

PHILIPPINE NATIONAL BANK, PETITIONER, VS. CASTALLOY TECHNOLOGY CORPORATION, ALLIED INDUSTRIAL CORPORATION, ALINSU STEEL FOUNDRY CORPORATION, GLORIA C. NGO AND TOMAS C. NGO, JR.,...

G.R. No. 178367. March 19, 2012

Ponente: REYES, J.

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REYES, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court, which seeks to annul and set aside the Decision[1] dated February 28, 2007 and Resolution[2] dated May 24, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 02056, affirming the Regional Trial Court (RTC), Branch 56 of Mandaue City's issuance of a writ of preliminary injunction in Civil Case No. MAN-5081.

The Factual Antecedents

On August 26, 1996, respondent Castalloy Technology Corporation (Castalloy) was granted by petitioner Philippine National Bank (PNB) a credit line in the amount of P4,000,000.00, later increased to P45,000,000.00 on October 15, 1996. Pursuant to said credit line, Castalloy borrowed from PNB the following amounts, covered by three separate promissory notes executed by Castalloy in favor of PNB, to wit: (1) Promissory Note (PN) No. 404/96 dated August 29, 1996, in the amount of US\$190,910.00, (2) PN No. 451/96 dated September 24, 1996, in the amount of US\$381,650.26, and (3) PN No. 473/96 dated October 8, 1996 in the amount of US\$495,426.83. While the promissory notes indicate the amounts thereof in US dollars, the net proceeds of the loan were released in Philippine currency, in the following amounts: (1) P4,992,442.00 for PN No. 404/96, (2) P9,985,000.00 for PN No. 451/96, and (3) P12,980,487.10 for PN No. 473/96.

To secure payment of the loans obtained by Castalloy, respondents Alinsu Steel Foundry Corporation (Alinsu) and Allied Industrial Corporation (Allied) constituted in favor of PNB a real estate mortgage over four parcels of land covered by the following land titles, all issued by the Register of Deeds of Mandaue City: Transfer Certificate of Title (TCT) No. 8516, TCT No. 1676, TCT No. 30722, and TCT No. 30721. To further secure the loan, respondents Gloria C. Ngo (Gloria) and Tomas C. Ngo, Jr.[3] (Tomas) executed a joint and solidary agreement in favor of PNB.

In addition to the three aforementioned promissory notes, PNB claimed that Castalloy had executed two other promissory notes with the following details: (1) PN No. 539/96 dated November 27, 1996, in the amount of P3,000,000.00, and (2) PN No. 365-9701DL-037 dated January 29, 1997 in the amount of P2,000,000.00. These two loans were denied by Castalloy, which argued that the signature of Gloria in the two notes was forged, and that the proceeds thereof were not deposited to the corporation's bank account.

After Castalloy defaulted in the payment of its obligations under the promissory notes, PNB filed a petition for extrajudicial foreclosure of real estate mortgage against Castalloy, Allied and Alinsu.

In the meantime, a complaint[4] for determination of correct obligation and injunction with application for writ of preliminary injunction/temporary restraining order was filed with the RTC by Castalloy, Allied, Alinsu, Gloria and Tomas against PNB and Sheriff Julbert E. Opada, arguing, among other matters, that:

13. Because of the disagreements brought about by the allegations of this complaint, that [respondent] Castalloy never borrowed the amount of [P]5,000,000.00 and that the dollar loans of [respondent] Castalloy Technology Corp. were already converted by [petitioner] into pesos at the time of their release and should not be converted again by [petitioner] into pesos at the rate of [P]56.20 to \$1.00 x x x.

14. There is a need for judicial a determination as to how much is the real obligation of [respondent] Castalloy Technology Corp. to [petitioner]. Converting the dollar loans of said [respondent] at the rate of [P]56.20 to \$1.00 and adding interest, the [petitioner] claims that on the dollar loan, the total obligation of [respondent] Castalloy Technology Corp. is [P]88,642,207.64 while on the peso loan, [petitioner] claims that the obligation of [respondent] Castalloy Technology Corp. is [P]9,644,994.44 or a total of [P]98,287,101.94;

15. On the other hand, because what were released to [respondent] Castalloy Technology Corp. at the time of the execution of the promissory notes were pesos and not dollars and [respondents] deny that Castalloy Technology Corp. borrowed [P]5,000,000.00 from [petitioner], the [respondents] claim that what is owing to [petitioner] is the amount of [P]41,037,189.86.[5] (Emphasis supplied)

In their application for preliminary injunction/temporary restraining order, the respondents claimed that the sale at the public auction of the mortgaged properties had to be held in abeyance pending judicial determination of the correct amount of Castalloy's obligation to PNB.

In its opposition to the application for injunction, PNB argued that the parties' dispute on the loan's computation was not a valid ground to restrain the mortgage's foreclosure.

The Order of the RTC

On April 27, 2006, the RTC, issued an Order[6] granting the respondents' application for a writ of preliminary injunction, subject to the posting of a bond in the amount of P5,000,000.00. The Court held that the difference in the outstanding loan amounts being claimed by the parties was "extremely extensive such that if a foreclosure would be allowed at this point in time, the same would probably result in irreparable injury"[7] to the herein respondents.

PNB filed a motion for reconsideration, but the same was denied for lack of merit in an Order[8] dated May 31, 2006. Unsatisfied, PNB questioned the RTC's orders before the CA through a petition for certiorari under Rule 65 of the Rules of Court.

The Ruling of the CA

On February 28, 2007, the CA rendered its decision[9] denying the petition, finding no grave abuse of discretion on the part of the RTC. The decision's dispositive portion then reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the petition filed in this case and AFFIRMING the assailed Orders dated April 27, 2006 and May 31, 2006, respectively, issued by the respondent judge of the RTC, Branch 56, in Mandaue City in Civil Case No. MAN-5081.

SO ORDERED.[10]

Citing the case of *Sps. Almeda v. CA*,[11] the CA ruled that when the exact amount of the loan obligation has not yet been determined, the bank cannot arbitrarily invoke its right of collection through extrajudicial foreclosure proceedings.[12]

PNB's motion for reconsideration was denied by the CA via its resolution[13] dated May 24, 2007.

Hence, the present petition.

The Issue

The issue for this Court's determination is: Whether or not the CA erred in finding no grave abuse of discretion on the part of the RTC when it granted the respondents' application for the issuance of a writ of preliminary injunction.

This Court's Ruling

The petition is meritorious.

The grounds for the issuance of a preliminary injunction are enumerated in Section 3, Rule 58 of the Rules of Court, which reads:

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.

In a line of cases, this Court has explained this rule and emphasized that a writ of preliminary injunction is issued to preserve the status quo ante, upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists prima facie, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injustice.[14]

In the instant case, the respondents admit that to secure the loan obligations of Castalloy, Alinsu and Allied constituted a real estate mortgage on their properties in favor of PNB. The respondents also do not dispute that they were unable to fully settle their loan obligation to the mortgagee-bank. There is an unpaid obligation to PNB, even granting that we disregard the disputed promissory notes dated November 27, 2006 and January 29, 2007, or consider the variance in the parties' respective formula for the loan's computation. This failure to pay has given PNB, as the mortgagee, the clear right to foreclose the mortgage constituted to secure the loan. Foreclosure is but a necessary consequence of non-payment of mortgage indebtedness. 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.[15] Availment of said remedy cannot be deemed violative of the mortgagors' right over the mortgaged properties. The respondents, as mortgagors, should be mindful of the effects and implications of a mortgage on their rights over the properties given as collaterals, especially when the loan secured thereby remains unpaid. In *China Banking Corporation v. CA*, [16] where the lower court also issued an order to enjoin a foreclosure sale, we explained:

On the last issue, we find that the issuance of the writ of injunction by the trial court unjustified. A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. But before a writ of preliminary injunction may be issued, there must be a clear showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of the said right. In the case at bench, we fail to see any reason why the foreclosure of the mortgages should be enjoined. On the

face of the clear admission by private respondents that they were unable to settle their obligations which were secured by the mortgages, petitioners have a clear right to foreclose the mortgages which is a remedy provided by law.[17] (Emphasis supplied and citations omitted)

The ruling in *Almeda*[18] cited by the CA in its decision is inapplicable in this case, considering that in *Almeda*, the debtors were found to have made a valid consignment of what they, in good faith and in compliance with the loan documents, honestly believed to be the real amount of their indebtedness. Furthermore, the mortgagee in said case appeared to have unilaterally increased the loan's interest rates to amounts that were excessive and unconscionable, without valid and reasonable standards upon which the increases were based.

Further to this, the Court's intent to depart from the broad application of the *Almeda* ruling to foreclosure proceedings is clear from its issuance on February 20, 2007 of an En Banc Resolution in A.M. No. 99-10-05-0, Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages. The resolution embodies the additional guidelines intended to aid courts in foreclosure proceedings, specifically limiting the instances, and citing the conditions, when a writ against foreclosure of a mortgage may be issued, to wit:

(1) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the loan secured by the mortgage has been paid or is not delinquent unless the application is verified and supported by evidence of payment.

(2) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the interest on the loan is unconscionable, unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly while the case is pending.

(3) Where a writ of preliminary injunction has been issued against a foreclosure of mortgage, the disposition of the case shall be speedily resolved. To this end, the court concerned shall submit to the Supreme Court, through the Office of the Court Administrator, quarterly reports on the progress of the cases involving ten million pesos and above.

(4) All requirements and restrictions prescribed for the issuance of a temporary restraining order/writ of preliminary injunction, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply as well to a status quo order.

From these guidelines, it is evident that a disagreement between the parties as to the amount of the secured loan that remains unpaid shall not, by itself, warrant the issuance of an injunctive writ to enjoin foreclosure. The guidelines speak of strict exceptions and conditions. Even an allegation of unconscionable interest being imposed on the loan by the mortgagee shall no longer suffice to support an injunction. Furthermore, if under this resolution a debtor can no longer seek an injunctive writ by the unsubstantiated claim of full payment, there is even more reason for a court not to issue an injunctive writ when the debtors or mortgagors readily admit default in the payment of the secured loan, as in this case.

As regards to the element of irreparable injury which was determined by the trial court in view of the difference of P57,249,912.08 in the parties' respective computations, this Court finds the same insufficient to support the requirement of injury in the issuance of an injunctive writs. An injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation.[19] The provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation.[20]

The injury being feared by the herein respondents is not of such nature. Ultimately, the amount to which the mortgagee-bank shall be entitled will be determined by the disposition of the trial court in the main issue of the case. We have explained in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*[21] that all is not lost for defaulting mortgagors whose properties were foreclosed by creditors-mortgagees. The respondents will not be deprived outrightly of their property, given the right of redemption granted to them under the law. Moreover, in extrajudicial foreclosures, mortgagors have the right to receive any surplus in the selling price. Thus, 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 will give the mortgagor a cause of action to recover such surplus.[22]

Lastly, the issues being linked to the parties' differing loan computations, which difference was found by the trial court as likely to cause the irreparable injury to the respondents, can only be reasonably determined after a trial on the merits. These issues include the effect of the loan proceeds' release in US dollars and the existence, authenticity or validity of the two promissory notes disputed by the respondents. In *Searth Commodities Corporation v. Court of Appeals*,[23] we held:

The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. (*Rivas v. Securities and Exchange Commission*, 190 SCRA 295 [1990]; *Government Service and Insurance System v. Florendo*, 178 SCRA 76 [1989]; and *Ortigas & Co. Ltd. Partnership v. Court of Appeals*, 162 SCRA 165 [1988]) In the case at bar, if the lower court issued the desired writ to enjoin the sale of the properties premised on the aforementioned justification of the petitioners, the issuance of the writ would be a virtual acceptance of their claim that the foreclosure sale is null and void. (See *Ortigas and Co., Ltd. Partnership v. Court of Appeals*, supra). There would in effect be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are ineptly bound to prove.[24] (Emphasis supplied)

Given these circumstances, we reverse the CA's ruling that the trial court did not commit grave abuse of discretion when it issued the subject writ of preliminary injunction, considering that said writ was issued in the absence of sufficient factual and legal justifications, even contrary to law and established jurisprudence.

WHEREFORE, premises considered, the petition is hereby GRANTED. The Decision dated February 28, 2007 and Resolution dated May 24, 2007 of the Court of Appeals in CA-G.R. SP No. 02056 are hereby REVERSED and SET ASIDE. In lieu thereof, a new one is entered declaring null and void the Regional Trial Court, Branch 56 of Mandaue City's Orders dated April 27, 2006 and May 31, 2006, and the Writ of Preliminary Injunction issued pursuant thereto, in Civil Case No. MAN-5081.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Sereno, JJ., concur.

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Agustin S. Dizon and Francisco P. Acosta, concurring; rollo, pp. 267-274.

[2] *Id.* at 287-288.

[3] Also known as Thomas C. Ngo, Jr. in other documents.

[4] Rollo, pp. 77-87.

[5] *Id.* at 81.

[6] *Id.* at 235-239.

[7] Id. at 237.

[8] Id. at 254-256.

[9] Supra note 1.

[10] Id. at 273.

[11] 326 Phil. 309 (1996).

[12] Supra note 1, at 272.

[13] Supra note 2.

[14] Los Baños Rural Bank, Inc. v. Africa, 433 Phil. 930, 935 (2002); See also Power Sites and Signs, Inc. v. United Neon, G.R. No. 163406, November 24, 2009, 605 SCRA 196.

[15] Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc., G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91. (Citations omitted)

[16] 333 Phil. 158 (1996).

[17] Id. at 173-174.

[18] Supra note 11.

[19] Philippine Virginia Tobacco Administration v. Judge Delos Angeles, 247 Phil. 506, 518-519 (1988). (Citations omitted)

[20] G.G. Sportswear Manufacturing Corporation v. Banco de Oro Unibank, Inc., G.R. No. 184434, February 8, 2010, 612 SCRA 47, 53. (Citation omitted)

[21] G.R. No. 165950, August 11, 2010, 628 SCRA 79.

[22] Id. at 94-95, citing Selegna Management and Development Corporation v. United Coconut Planters Bank, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 146.

[23] G.R. No. 64220, March 31, 1992, 207 SCRA 622.

[24] Id. at 629-630.

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