

EUGENE L. LIM, PETITIONER, VS. BPI AGRICULTURAL DEVELOPMENT BANK, RESPONDENT.

G.R. No. 179230. March 09, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The BPI Agricultural Development Bank (respondent) granted Eugene L. Lim (petitioner) and his wife Constancia a revolving credit line in the amount of P7,000,000 on account of which they executed two promissory notes: Promissory Note No. 1000045-08 dated January 9, 1998 for P2,000,000 which matured on July 8, 1998,[1] and Promissory Note No. 1000045-09 dated April 8, 1998 for P5,000,000 which matured on October 5, 1998.[2]

Respondent also granted petitioner medium term loans on account of which he and his wife executed Promissory Note No. 6000201-00 dated September 4, 1997 for P3,294,117.63 which matured on August 19, 1999[3] and Promissory Note No. 6000191-00 for P2,000,000 dated February 19, 1997 which matured on February 19, 2002.[4]

The first three Promissory Notes, Nos. 1000045-08, 1000045-09, and 6000201-00, carried a cross-default provision reading:

In case of my/our failure to pay when due and payable any amount which I/we are obligated to pay under this Note and/or any other obligation which I/we or any of us may owe or hereafter owe to the BANK, or to the Bank of the Philippine Islands (BPI) or to any of BPI Subsidiary or Affiliate, such as but not limited to BPI Family Bank, BPI Credit Corporation, BPI Leasing Corporation, BPI Securities Corporation and BPI Express Card Corporation whether as or in case of conviction for a criminal offense with final judgment carrying with it the penalty of civil interdiction affecting me/us, or any of us, or in any of the cases covered by Article 1198 of the Civil Code of the Philippines, then the entire amount outstanding under this Note shall immediately become due and payable without the necessity of notice or demand which I/we hereby waive. Likewise, I/we hereby jointly and severally promise to pay a late payment charge on any overdue amount under this note at the rate of Two percent (2%) per month over and above and in addition to the interest payable under this note.[5] (emphasis and underscoring supplied)

The fourth Promissory Note, No. 6000191-00, carried a substantially similar provision.[6]

To secure the payment of their loans, petitioner and his wife executed real estate mortgages covering properties in Ozamis City.

Petitioner defaulted on the first Promissory Note. And he had an overdraft of P16,000,000 with respondent,[7] drawing respondent to send a final demand letter dated July 27, 1998 declaring petitioner's availments under the revolving credit line and medium term loans immediately due and payable[8] and demanding settlement thereof in five days.

Petitioner and his wife failed to settle their obligations, hence, respondent filed an application for extrajudicial foreclosure of the mortgages in September 1999 before the Office of the Sheriff of the Regional Trial Court

(RTC) of Ozamis City.[9]

Petitioner thereupon filed on October 15, 1998 before the RTC of Ozamis City a complaint[10] for injunction with damages against respondent to enjoin the foreclosure of the mortgages, alleging, inter alia, as follows:

3. To finance the construction of [its] poultry farm . . . the defendant[-herein respondent] granted the plaintiff a Revolving Credit Line amounting to P7 Million, which was availed of by the plaintiff under the following Promissory Note [including Note No. 1000045-08]:

x x x x

5. x x x [I]t appears indubitably clear, that at the time the defendant[-herein respondent's] lawyer sent a letter to plaintiff dated 27 July 1998, declaring the entire obligation of plaintiff immediately due and demandable [covered by the first Promissory Note], the only loan availed which had already matured was the P2 Million in the Revolving Credit Line, but whose interest was fully paid up to 8 July 1998; x x x

x x x x

7. Defendant's act of accelerating the maturity of plaintiff's entire obligation would not only be in gross bad faith, but also a gross abuse of right, as it has subjected the maturity of the loans to its own whims and caprices, to the damage and great prejudice of the plaintiff; not to mention the fact that it is done in the midst of this present economic crisis and during these difficult times of high and exorbitant interest rates;

8. There is no reason for the defendant to hasten the maturity of the loans, as it would not suffer any prejudice, for the loans both under the Credit Line and the Medium Term Loan are secured with collaterals and whatever amount due can very well be taken care of by the same; on the contrary, it is plaintiff who would suffer the most;

9. Surprisingly, defendant BPI Agribank filed with the office of the RTC Sheriff, Ozamiz City, an application for Extra-judicial foreclosure of the mortgaged properties, which foreclosure will undoubtedly work undeniable injustice and serious irreparable damage to plaintiff. Hence, this instant complaint asking this Honorable Court to maintain the status quo and cease and desist from taking any further action in connection with the application for foreclosure against plaintiff[.][11] (emphasis and underscoring supplied),

and praying that:

- Immediately after the filing of the complaint and before hearing, a writ of preliminary injunction/temporary order be issued ordering the defendant BPI Agribank to maintain the status quo and cease and desist from taking any further action against plaintiff by collecting his loan obligation particularly by foreclosing the mortgaged properties; and furthermore, ordering the defendant Ex-Officio Sheriff of Ozamiz City to cease and desist from taking any further action in connection with defendant's application for foreclosure;

- After due hearing:

2.1 Ordering the preliminary injunction permanent;

2.2. Ordering the defendant to pay plaintiff the amount of no less than P500,000 as moral damages, P100,000 as actual damages; P100,000 as exemplary damages and P50,000 as attorney's fees.

- Plaintiff be granted such other and further reliefs as are just and equitable under the premises.[12] (emphasis and underscoring supplied)

By Order of October 23, 1998,[13] Branch 15 of the Ozamis City RTC directed the issuance of a Temporary Restraining Order.

After it conducted a hearing on herein petitioner's application for a writ of preliminary injunction, the trial court,

by Order of March 13, 2000,[14] directed the issuance of a writ of preliminary injunction, it finding that "there are legal matters to be looked into with respect to the application of the acceleration clause or default provisions in the promissory note and great and irreparable damage will be suffered by the plaintiff if the mortgage will be foreclosed and the propert[ies] are sold on public auction." [15] Its Motion for Reconsideration [16] having been denied, [17] respondent filed a petition for certiorari [18] before the Court of Appeals.

The Court of Appeals, by Decision of June 30, 2006, [19] finding that petitioner has no clear right to an injunctive relief, lifted the preliminary injunction issued by the RTC, hence, the present petition for review on certiorari, [20] petitioner alleging that the Court of Appeals gravely erred in:

x x x LIFTING THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE TRIAL COURT.

x x x x

x x x RULING THAT THE [RTC] MARCH 13, 2000 ORDER FAILED TO DEMONSTRATE THAT PETITIONER HAS ANY RIGHT IN ESSE WHICH WOULD BE VIOLATED BY THE RESPONDENT BANK IF FORECLOSURE PROCEEDINGS WERE TO PROCEED.

x x x x

x x x NOT RULING THAT THE ISSUE ON THE VALIDITY OR LEGALITY OF THE DEFAULT PROVISION ALLEGEDLY PROVIDED IN THE PROMISSORY NOTES AND INVOKED [BY] THE RESPONDENT BANK IN DECLARING PETITIONER AS HAVING DEFAULTED IN ALL HIS ACCOUNTS/OBLIGATIONS CONSTITUTES AS A LEGAL AND FACTUAL BASIS IN THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION IN ORDER TO PRESERVE THE STATUS QUO AND TO PREVENT GREAT AND IRREPARABLE DAMAGE AND INJURY TO PETITIONER SHOULD THE FORECLOSURE PROCEED. [21] (emphasis and underscoring supplied)

The petition fails.

One of the requisites for the issuance of a writ of preliminary injunction is that the applicant must have a right in esse. [22] A right in esse is a clear and unmistakable right to be protected, [23] one clearly founded on or granted by law or is enforceable as a matter of law. [24] The existence of a right to be protected, and the acts against which the writ is to be directed are violative of said right must be established. [25]

The complaint filed by petitioner for injunction with damages seeks to enjoin the foreclosure of the mortgages. Petitioner admitted having executed Promissory Note No. 1000045-08. During the hearing of his application for a writ of preliminary injunction, the cross-default provision of the note was read to him and he admitted having gone over [26] it before he signed the note. And petitioner admitted that he failed to honor the note on maturity.

Petitioner alleged in his complaint, however, that respondent's acceleration of the maturity of his entire obligation is "in gross bad faith" and in "gross abuse of [his] right" as it "subjected the maturity of the loans to its own whims and caprices . . . not to mention that it [was] done in the midst of this present economic crisis"

Respondent's declaration that petitioner's availments under the revolving credit line and medium term loans were immediately due and payable was by virtue of the cross-default provision of Promissory Note No. 1000045-08. Respondent's move to foreclose the mortgages after petitioner defaulted in his obligation under the promissory note was thus in accordance with said provision which petitioner did not challenge. The trial court thus erred in ordering the issuance of the writ of preliminary injunction on the basis of its finding that "there are legal matters to be looked into with respect to the application of the acceleration clause or default provisions in the promissory note."

It need not be underlined that jurisdiction over an issue in a case is determined and conferred by the pleadings filed by the parties, or by their agreement in a pre-trial order or stipulation or, at times by their implied consent as by the failure of a party to object to evidence on an issue not covered by the pleadings, as provided in Section 5, Rule 10 of the Rules of Court.[27]

By the above-quoted allegations and prayer in petitioner's complaint, however, which complaint, it bears emphasis, is for injunction and damages, as well as from the transcript of stenographic notes taken during the hearing on petitioner's application for a writ of preliminary injunction, petitioner has not laid or established a right in esse to entitle him to the writ.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Exhibit "2," records, p. 61.

[2] Exhibits "1"-"3," id. at 60.

[3] Exhibit "3," id. at 62.

[4] Exhibit "4," id. at 63.

[5] Exhibit "3-c," id. at 62. Vide Exhibits "1-c" and "2-c," id. at 60-61.

[6] Vide Exhibit "4-c," id. at 63.

[7] TSN, May 7, 1999, p. 6.

[8] Records, pp. 8-9.

[9] TSN, April 6, 1999, p. 17.

[10] Records, pp. 2-6.

[11] Id. at 3-4.

[12] Id. at 4-5.

[13] Id. at 18.

[14] Id. at 83-84.

[15] Id. at 84.

[16] Id. at 85-89.

[17] Id. at 95.

[18] CA rollo, pp. 2-25.

[19] Decision penned by Court of Appeals Associate Justice Edgardo A. Camello, with the concurrence of Associate Justices Ricardo R. Rosario and Sixto C. Marella, Jr.; id. at 138-150.

[20] Rollo, pp. 32-54.

[21] Id. at 44-45.

[22] *Marquez v. Presiding Judge (Hon. Ismael B. Sanchez)*, RTC Br. 58, Lucena City, G.R. No. 141849, February 13, 2007, 515 SCRA 577, 588.

[23] *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*, G.R. No. 161004, April 14, 2008, 551 SCRA 183, 189.

[24] *Tomawis v. Tabao-Caudang*, G.R. No. 166547, September 12, 2007, 533 SCRA 68, 85.

[25] *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, 523 SCRA 405, 415-416.

[26] TSN, March 9, 1999, pp. 17-19.

[27] *De Joya v. Marquez*, G.R. No. 162416, January 31, 2006, 481 SCRA 376, 382. Vide Florenz Regalado, *Remedial Law Compendium*, Vol. 1, p. 8; *Lazo v. Republic Surety and Insurance Co., Inc.*, G.R. No. L-27365, January 30, 1970, 31 SCRA 329, 334.

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