

G.G. SPORTSWEAR MANUFACTURING CORP. AND NARESH K. GIDWANI, PETITIONERS, VS. BANCO DE ORO UNIBANK, INC., PHILIPPINE INVESTMENT ONE (SPV-AMC), INC. AND THE OFFICE OF THE CLERK OF ...

G.R. No. 184434. February 08, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is concerned with the need to issue a temporary restraining order (TRO) or writ of preliminary injunction, enjoining a bank's foreclosure of the mortgages that secure the plaintiffs' loans upon a claim that the bank had already sold the loan receivables to a Special Purpose Vehicle entity.

The Facts and the Case

On April 22, 1994 petitioners G.G. Sportswear Manufacturing Corp. (G.G. Sportswear) and Naresh Gidwani mortgaged a lot in Aranda, Makati, and a house and lot in Bel-Air Village, also in Makati, to Equitable-PCI Bank, now the respondent Banco de Oro Unibank, Inc. (BDO), to secure a P20,357,000.00 loan to G.G. Sportswear. On April 25, 1996, to secure an additional P11,643,000.00 loan that BDO gave G.G. Sportswear, the parties amended the real estate mortgages to include such loan. Petitioner G.G. Sportswear was unable to pay its loans.

On March 15, 2005 respondent BDO told G.G. Sportswear in a letter[1] that the bank transferred on that date its "past due loan obligation with the bank," totaling US\$12,257,581.31 as of December 31, 2004, to Philippine Investment One (SPV-AMC), Inc. (PIO), "including all interest, fees, charges, penalties, and securities/collaterals, if any." This was followed by BDO Certification[2] dated April 21, 2005 that it "has assigned, conveyed, transferred and sold" to PIO, "on a without recourse basis, all its rights, title, benefits and interest to the Loan Receivables" of G.G. Sportswear.

Subsequently, however, respondent BDO applied with the Ex Officio Sheriff of Makati for the foreclosure of the properties that petitioners G.G. Sportswear and Gidwani mortgaged with the bank. The notice of sheriff's sale scheduled the auction of the properties on May 31, 2007 but this was subsequently rescheduled to July 18, 2007. At any rate, the sheriff auctioned off the Aranda property to BDO on June 21, 2007.[3]

On July 16, 2007, two days before the rescheduled auction of the Bel-Air property, petitioners G.G. Sportswear and Gidwani filed an action with the Regional Trial Court (RTC) of Makati, in Civil Case 07-631,[4] to annul the foreclosure, hold respondent BDO in indirect contempt, award damages, and enjoin further foreclosure by TRO and preliminary injunction. They alleged that, as a result of BDO's transfer of G.G. Sportswear's loan receivables to PIO in 2005, BDO lost the right to foreclose.

In its answer,[5] respondent BDO denied transferring petitioner G.G. Sportswear's loan receivables to PIO, stating that the April 21, 2005 Certification it issued was a mere "general certification" that did not specify which of several loan receivables were sold to PIO. BDO in fact transferred to Philippine Asset Investment, which entity

was subsequently taken over by respondent PIO, only P290,820.00 out of G.G. Sportswear's total loan.[6] BDO attached Certifications[7] from itself and from PIO to the effect that the credits secured by the Aranda and Bel-Air properties had not been transferred to PIO. The latter filed an answer of the same tenor.[8]

On August 7, 2007 the RTC issued an order,[9] denying petitioners G.G. Sportswear and Gidwani's applications for TRO and preliminary injunction. They filed a motion for reconsideration and a motion to inhibit the presiding judge,[10] but on October 11, 2007 the RTC denied both motions.[11] This prompted G.G. Sportswear and Gidwani to file a special civil action of certiorari with the Court of Appeals (CA) in CA-G.R. SP 101799, assailing the RTC orders mainly based on the proposition that respondent BDO had lost its right to foreclose the mortgages when it assigned its rights to PIO.

On June 26, 2008 the CA rendered judgment,[12] dismissing the petition for lack of merit. It denied on August 29, 2008 petitioners G.G. Sportswear and Gidwani's subsequent motion for reconsideration,[13] prompting them to file the present petition for review.

Issue Presented

The only issue presented in this case is whether or not the CA erred in finding that the RTC did not gravely abuse its discretion when it denied petitioners G.G. Sportswear and Gidwani's application for TRO and preliminary injunction despite the bank's apparent assignment of its credit to another entity.

The Court's Ruling

Petitioners G.G. Sportswear and Gidwani point out that BDO's March 15, 2005 letter and its April 21, 2005 certification show that the bank already transferred to PIO all its rights to the loan receivables of G.G. Sportswear. Thus, BDO lost its right to foreclose the mortgages on the properties that secured the unpaid loans, thus, entitling petitioners to an order enjoining the foreclosures. Further, petitioners claim that BDO bloated G.G. Sportswear's outstanding obligation such that it was being made to pay more through the foreclosure than was actually due.

The test for issuing a TRO or an injunction is whether the facts show a need for equity to intervene in order to protect perceived rights in equity.[14] In general, a higher court will not set aside the trial court's grant or denial of an application for preliminary injunction unless it gravely abused its discretion as when it lacks jurisdiction over the action, ignores relevant considerations that stick out of the parties' pleadings, sees the facts with a blurred lens, ignores what is relevant, draws illogical conclusions, or simply acts in random fashion.

Injunction may be issued only when the plaintiff appears to be entitled to the main relief he asks in his complaint.[15] This means that the plaintiff's allegations should show clearly that he has a cause of action. This means that he enjoys some right and that the defendant has violated it.[16] And, where the defendant is heard on the application for injunction, the trial court must consider, too, the weight of his opposition.

If one were to go by respondent BDO's March 15, 2005 letter to petitioner G.G. Sportswear and its April 21, 2005 certification, the bank appears to have already assigned all the loan receivables of G.G. Sportswear to respondent PIO. Logically, BDO no longer had the right to foreclose on the mortgages that secured the loans. But, judging by its answer to the complaint, BDO wanted that corrected. For it claimed that it actually assigned just a measly portion of its loan receivables to respondent PIO.

Did the allegations of the parties and the documents they attached to their pleadings give ample justification for the issuance of a TRO or preliminary injunction order to stop the foreclosure sale of the Bel-Air property? Two considerations militate against it:

First. The mortgaged properties were due for foreclosure. Admittedly, petitioner G.G. Sportswear had defaulted on the loans secured by the subject mortgages. Petitioners had, therefore, no right to complain about losing their

properties to foreclosure.

Second. The issue of which party owns the loan receivables and, consequently, had the right to foreclose the mortgages is essentially an issue between BDO and PIO. This issue is the concern of petitioners G.G. Sportswear and Gidwani but only to the extent that they are entitled to ensure that the proceeds of the foreclosure sale were paid to the right party.

As it happens, however, this is not even a genuine issue. Respondent PIO, which had been impleaded in the case, did not contest BDO's ownership of the loan receivables and its right to foreclose the mortgages. It would, therefore, make no sense to insist that PIO be the one to foreclose when it denounces such right. Besides, the real estate mortgages presented for foreclosure remained in BDO's name. No document has been presented superseding it.

For the above reasons, it cannot be said that petitioners G.G. Sportswear and Gidwani have established a right to the main relief they want, namely, the arrest of the foreclosure sale of their mortgaged properties after they had admitted not paying their loans. As for their claim that BDO had bloated G.G. Sportswear's outstanding obligation, the remedy if this turns out to be true is to direct BDO to return the excess proceeds with damages as the circumstances may warrant.

What is more, 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.[17] Here, since there is a valid cause to foreclose on the mortgages, petitioners G.G. Sportswear and Gidwani cannot claim that the irreparable damage they wanted to prevent by their application for preliminary injunction is the loss of their properties to auction sale. Their real injury, if it turns out that the right to foreclose belongs to PIO rather than to BDO, is payment of the proceeds of the auction sale to the wrong party rather than to their creditor. But this kind of injury is purely monetary and is compensable by an appropriate judgment against BDO. It is not in any sense an irreparable injury.

Under the circumstances, the Court must concur with the CA's finding that the RTC did not act with grave abuse of discretion in denying petitioners' application for TRO and preliminary injunction order.

ACCORDINGLY, the Court DENIES the petition and entirely AFFIRMS the June 26, 2008 decision and August 29, 2008 resolution of the Court of Appeals in CA-G.R. SP 101799.

SO ORDERED.

Carpio, Brion, Del Castillo, and Perez, JJ., concur.

[1] Rollo, p. 542.

[2] Id. at 216.

[3] Id. at 52.

[4] Entitled "G.G. Sportswear Manufacturing Corporation and Naresh K. Gidwani v. Banco de Oro-EPCI, Inc. (formerly Equitable-PCIBank), Philippine Investments One (SPV-AMC), Inc., and Office of the Clerk of Court and Ex Officio Sheriff of the RTC of Makati City, represented by Atty. Engracio M. Escasinas, Jr."

[5] Rollo, pp. 601-619.

[6] Id. at 613-614.

[7] Id. at 620-621.

[8] Id. at 674-678.

[9] Id. at 285-287.

[10] Id. at 584-600.

[11] Id. at 288.

[12] Id. at 88-106; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon.

[13] Id. at 108-109; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon.

[14] Almeida v. Court of Appeals, 489 Phil. 648, 663 (2005).

[15] Toyota Motor Philippines Corporation v. Court of Appeals, G.R. No. 102881, December 7, 1992, 216 SCRA 236, 251.

[16] Los Baños Rural Bank, Inc. v. Africa, 433 Phil. 930, 940-941 (2002).

[17] Id. at 940.

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