Bank v. Fernandez*, *supra* note 25, citing *Union Bank of the Philippines v. Court of Appeals*, 370 Phil. 837 (1999).

[28] *Borromeo v. Court of Appeals*, *supra* note 18 at 284, citing *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 142731, June 8, 2006, 490 SCRA 168; *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138; *Lim v. Court of Appeals*, *supra*; and *PNB v. Ritratto Group, Inc.*, 414 Phil. 494, 507-508 (2001).

[29] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, *supra* at 127.

[30] *Lim v. Court of Appeals*, *supra* note 18.

[31] G.R. No. 161004, April 14, 2008, 551 SCRA 183, 189.

[32] *Marquez v. Presiding Judge (Hon. Ismael B. Sanchez)*, RTC Br. 58, Lucena City, G.R. No. 141849, February 13, 2007, 515 SCRA 577, 594, citing *Sales v. Securities and Exchange Commission*, G.R. No. 54330, January 13, 1989, 169 SCRA 109, 127 and 43 C.J.S. 867.

[33] See *Marquez v. The Presiding Judge, (Hon. Ismael B. Sanchez)*, RTC Br. 58, Lucena City, *supra* at 596.

[34] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, *supra* note 28 at 146, citing Republic Act No. 8791, approved on May 23, 2000; J. Feria and M.C. Noche, *Civil Procedure Annotated*, Vol. 2, 577 (2001); and *Sulit v. Court of Appeals*, 335 Phil. 914, 931 (1997).

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