SPOUSES ANTHONY L. NGO AND SO HON K. NGO AND SPOUSES LUIS M. LITAM, JR. AND LUZVIMINDA C. LITAM, PETITIONERS, VS. ALLIED BANKING CORPORATION, RESPONDENT.

G.R. No. 177420. October 06, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Assailed in this petition for review on certiorari[1] are the April 19, 2006 Decision[2] and the April 2, 2007 Resolution[3] of the Court of Appeals (CA), which lifted the writ of preliminary mandatory injunction issued on October 1,2002[4] by the Regional Trial Court (RTC) of Quezon City, Branch 98.

The facts:

In a Complaint for Damages with prayer for the issuance of a Preliminary Mandatory Injunction[5] filed with the RTC on

May 9, 2002, petitioner-spouses alleged in the main that Allied Banking Corporation (Allied Bank) unlawfully and unjustifiably refused to discharge/release the real estate mortgage constituted on the two lots of spouses Anthony Ngo and So Hon Ngo, and withheld the Owner's Duplicate Copy of the Transfer Certificate of Title (TCT) of the said lots, despite spouses Ngo's full payment of the P12 million loan secured by the mortgage.

Petitioners averred that the funds used by spouses Ngo in paying for the loan were the proceeds of the sale of the lots to spouses Luis Litam, Jr. and Luzviminda Litam; and that the sale was known to and permitted by Allied Bank through its Manager, Rodolfo Jose.[6] The bank, however, vehemently denied giving its imprimatur to the sale.[7]

Allied Bank admitted the satisfaction of the P12 million loan but clarified that the real estate mortgage on the lots still secures the unpaid P42,900,000.00 loan of Civic Merchandising, Inc., for which Anthony Ngo stands as a surety. In support thereof, the bank presented the Continuing Guaranty/Comprehensive Surety Agreement executed by Anthony Ngo, both in his personal capacity and as the company's president and general manager.

On October 1,2002, after hearing the parties, the RTC ordered the issuance of a writ of preliminary injunction, directing Allied Bank to discharge the real estate mortgage constituted on the subject properties, and to release to spouses Ngo the owner's copy of the TCTs of the lots. [8]

When its motion for reconsideration[9] of the foregoing order was denied,[10] Allied Bank elevated the incident to the CA by way of a special civil action for certiorari.

On April 19, 2006, the CA annulled the RTC's orders upon finding that petitioner-spouses failed to establish a clear and unmistakable right to warrant the issuance of the provisional injunctive writ against Allied Bank.[11] This was affirmed in its April 02,2007 Resolution[12] denying petitioner-spouses' motion for reconsideration.

Aggrieved, petitioner-spouses interposed the instant recourse, ascribing the following errors to the CA:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE REAL ESTATE MORTGAGE EXECUTED BY SPS. NGO SECURED THE CREDIT ACCOMODATION OF CIVIC MERCHANDISING, INC.

II.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONERS FAILED TO ESTABLISH A CLEAR AND UNMISTAKABLE RIGHT INVADED BY THE RESPONDENT TO WARRANT THE ISSUANCE OF THE WRIT OF PRELIMINARY MANDATORY INJUNCTION.[13]

The petition lacks merit.

Section 3, Rule 58 of the 1997 Revised Rules of Civil Procedure provides that a writ of preliminary injunction, whether mandatory or prohibitory, may be granted if the following requisites are met:

(1) The applicant must have a clear and unmistakable right, that is a right in esse;

(2) There is a material and substantial invasion of such right;

(3) There is an urgent need to issue the writ in order to prevent irreparable injury to the applicant; and

(4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[14]

A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the status quo between the parties, it also commands the performance of an act.[15] Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute.[16] When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper.[17] While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.[18]

Petitioner-spouses-anchored their right to an injunctive writ on Payment Slip No. 160989, issued by Allied Bank, evidencing their full payment of the P12 million loan on February 26,2002. Such payment, according to spouses Ngo, vested in them the right to demand: (1) the release/cancellation of the real estate mortgage securing such debt; and (2) the return of the owner's copy of the TCTs of the subject lots so they can cause the transfer thereof to their buyers, spouses Litam.

The bank, on the other hand, admitted the settlement of the P12 million loan, but insisted that the real estate mortgage executed by spouses Ngo also covers the subsisting P42,900,000.00 loan extended to Civic Merchandising, Inc., which is secured by a suretyship agreement assumed by Anthony Ngo. In support thereof, Allied Bank emphasized the following provisions of the real estate mortgage:

That, for and consideration of credit accommodations obtained from the MORTGAGEE, detailed as follows:

Nature Amount or Line

LOAN LINE P10,000,000.00

and to secure the payment of the same and all other obligations of the MORTGAGOR to the MORTGAGEE of whatever kind and nature, whether such obligations have been contracted before, during or after the constitution

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and execution of this mortgage, including interest and expenses or any other obligation owing to the MORTGAGEE whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the MORTGAGEE, the MORTGAGOR does hereby transfer and convey by way of mortgage unto the MORTGAGEE, its successors or assigns, the parcels of land which are described in the list inserted on the back of this document and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the MORTGAGOR declares that he/it is the absolute owner free from liens and encumbrances.[19]

Allied Bank also pointed out the complementary terms of the Continuing Guaranty/Comprehensive Surety Agreement signed by Anthony Ngo, viz.:

> II. As security for and all indebtedness of obligations of the undersigned to you now existing or hereafter arising hereunder or otherwise, you are hereby given the right to retain, and you are hereby given a lien upon, all money or other property, and/or proceeds thereof, which have been or may hereafter be deposited or left with you (or with any third party acting on your behalf) by or for the account or credit of the undersigned, including (without limitation of the foregoing) that in safekeeping or in which the undersigned may have any interest.[20]

In granting petitioners' application for a preliminary mandatory injunction, the RTC reasoned in this manner:

It is undisputed that the real estate mortgage annotated at the dorsal portion of TCT Nos. 81647 and 81648 had already been paid by [petitioners] Ngo as of February 26, 2002. The original obligation having been paid, it becomes the duty of the [respondent] to release the title of the properties and to cancel the real estate mortgage.[21]

Generally, a trial court's decision to grant or to deny injunctive relief will not be set aside on appeal unless the court abused its discretion. In granting or denying injunctive relief, a court abuses its discretion when it lacks jurisdiction, fails to consider and make a record of the factors relevant to its determination, relies on clearly erroneous factual findings, considers clearly irrelevant or improper factors, clearly gives too much weight to one factor, relies on erroneous conclusions of law or equity, or misapplies its factual or legal conclusions.[22]

In this case, the mere fact of payment of the P12 million loan is a scant justification for the issuance of the writ. The RTC accorded too much weight thereon and deliberately ignored other relevant facts alleged in the pleadings and shown in the annexes submitted by the parties, specifically the real estate mortgage and the Continuing Guaranty/Comprehensive Surety Agreement. The covenants contained in the said agreements, coupled with the bank's categorical denial that it permitted the sale of the mortgaged properties to spouses Litam, cast serious doubts on, and pose a substantial challenge against, the rights claimed by petitioner-spouses.

Contrary to the RTC's ruling, the rights claimed by petitioners are less than clear and far from being unmistakable. Consequently, without such unequivocal right, the possibility of irreparable damage would not justify injuctive relief in petitioner's favor. In addition, the possibility of damage to petitioners is remote compared to the immediate and serious injury that respondent will suffer if the writ implemented. In this regard, we quote with approval the ensuing pronouncement of the CA:

> Neither is there an urgent and paramount necessity for the writ to prevent serious damage to the spouse Ngo and Litam. Actually, it is the [respondent] who stands to suffer great damage and injury, as it stands to lose its security on a P42,900,000.00 loan, exclusive of interest and penalties, if the writ is implemented.[23]

Further, in issuing the preliminary mandatory injunction, which was the main prayer in the complaint, the RTC effectively concluded the main case without proper hearing on the merits as there was practically nothing left to be determined except petitioner-spouses' claim for damages.

Settled is the rule that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial.[24]

Accordingly, we hold that the RTC improperly issued the writ of preliminary injunction and the CA was correct in annulling the same.

However, the CA erred in declaring that "the mortgage over the properties, secured not merely the credit accommodation in the amount of P12,000,000.00, but likewise the credit accommodation of Civic Merchandising and the latter's outstanding liability in the amount of P42,900,000.00. " It is a prejudgment of the main case, and a premature acceptance of a proposition which petitioners are still bound to prove in a full-blown trial. As discussed above, the credit accommodation given to Civic Merchandising, Inc. casts a cloud of doubt over the rights claimed by petitioners. But such doubt merely precluded the issuance of an injunctive writ; it did not conclusively establish that the real estate mortgage, indeed, also secured Civic Merchandising, Inc.'s loan. This notwithstanding, the resulting disposition arrived at by the CA is still correct and we concur therewith.

WHEREFORE, premises considered, the Petition is hereby DENIED and the assailed April 19, 2006 Decision and the April 2, 2007 Resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

Velasco, Jr.,[**]Peralta, Mendoza, and Sereno, [***]JJ., concur.

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[*] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 898 dated September 28, 2010.

[1] RULES OF COURT, Rule 45.

[2] Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Roberto A. Barrios and Mario L. Guarifia III, concurring; rollo, pp. 41-48.

[3] Id. at 50.

[4] Id. at 81-83.

[5] Id. at 51-60.

[6] Complaint; id.

[7] Respondent's Answer with Opposition to the Prayer for Preliminary Mandatory Injunction & Compulsory Counterclaim; id. at 61-72.

[8] Supra note 4.

[9] Rollo, pp. 84-94.

[10] Id. at 134-140.

[11] CA Decision, supra note 2.

[12] Supra note 3.

[13] Rollo, pp. 18-19.

[14] See Philippine Leisure and Retirement Authority v. Court of Appeals, G.R. No. 156303, December 19, 2007,

541 SCRA 85, 100.

[15] Gateway Electronics Corporation v. Land Bank of the Philippines, G.R. Nos. 155217 and 156393, July 30, 2003, 407 SCRA 454, 462.

[16] Id.

[17] China Banking Corporation v. Co; G.R. No. 174569, September 17,2008, 565 SCRA 600.

[18] Mizona v. Court of Appeals, 400 Phil. 587 (2000); Developers Group of Companies, Inc. v. Court of Appeals, G.R. No. 104583, March 8, 1993, 219 SCRA 715, 721.

[19] CA rollo, p. 52. (Emphasis supplied.)

[20] Id. at 56. (Emphasis supplied.)

[21] Supra note 4, at 82.

[22] 42 Am.Jur.2d, pp. 576-577, as cited in Almeida v. Court of Appeals, 489 Phil. 648(2005).

[23] Supra note 2, at 46.

[24] Pension v. Maranan, G. R. No. 148630, June 20, 2006, 491 SCRA 396; Mizona v. Court of Appeals, supra note 18; Searth Commodities Corp. v. Court of Appeals, G.R. No. 64220, March 31, 1992, 207 SCRA 622; Rivas v. Securities and Exchange Commission, G.R. No. 53772, Oct. 4, 1990, 190 SCRA 295; Government Service Insurance System v. Florendo, G. R. No. L-48603, September 29, 1989, 178 SCRA 76; Ortigas and Company, Limited Partnership v. Court of Appeals, No. 79128, June 16, 1988, 162 SCRA 165.

[**]Additional member in lieu of Associate Justice Antonio T. Carpio per Special Order No. 897 dated September 28, 2010.

[***]Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 903 dated September 28, 2010.

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