# ST. JAMES COLLEGE OF PARAÑAQUE; JAIME T. TORRES, REPRESENTED BY HIS LEGAL REPRESENTATIVE, JAMES KENLEY M. TORRES; AND MYRNA M. TORRES, PETITIONERS, VS. EQUITABLE PCI BANK, RESPO...

*G.R. No. 179441. August 09, 2010*

Ponente: VELASCO JR., J.

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**VELASCO JR., J.:**

Appealed via this petition for review under Rule 45 is the Decision[1] dated January 17, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 86587, as reiterated in its Resolution[2] of August 28, 2007, reversing the earlier orders in SCA No. 2569 of the Regional Trial Court (RTC), Branch 266 in Pasig City.

The Facts

Petitioners-spouses Jaime (now deceased) and Myrna Torres owned and operated St. James College of Parañaque[3] (St. James College), a sole proprietorship educational institution. Sometime in 1995, the Philippine Commercial and International Bank (PCIB) granted the Torres spouses and/or St. James College a credit line facility of up to PhP 25,000,000. This accommodation or any of its extension or renewal was secured by a real estate mortgage[4] (REM) over a parcel of land situated in Parañaque covered by Transfer Certificate of Title (TCT) No. 74598[5] in the name of St. James College, particularly described as:

> A parcel of Land (lot 2 of the cons. and subd. plan Pcs.-13-0008777, being a portion of the cons. of Lots 4654-B and 5654-C Psd.-13-002266. L.R.C. Rec. No. N-21332), situated in the Bo. of San Dionisio, Mun. of Parañaque, Metro Manila. x x x containing an area of NINETEEN THOUSAND TWO HUNDRED TWENTY FIVE (19,225) SQ. METERS.

St. James College used to occupy the above lot.

PCIB eventually merged with Equitable Bank with the surviving bank known as Equitable PCI Bank (EPCIB) (now Banco de Oro). The credit line underwent several annual renewals, the last being effected in 2001. As petitioners had defaulted in the payment of the loan obtained from the secured credit accommodation, their total unpaid loan obligation, as of September 2001, stood at PhP 18,300,000.

In a bid to settle its loan availment, petitioners first proposed to EPCIB that they be allowed to pay their account in equal quarterly installments for five years. This payment scheme was apparently not acceptable to EPCIB, as another written letter later followed, this time petitioners proposing that their outstanding credit be converted into a long term loan payable in 10 equal annual installments.

EPCIB responded via a letter of January 9, 2003.[6] In it, EPCIB informed petitioners that it is denying their request for the reinstatement of their credit line, but proposed a restructuring package with a soft payment scheme for the outstanding loan balance of PhP 18,300,000. Under the counter-proposal, the bank would book the accumulated past due loans to current status and charge interest at a fixed rate of 13.375% per annum, payable in

either of the ensuing modes and level, at petitioners' options: payment of the PhP 18,300,000 principal either at a monthly rate of PhP 508,333.33; or equal annual amortizations of PhP 6,100,000 payable every May. Petitioner Jaime Torres chose and agreed to the second option, i.e., the equal annual amortizations of PhP 6,100,000 payable every May, by affixing his conforme signature at the bottom portion of EPCIB's letter, writing the words "on annual amortization."[7]

May 2003 came, but petitioners failed to pay the stipulated annual amortization of PhP 6,100,000 agreed upon. Whereupon, EPCIB addressed to petitioners a demand letter dated June 6, 2003 requiring them to settle their obligation. On June 23, 2003, petitioners tendered, and EPCIB accepted, a partial payment of PhP 2,521,609.62, broken down to cover the following items: PhP 1,000,000 principal, PhP 1,360,881.62 interest due on June 15, 2003, and PhP 160,728.00 insurance premium for the mortgaged property. In the covering June 23, 2003 letter,[8] which came with the tender, petitioners promised to make another payment in October 2003 and that the account would be made current in June 2004. They manifested, however, that St. James College is not subject to the 10% value-added tax (VAT) which EPCIB assessed against the school in its June 15, 2003 statement of account. Petitioners accordingly requested the deletion of the VAT portion.

Vis-à-vis the PhP 2,521,609.62 payment to which it issued an official receipt (OR)[9] dated June 30, 2003, EPCIB made it abundantly clear on the OR that: "THE RECEIPT OF PAYMENT IS WITHOUT PREJUDICE TO THE BANK'S RIGHT AND CLAIMS ARISING FROM THE FACT THE ACCOUNT IS OVERDUE. NOR SHALL IT RENDER THE BANK LIABLE FOR ANY DAMAGE BY ITS ACCEPTANCE OF PAYMENT." And in answer to petitioners' cover letter of June 23, 2003, EPCIB, through counsel, reminded and made it clear to petitioners that their first partial payment did not detract from the past due character of their outstanding loan for which reason it is demanding the remaining PhP 5,100,000 to complete the first PhP 6,100,000 principal payment. On August 27, 2003, EPCIB again sent another demand letter to petitioners, but to no avail.

On September 15, 2003, petitioners requested that the bank allow a partial payment of the May 2003 amortization balance of PhP 5,100,000. Two days later, EPCIB responded denying petitioners' request, but nonetheless proposed a new repayment scheme to which petitioners were not amenable.

Petitioners made a second check remittance, this time in the amount of PhP 921,535.42,[10] the PhP 500,000 portion of which represented payment of the principal and PhP 421,535.42 for interest due on October 15, 2003. By letter dated November 5, 2003, EPCIB again reminded petitioners that its receipt of the check payment for the amount of the PhP 921,535.42 is without prejudice to the bank's rights considering the overdue nature of petitioners' loan.[11]

On November 6, 2003, petitioners issued a Stop Payment Order[12] for their PhP 921,535.42 check. And in a November 8, 2003 letter, petitioner Jaime, adverting to EPCIB's November 5, 2003 letter, told the bank, "You cannot just unilaterally decide/announce that you did not approve our proposal/request for restructuring of our loan after receiving our payment, which was based on said proposal/request."[13]

On November 10, 2003, EPCIB, through counsel, demanded full settlement of petitioners' loan obligation in the total amount of PhP 24,719,461.48. Appended to the demand letter which went unheeded was a statement of account showing detailed principal obligation, interest, and penalties as well as payments petitioners made and how they were applied.

On November 27, 2003, EPCIB filed before the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC in Parañaque City its Petition for Sale[14] to extra-judicially foreclose the mortgaged property covered by TCT No. 74598. After due publication, the foreclosure sale of the mortgaged property was set for January 9 and 16, 2004.


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On December 8, 2003, in the RTC, Branch 266 in Pasig City, petitioners instituted against EPCIB a complaint for Declaratory Relief, Injunction and Damages, with application for a temporary restraining order (TRO) and/or writ of preliminary injunction,[15] docketed as SCA No. 2569.

On the very day of the scheduled foreclosure sale, January 9, 2004, the Pasig City RTC issued a TRO,[16] enjoining EPCIB from proceeding with the scheduled foreclosure sale, and set a date for the hearing on the application for a writ of preliminary injunction.

After the scheduled hearing on January 15, 2004, the trial court required the parties to file their respective memoranda. EPCIB filed a motion praying for an additional time to file its memorandum which the RTC eventually denied.

On March 10, 2004, the RTC issued an Order granting a writ of preliminary injunction in favor of petitioners, as plaintiffs a quo, thus effectively staying the rescheduled foreclosure sale of St. James College's mortgaged property. The dispositive portion of the RTC Order reads:

> WHEREFORE, premises considered, finding plaintiffs' application for writ of preliminary injunction to be well-taken and legally justified, the same is hereby GRANTED.
>
> Accordingly, in the interest of substantial justice, let therefore a writ of preliminary injunction be issued enjoining the defendant EPCIB and/or any of its representative/s or any person acting in its behalf to foreclose the mortgaged property of the plaintiffs until final order of the Court. Plaintiffs are directed to post an injunction bond in the amount of ONE MILLION PESOS (PhP1,000,000.00) to answer for whatever damages that said defendant may suffer in the event that it is finally determined by the Court that plaintiffs are not entitled to the same.
>
> SO ORDERED.[17]

By Order[18] of July 6, 2004, the RTC denied EPCIB's Extremely Urgent Motion for Reconsideration.[19]

Aggrieved, EPCIB went to the CA on certiorari to nullify the RTC Orders dated March 10, 2004 and July 6, 2004, and necessarily to assail the propriety of the writ of preliminary injunction thus granted.

Meanwhile, petitioner Jaime passed away and was substituted by petitioner James Kenley M. Torres.

The Ruling of the CA

On January 17, 2007, the appellate court--while making short shrift of the jurisdictional challenge raised by EPCIB, but finding that grave abuse of discretion attended the issuance of the assailed writ of preliminary injunction--rendered the assailed decision nullifying and setting aside the RTC orders, disposing as follows:

> WHEREFORE, premises considered, the instant petition for certiorari is GRANTED. Accordingly, the March 10, 2004 and July 6, 2004 Orders of the Regional Trial Court of Pasig City, Branch 266, are hereby REVERSED and SET ASIDE.
>
> SO ORDERED.[20]

Their Motion for Reconsideration (Of the Decision dated 17 January 2007)[21] having been denied in the equally assailed resolution of August 28, 2007, petitioners interposed the instant recourse.

The Court, through its Resolution of December 12, 2007, issued a TRO,[22] enjoining the Office of the Clerk of Court and Ex-Officio Sheriff of the Parañaque City RTC, and EPCIB, their agents or representatives, from enforcing the appealed decision and resolution of the CA, conditioned upon the posting by petitioners of a PhP 1,000,000 surety bond. On January 29, 2008, petitioners submitted the necessary surety bond.

The Issues

Petitioners urge the setting aside of the appealed CA decision and resolution on the submission that the appellate court committed grave and reversible error:

> I. x x x IN RULING THAT THE PETITIONERS (PRIVATE RESPONDENTS IN CA-G.R. SP NO. 86587) FAILED TO ESTABLISH THE ELEMENTS FOR THE ISSUANCE OF THE INJUNCTIVE WRIT CONTRARY TO THE FINDINGS OF THE COURT A QUO BY MISAPPLYING THE CASE OF TOYOTA MOTOR PHILIPPINES CORPORATION WORKERS' ASSOCIATION VS COURT OF APPEALS, 412 SCRA 69.
>
> II. x x x IN MISINTERPRETING THE DOCTRINE ENUNCIATED IN ESTARES VS. COURT OF APPEALS, 459 SCRA, 619 UPON WHICH IT LIKEWISE BASED ITS ASSAILED DECISION PROMULGATED ON JANUARY 17, 2007.
>
> III. x x x IN RULING THAT THERE WAS NO NOVATION AS PROVIDED FOR UNDER ARTICLE 1292 OF THE NEW CIVIL CODE OF THE PHILIPPINES.[23]

The key issues tendered may be summarized, as follows: first, whether there was indeed a novation of the contract between the parties; and second, whether the required ground or grounds for the issuance of a preliminary injunction is/are present.

The Court's Ruling

The petition is unmeritorious.

No Novation of Contract

Petitioners admit the existence of their unsettled loan obligation to EPCIB. They would insist, however, that the full amount is still not due owing to the implied novation of the terms of payment previously agreed upon. As petitioners assert in this regard that the acceptance by EPCIB, particularly of the June 23, 2003 PhP 2,521,609.62 payment, without any objection on the new terms set forth in their June 23, 2003 complementing covering letter, novated the terms of payment of the PhP 18,300,000 secured loan. To petitioners, EPCIB veritably acquiesced to the new terms of payment being incompatible with the terms of the January 9, 2003 counter-proposal of EPCIB affecting petitioners' obligation of PhP 18,300,000.

We are not persuaded.

As a civil law concept, novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates it, either by changing its objects or principal conditions, or by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.[24] Novation may be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.[25] Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished, or implied, when the new obligation is on every point incompatible with the old one.[26] The test of incompatibility lies on whether the two obligations can stand together, each one with its own independent existence.[27]

For novation, as a mode of extinguishing or modifying an obligation, to apply, the following requisites must concur:

1) There must be a previous valid obligation.
2) The parties concerned must agree to a new contract.

3) The old contract must be extinguished.
4) There must be a valid new contract.[28]

As correctly determined by the appellate court, certain circumstances or their interplay militates against the application of novation.

First. The parties did not unequivocally declare, let alone agree, that the obligation had been modified as to the terms of payment by the partial payments of the obligation. Petitioners indeed made known their inability to pay in full the PhP 6,100,000 principal obligation due in May 2003 and tendered only partial payments of PhP 1,000,000 on June 23, 2003 and PhP 500,000 on November 5, 2003. It should be stressed, however, that EPCIB lost no time in demanding payment for the full PhP 6,100,000 principal obligation due in May 2003. The following acts of EPCIB readily argue against the idea of its having agreed to a modification in the stipulated terms of payment: (a) its letter-reply to petitioners' June 23, 2003 letter; (b) the August 27, 2003 demand-letter of EPCIB for the full principal balance of PhP 5,100,000 from petitioners; (c) the September 17, 2003 letter of EPCIB denying petitioners' request for a partial payment; (d) the OR dated June 30, 2003 EPCIB issued where the following entries were written: "THE RECEIPT OF PAYMENT IS WITHOUT PREJUDICE TO THE BANK'S RIGHTS AND CLAIMS ARISING FROM THE FACT THE ACCOUNT IS OVERDUE. NOR SHALL IT RENDER THE BANK LIABLE FOR ANY DAMAGE BY ITS ACCEPTANCE OF PAYMENT"; and (e) the letter of November 5, 2003 EPCIB sent reiterating that the receipt of the second partial payment is without prejudice to the bank's rights on the overdue loan.

The underlying arrangement between petitioners and EPCIB, respecting the terms of payment of the loan drawn against the credit facility, was that set forth in the January 9, 2003 agreement, which, for reference, required petitioners to remit to the lending bank an annual amortization of PhP 6,100,000 payable every May until the entire loan obligation shall have been covered. Any suggestion that EPCIB is precluded from asserting its legal rights after petitioners reneged on their part of the bargain etched in said January 9, 2003 agreement owing alone to its acceptance of an amount less than PhP 6,100,000, is too presumptuous for acceptance. Viewed otherwise, the notion of novation foisted by petitioners on the Court cannot be plausibly deduced from EPCIB's acceptance of such lesser amount.

Contrary to what petitioners would want the Court to believe, there is clearly no incompatibility between EPCIB's receipt of the partial payments of the principal amounts and what was due in May 2003, i.e., the PhP 1,000,000 and PhP 500,000 payments vis-à-vis the PhP 6,100,000 due. As it were, EPCIB accepted the partial payments remitted, but demanded, at the same time, the full payment of what was otherwise due in May 2003, as the parties agreed upon. As the CA observed correctly, precisely EPCIB was demanding the full payment of the PhP 5,100,000 principal due in May 2003 which had not yet been settled.

Second. Novatio non praesumitur, or novation is never presumed,[29] is a well-settled principle. Consequently, that which arises from a purported modification in the terms and conditions of the obligation must be clear and express. On petitioners thus rests the onus of showing clearly and unequivocally that novation has indeed taken place. To us, petitioners have not discharged the burden. Moreover, we fail to see the presence of the concurring requisites for a novation of contract, as enumerated above. Indeed, petitioners have not shown an express modification of the terms of payment of the obligation.

It has often been said that the minds that agree to contract can agree to novate. And the agreement or consent to novate may well be inferred from the acts of a creditor, since volition may as well be expressed by deeds as by words.[30] In the instant case, however, the acts of EPCIB before, simultaneously to, and after its acceptance of payments from petitioners argue against the idea of its having acceded or acquiesced to petitioners' request for a change of the terms of payments of the secured loan. Far from it. Thus, a novation through an alleged implied


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consent by EPCIB, as proffered and argued by petitioners, cannot be given imprimatur by the Court.

Propriety of the Grant of Injunctive Writ

We now come to the main issue in this case--the propriety of the issuance of the preliminary injunctive writ.

Basically, petitioners fault the appellate court for citing and relying on Toyota Motor Philippines Corporation Workers' Association v. Court of Appeals (Toyota)[31] and Estares v. Court of Appeals[32] in support of its disposition on their non-entitlement to a preliminary injunctive writ. Pursuing this point, petitioners posit the inapplicability of Toyota, as that case involved the issuance of a writ of preliminary mandatory injunction, not a writ of preliminary prohibitory injunction, as here. And Estares, they argue, was cast against and revolved around a different factual issue, for the debtors Estares spouses in Estares, unlike petitioners, did not question the statement of account given them by the lending institution and failed to establish their entitlement to the injunctive writ.

Moreover, petitioners invite attention to the fact respecting the mortgaged lot being the site of St. James College. As such, petitioners add, public interest demands that said educational institution be protected from an undue operational disruption which would result in damages, in case of a foreclosure sale, that are not only incapable of pecuniary estimation, but also well-nigh irreparable, affecting the employment of the teaching staff and other school personnel and the displacement of thousands of students.

We are not persuaded.

Requisites for issuance of an injunctive writ

A writ of preliminary injunction issues to:

> prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole office is to preserve the status quo until the merits of the case can be heard fully. Thus, its issuance is conditioned upon a showing of a clear and unmistakable right that is violated. Moreover, an urgent necessity for its issuance must be shown by the applicant.[33] (Emphasis supplied.)

Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established, thus:

> (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.

And following jurisprudence, these requisites must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue:

> (1) The applicant must have a clear and unmistakable right to be protected, that is a right in esse;
>
> (2) There is a material and substantial invasion of such right;
>
> (3) There is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[34]

Thus, the question of applicability of Toyota as regards the requisites of a preliminary injunction is of no moment, for there is no distinction in the requisites for either a mandatory or prohibitory injunctive writ.

Requisites for injunctive writ not present

A circumspect review of the parties' pleadings and other records of the case readily yields the conclusion that the minimum legal requisites for the issuance of a preliminary prohibitory injunction have not been satisfied. Hence, the appellate court neither committed manifest error nor gravely abused its discretion in setting aside the grant by the trial court of a writ of preliminary injunction in favor of petitioners.

For sure, the Court is aware that the matter of the propriety of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court. It bears to stress, however, that the injunctive writ is conditioned on the existence of a clear and positive right of the applicant which should be protected, the writ being the strong arm of equity, an extraordinary peremptory remedy which can be availed of only upon the existence of well-defined circumstances. Be that as it may, the writ must be used with extreme caution, affecting as it does the respective rights of the parties.[35] In fine, the writ should be granted only when the court is fully satisfied that the law permits it and the emergency demands it,[36] for the very foundation of the jurisdiction to issue writ of injunction rests in the existence of a cause of action, probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[37]

Petitioners failed to show a right in esse to be protected

We join the CA in its findings that the petitioners have not shown a right in esse to be protected. Indeed, the Rules requires that the applicant's right must be clear or unmistakable, that is, a right that is actual, clear, and positive especially calling for judicial protection.[38] An injunction will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action.

An application for a preliminary injunction is a mere adjunct to the main action. While the instant proceeding is only for the purpose of determining whether grave abuse of discretion indeed attended the issuance by the RTC of the writ in question, as the CA has determined positively, it is inevitable that our pronouncements may have some unintended bearing on the main suit for declaratory relief. Nonetheless, it behooves the Court to resolve the matter in keeping with the requirements of justice and fair play.

A judicious review of the records shows petitioners applying for and EPCIB granting the former credit facilities and for which a bona fide REM over the St. James College lot had been constituted. EPCIB has shown documentary evidence of how petitioners agreed to the credit line accomodation with a limit of PhP 25,000,000. Moreover, the late petitioner Jaime indeed agreed to the January 9, 2003 counter-proposal of EPCIB for the payment of the PhP 18,300,000 outstanding loan, by signing his conforme on the counter-proposal and voluntarily opting to pay the loan on equal annual payments of PhP 6,100,000 every May for three years.

It bears stressing that the original renewable credit line was granted sometime in 1995, while the REM over the land covered by TCT No. 74598 was executed on November 8, 1994. The records show that the credit line was last renewed in 2001. There can be no quibbling that in September 2001, petitioners were already in default, their overdue loan having an unpaid balance of PhP 18,300,000. The fact of default was admitted by petitioners when they twice proposed ways of settling their account.

Verily, the January 9, 2003 counter-proposal of EPCIB was a gesture of liberality on its part, inasmuch as, by that simple act, it deferred exercising its rights as REM-secured creditor, by affording petitioners the opportunity to


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restructure their loan by make making the outstanding balance of PhP 18,300,000 current. As events turned out, however, petitioners still breached the terms of the counter-proposal by which they voluntarily agreed to abide.

We note that EPCIB did not immediately exercise its right to foreclose when the opportunity first presented itself. From September 27, 2001, when petitioners were already in arrears, until November 27, 2003, or for more than two years, EPCIB let that opportunity pass by. The new terms of payment pursuant to the January 9, 2003 agreement gave petitioners a fresh start to meet their obligation.

We further note that petitioners saw fit to commence SCA No. 2569 for declaratory relief only on December 8, 2003 or after EPCIB filed its petition for sale to extra-judicially foreclose the subject mortgaged property. With the view we take of things, petitioner instituted SCA No. 2569 as an afterthought and a measure to thwart and forestall the imminent extrajudicial foreclosure proceedings.

Given the foregoing perspective, EPCIB has clearly established its status as unpaid mortgagee-creditor entitled to foreclose the mortgage, a remedy provided by law[39] and the mortgage contract itself. On the other hand, petitioners can hardly claim a right, much less a clear and unmistakable one, which the intended foreclosure sale would violate if not enjoined. Surely, the foreclosure of mortgage does not by itself constitute a violation of the rights of a defaulting mortgagor.

The main purpose of the subsidiary contract of REM is to secure the principal obligation. Withal, when the mortgagors-debtors has defaulted in the amortization payments of their loans, the superior legal right of the secured unpaid creditors to exercise foreclosure proceedings on the mortgage property to answer for the principal obligation arises. So it must be in this case.

Contrary to what the RTC wrote, there was no urgent necessity to issue the writ to protect the rights and interest of petitioners as owners. First, they could participate in the foreclosure sale and get their property back unencumbered by the payment of the obligations that they acknowledged in the first place. Second, a foreclosure sale does not ipso facto pass title to the winning bidder over the mortgaged property. Petitioners continue to own the mortgaged property sold in an auction sale until the expiration of the redemption period. Third, petitioners have one year from the auction sale to redeem the mortgaged property. The one-year redemption period is another grace period accorded petitioners to pay the outstanding debt, which would be converted to the proceeds of the forced sale pursuant to the requisites under Sec. 6 of Republic Act No. 3135, as amended, for the redemption of a property sold in an extrajudicial sale, also in accordance with Sec. 78 of the General Banking Act, as amended by Presidential Decree No. 1828.[40] It is only upon the expiration of the redemption period, without the judgment debtors having made use of their right of redemption, does ownership of the land sold become consolidated in the purchaser or winning bidder.[41]

Petitioners contend that the proposed foreclosure sale would likely cause unemployment in, as well as the displacement of thousands of students of, St. James College. Petitioners' thesis of unemployment and displacement provides a practical, not a legal reason, for the issuance of an injunctive writ. What they conveniently refrained from saying is that it is within their power and to their interest to prevent the occurrence of any of the two eventualities.

Finally, petitioners point to the fact that the mortgaged property has a value of over PhP 1 billion which is many times over their unpaid loan obligation.

The disparity between what the mortgaged lot is worth and petitioners' unpaid debt of PhP 24 million is not, standing alone, a ground to enjoin a foreclosure sale. Neither would petitioners, as mortgagors, be placed at a disadvantage by such state of things. The CA, citing decisional law, explains why:


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> Second, the fact that the outstanding obligation is only P24 million while the value of the mortgaged property could be more than one billion pesos is not sufficient to enjoin the foreclosure sale of the said property. We agree with [EPCIB] that the value of the mortgaged property has no bearing on the propriety of the auction sale provided that the same is regularly and honestly conducted. This is because in a foreclosure sale where there is a right to redeem, inadequacy of the bid price is of no moment for the reason that the judgment debtor has always the chance to redeem and reacquire the property. In fact, the property may be sold for less than its fair market value precisely because the lesser the price, the easier for the owner to effect a redemption.[42]

Application for injunctive relief construed strictly

In all then, the preliminary evidence presented by petitioners and the allegations in their complaint did not clearly make out any entitlement to the injunctive relief prayed for. Consequently, the RTC gravely abused its discretion in granting the writ of preliminary injunction. Trial courts are reminded to see to it that applications for preliminary injunction clearly allege facts and circumstances showing the existence of the requisites.[43] We need not stress that an application for injunctive relief is construed strictly against the pleader.[44] Here, petitioners have not sufficiently shown the presence of the requisites for their entitlement to the writ. Perforce, the injunctive writ issued by the trial court must be recalled.

On the issue of petitioners' contention on the alleged VAT imposed on the principal obligation, such can be fully ventilated in the main action before the trial court.

One final word. The institution by petitioners of a suit for declaratory relief--after the petition for extrajudicial petition has already been filed; and hoping in the process to block the bank's legitimate effort to collect an overdue account and demandable debt--is but a crude attempt to evade complying with their just obligation. It cannot be countenanced. The antecedent facts in this case are quite simple: petitioners opened a credit line secured by a REM. After drawing much from that line, they failed to pay, even after the bank bent backwards in the matter of terms of payments. As a matter of justice and good conscience, the bank's right to a forced sale of the mortgaged property pursuant to the REM must be upheld absent other weightier reasons.

WHEREFORE, the instant petition is hereby DENIED for lack of merit, and the Court of Appeals Decision dated January 17, 2007 and Resolution dated August 28, 2007 in CA-G.R. SP No. 86587 are AFFIRMED. The temporary restraining order issued by the Court pursuant to its Resolution of December 12, 2007 is accordingly LIFTED.

Costs against petitioners.

**SO ORDERED.**

Corona, C.J., (Chairperson), Leonardo-De Castro, Del Castillo, and Perez, JJ., concur.

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[1] Rollo, pp. 162-183. Penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of the Court) and Rosmari D. Carandang.

[2] Id. at 196-198.

[3] Referred to in certain pleadings and documents as St. James School.

[4] Rollo, pp. 58-59, dated November 8, 1994.

[5] Id. at 60-61, dated September 16, 1993.

[6] Id. at 56-57.

[7] Id. at 57.

[8] Id. at 62.

[9] Id. at 63.

[10] Id. at 64, Check Voucher No. 3946 dated October 30, 2003.

[11] Id. at 69.

[12] Id. at 67-68.

[13] Id. at 15.

[14] Id. at 72-74.

[15] Id. at 77-85.

[16] Id. at 95-96.

[17] Id. at 114.

[18] Id. at 129-130.

[19] Id. at 115-128, dated March 19, 2004.

[20] Id. at 182.

[21] Id. at 184-195, dated February 2, 2007.

[22] Id. at 222-224.

[23] Id. at 26.

[24] Idolor v. Court of Appeals, G.R. No. 141853, February 7, 2001, 351 SCRA 399, 407; Agro Conglomerates, Inc. v. Court of Appeals, G.R. No. 117660, December 12, 2000, 348 SCRA 450, 458; De Cortes v. Venturanza, No. L-26058, October 28, 1977, 79 SCRA 709, 722-723; Philippine National Bank v. Mallari and The First National Surety & Assurance Co., Inc., 104 Phil. 437, 441 (1958).

[25] Babst v. Court of Appeals, G.R. No. 99398, January 26, 2001, 350 SCRA 341, 355-356; citing Quinto v. People, G.R. No. 126712, April 14, 1999, 305 SCRA 708, 714.

[26] Spouses Bautista v. Pilar Development Corporation, G.R. No. 135046, August 17, 1999, 312 SCRA 611, 618.

[27] Molino v. Security Diners International Corporation, G.R. No. 136780, August 16, 2001, 363 SCRA 358, 366; citing Fortune Motors v. Court of Appeals, G.R. No. 112191, February 7, 1997, 267 SCRA 653.

[28] Agro Conglomerates, Inc. v. Court of Appeals, supra note 24, at 458-459; Security Bank and Trust Company, Inc. v. Cuenca, G.R. No. 138544, October 3, 2000, 341 SCRA 781, 796; Reyes v. Court of Appeals, G.R. No. 120817, November 4, 1996, 264 SCRA 35, 43.

[29] Reyes v. Court of Appeals, supra note 28, at 48; Agro Conglomerates, Inc. v. Court of Appeals, supra note 24, at 459; Security Bank and Trust Company, Inc. v. Cuenca, supra note 28.

[30] Babst v. Court of Appeals, supra note 25.

[31] G.R. No. 148924, September 24, 2003, 412 SCRA 69.


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[32] G.R. No. 144755, June 8, 2005, 459 SCRA 604, 619.

[33] First Global Realty and Development Corporation v. San Agustin, G.R. No. 144499, February 19, 2002, 377 SCRA 341; see also Tayag v. Lacson, G.R. No. 134971, March 25, 2004, 426 SCRA 282; Mabayo Farms, Inc. v. Court of Appeals, G.R. No. 140058, August 1, 2002, 386 SCRA 110.

[34] Biñan Steel Corporation v. Court of Appeals, G.R. Nos. 142013 & 148430, October 15, 2002, 391 SCRA 90; Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority, G.R. No. 131367, August 31, 2000, 339 SCRA 434.

[35] Bataclan v. Court of Appeals, G.R. No. 78148, July 31, 1989, 175 SCRA 764.

[36] Olalia v. Hizon, G.R. No. 87913, May 6, 1991, 196 SCRA 665, 672-673.

[37] Id., citing Golding v. Balatbat, 36 Phil. 941 (1917).

[38] See Republic v. Villarama, G.R. No. 117733, September 5, 1997, 278 SCRA 736; Buayan Cattle Co., Inc. v. Quintillan, No. L-26970, March 19, 1984, 128 SCRA 276.

[39] Caltex Philippines, Inc. v. Intermediate Appellate Court, G.R. No. 74730, August 25, 1989, 176 SCRA 741.

[40] Tolentino v. Court of Appeals, G.R. No. 171354, March 7, 2007, 517 SCRA 370.

[41] Ley v. Union Bank of the Philippines, G.R. No. 167961, April 4, 2007, 520 SCRA 369.

[42] Rollo, p. 177; citing Valmonte v. Court of Appeals, No. L-41621, February 18, 1999, 303 SCRA 278.

[43] Sales v. Securities and Exchange Commission, G.R. No. 54330, January 13, 1989, 169 SCRA 109.

[44] Id. See also 43 C.J.S. 867: "A complaint for injunctive relief should be strictly construed against the pleader."


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