

TML GASKET INDUSTRIES, INC., PETITIONER, VS. BPI FAMILY SAVINGS BANK, INC., RESPONDENT.*G.R. No. 188768. January 07, 2013*

Ponente: PEREZ, J.

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We are urged in this petition for review on certiorari to reverse *ami set aside* the Decision[1] of the Court of Appeals in CA-G. R. SP No. 81932 which, in turn, reversed the Orders,[2] respectively dated 22 August 2003 and 27 November 2003, of the Regional Trial Court (RTC), Branch 194, Parañaque City in Civil Case No. 02-0504. The assailed Orders issued a writ or *prdiminary* injunction in favor of petitioner TML Gasket Industries, Inc. (TML), enjoining respondent BPI Family Savings Bank, Inc.'s (BPI's) extra-judicial foreclosure of TML's mortgaged properties, and denied TML's motion for reconsideration thereof.

The facts are not in dispute.

Sometime in September 1996, TML obtained a loan from the Bank of Southeast Asia, Inc. (BSA), which TML can avail via a credit facility of P85,000,000.00. As security for the loan, TML executed a real estate mortgage over commercial and industrial lots located at Dr. A. Santos Avenue, Parañaque City covered by Transfer Certificate of Title (TCT) Nos. 81278 and 81303 of the Registry of Deeds of Parañaque City. For additional security, BSA required TML to execute a promissory note for each availment from the credit facility.

On different dates from September 1996 to 31 July 1997, TML executed several promissory notes (PN), which provided in pertinent part:

Since time is of the essence hereof, [TML] is in default under this Note, without need for notice, demand, presentment or any other act or deed in any of the following events: a) [TML] fails to pay when due, totally or partially, the principal, interest and other charges under this Note x x x.[3]

During the period of the loan, BSA changed its corporate name to DBS Bank Phils. (DBS), which eventually merged with BPI under the latter's corporate name.

TML defaulted in the payment of its loan leading BPI to extra- judicially foreclose the mortgaged properties. As of 25 June 2002, TML's indebtedness to BPI amounted to P71,877,930.56, excluding penalties, charges, attorney's fees and other expenses of foreclosure.

On 24 October 2002, the Ex-Officio Sheriff of RTC, Parañaque City issued a Notice of Extra-judicial Foreclosure Sale of the mortgaged properties.

Because of the imminent foreclosure sale of its mortgaged properties, TML, on 21 November 2002, filed a "Complaint for Declaratory Relief, Accounting, Declaration of Nullity of Notice of Extra-Judicial Sale, Increased (sic) in Interest Rates, Penalty Charges Plus, (sic) Damages, with Prayer for the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction" against BPI and DBS before the RTC, Branch 194, Parañaque City.

The complaint highlighted the following clause in the PNs signed by TML, to wit:

If changes in the conditions and/or circumstances occur which, directly or indirectly, increase the overall costs of money to the Lender, such as but not limited to the following: (i) any change in the laws or regulations, including any amendments, modifications, interpretations, administrative implementation or repeal thereof affecting the Lender or its business such as reserve or similar requirement, tax on income, gross receipts, or the imposition of any levy, fees or other taxes; or (ii) changes in the interest rate of forbearance of money whether in the prevailing market rates or such other guiding or reference rates as may be adopted, determined and/or authorized by the CB; (iii) extraordinary inflation or there is an increase of fifteen percent (15%) in the consumer price index as announced by the CB or the National Economic Development Authority reckoned from the date of the granting of the loan or the credit line; or (iv) devaluation, revaluation, or depreciation in real value or purchasing power of the Philippine Peso, that is, when there has been an adverse change of at least fifteen percent (15%), in the CB Reference Exchange Rate for the Philippine Peso to the US Dollar and/or such other foreign currencies adopted by the Philippine Government or its instrumentalities or agencies, as forming part of its international reserves, reckoned from the date of granting of the loan or credit line; (v) any change in the reserve or similar requirements as a necessary consequence of obtaining a unibanking license on the part of the Lender, then the Lender may, at its sole option, correspondingly adjust the interest rate in all outstanding loans(s) and other obligations under this Note/s and such other documents that may be thereafter be executed. The adjustment in interest rate shall take effect three (3) days after receipt by [TML] of the notice of adjustment.[4]

TML asseverated that BSA made it understand that the stipulation meant that TML's loan would be subject to only a 16% interest rate per annum. TML alleged that "despite [the] odds and difficulties [it] encountered, aggravated by the global economic crisis, [it] tried hard to religiously pay its x x x obligation to [BPI] x x x." However, contrary to their actual understanding, BSA "unreasonably, unconscionably and unilaterally" imposed a 33% interest rate per annum, and ultimately, a penalty of 36% interest on past due principal and corresponding interest thereon.

TML likewise pointed out that it had demanded an independent accounting and liquidation of its loan account, which went unheeded. Ultimately, for TML, it cannot be considered in default of an obligation with an undetermined and unascertained amount. In that regard, TML argued that the intended foreclosure of TML's mortgaged properties is unwarranted for being illegal; thus, the foreclosure ought to be enjoined to prevent TML from suffering grave and irreparable damage, especially since TML's office and factory are located at the mortgaged properties.

Refuting TML's allegations, BPI maintained that the interest rates on TML's loan obligation were mutually and voluntarily agreed upon. On TML's application for the issuance of a writ of preliminary injunction, BPI countered that it has the absolute right to foreclose the mortgage constituted over TML's properties given that TML defaulted on its loan obligation, which had already become due and demandable.

In an Order dated 20 June 2003, the trial court denied TML's application for the issuance of a preliminary injunction, ratiocinating thus:

In resolving whether or not to grant the injunctive writ, this Court is guided by the requisites thereof, as repeatedly (sic) enunciated by the Supreme Court, to wit: (1) the invasion of a right is material and substantial; (2) the right of complainant is clear and unmistakable; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. x x x.

From the testimony of [TML's] witness[,], Lyman Lozada[,], it was established that [TML] is indeed indebted to [BPI] and has become delinquent in the payment of the loan obligation; that [TML] is willing to let go off (sic) the collaterals, the properties subject matter hereof, by way of dacion en pago. Apparently, the only

concern of [TML] is the fact that it will be ousted from the properties after the period of redemption shall have lapsed.

The foregoing testimony of [TML] casts [doubt] on its right over the property. The aforementioned requisites are not obtaining in favor of [TML]. Moreover[,] as held by the Supreme Court[,] “where the complainant’s right or title is doubtful or disputed, injunction is not proper. x x x.

Furthermore, [TML] has in its favor the right of redemption.[5]

On motion for reconsideration, the trial court made a complete turn- around. It ordered the issuance of the writ in favor of TML, subject to the posting of a bond in the amount of P300,000.00, to wit:

While it is admitted that [TML] has defaulted in the payment of its loan obligation, which thus conferred upon [BPI] the right of foreclosure, the Court, after a contemplation of the logical consequence of the denial of the injunctive writ, is convinced that great and irreparable damages may be caused [TML]. As pointed out by [TML], it might lead to an absurd scenario of [TML] winning the case but losing its property in [BPI’s] favor or in an even worse scenario, in favor of third parties. This is because of the short period within which [TML] could exercise its redemption right under the General Banking Act.[6]

BPI moved for reconsideration of the order. However, the trial court maintained its ruling:

Admittedly, [TML] has incurred in default in the payment of its obligation but the amount has yet to be determined, the determination thereof being one of the provinces of the instant complaint, and considering the brief redemption period under the General Banking Act[,] the redemption is next to impossible. Thus, the injury to [TML] would be very grave if not irreparable.[7]

Posthaste, BPI filed a petition for certiorari under Rule 65 of the Rules of Court before the Court of Appeals, seeking to annul and set aside the twin Orders of the trial court respectively dated 22 August 2003 and 27 November 2003 which granted the writ of preliminary injunction in favor of TML and enjoined the foreclosure sale of the mortgaged properties.

The appellate court found grave abuse of discretion in the trial court’s issuance of the orders as demonstrated by the following:

1. TML signed the PNs which stipulated that TML, as the Borrower, is considered in default when it “fails to pay, when due, totally or partially, the principal, interest and other charges [thereunder].”
2. Consistent therewith, the Real Estate Mortgage signed by TML provides that one of the effects of default of the mortgagor (TML) includes the right of the mortgagee (BPI) to immediately foreclose the mortgage, which foreclosure may be undertaken judicially or extra-judicially, at the discretion of the mortgagee (BPI).
3. TML itself admitted in its complaint that it has failed to pay its outstanding loan to BPI.
4. From all three points, BPI has the right to extra-judicially foreclose the mortgaged properties.
5. TML did not demonstrate an actual existing right to be protected.
6. Corollary thereto, there is no threatened or actual violation of

TML’s doubtful right to the mortgaged properties.

The dispositive portion of the appellate court’s decision reads, thus:

WHEREFORE, the Petition is GRANTED. The twin Order(s), dated August 22, 2003 and November 27, 2003, of the Regional Trial Court of Parañaque City, Branch 164 (sic) in Civil Case No. 02-0504, are hereby

REVERSED and SET ASIDE. Accordingly, the writ of preliminary injunction granted in favor of [TML] is hereby LIFTED.[8]

TML filed a motion for reconsideration. While the resolution thereof was pending, TML filed a Supplemental Motion for Reconsideration arguing that BPI's petition for certiorari has become moot and academic because BPI had supposedly filed an Amended Petition for Extra-judicial Foreclosure of Real Estate Mortgage under Act No. 3135 before the trial court. For TML, that effectively changed the amount of its obligation to BPI, which, in turn, rendered BPI's original petition for extra-judicial foreclosure of mortgage moot and academic.

The appellate court denied the motions and affirmed its original decision:

WHEREFORE, the instant motion for reconsideration and supplemental motion for reconsideration are hereby DENIED. Accordingly, Our Decision, dated August 19, 2008, STANDS.[9]

Hence, this petition for review on certiorari positing that the appellate court erred when it reversed and set aside the twin Orders of the trial court and lifted the injunctive writ.

We subscribe to the appellate court's ruling.

Section 3, Rule 58 of the Rules of Court lists the grounds for the issuance of a writ of preliminary injunction:

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 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.

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The requisites of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.[10]

In this case, TML anchors its right to the mortgaged properties on its claim that it cannot be considered in default of its loan obligation to BPI. Consequently, the mortgaged properties cannot be foreclosed. TML claims it had been religiously paying its loan; however, BPI's unilateral increase of the rate of interest to 33% prevented TML from further paying the loan. Thus, for TML, while an accounting and liquidation of the actual amount of its obligation to BPI remains undetermined, it cannot be considered in default. Ultimately, TML avers that the threatened foreclosure and auction sale of its mortgaged properties while its loan with BPI subsists is a violation of its right.

We note that TML categorically admitted that it has an existing loan with BPI, secured by a real estate mortgage and several promissory notes, and that it stopped paying for one reason or another. On that point, we affirm the appellate court's findings:

It is settled rule of law that foreclosure is proper when the debtors are in default of the payment of their obligation. On this note, it must be recalled that the promissory notes executed by [TML] in favor of [BPI]

states that the Borrower - in this case, [TML] – is considered in default when it fails to pay when due, totally or partially, the principal, interest and other charges under [the promissory note(s)]. In conjunction therewith, the [real estate mortgage] executed by the parties stipulates, among others, that:

Sec. 6. Effects of Default by the Mortgagor. xxx

a) The MORTGAGEE shall have the right to immediately foreclose on this Mortgage in accordance with Sec. 7, hereof; xxx

Sec. 7. Foreclosure. Foreclosure shall, at the sole discretion of the MORTGAGEE, be either judicial or extrajudicial, xxx xxx.

In its Complaint, [TML] admitted that it has not paid its obligation with [BPI] by reason of the exorbitant rates of interest unilaterally imposed by the latter. However, regardless of [TML's] defenses, the fact that it has an outstanding obligation with [BPI] which it failed to pay despite demand remains undisputed. Verily, [TML's] failure to comply with the terms and conditions of its credit agreement with [BPI], as embodied in the [real estate mortgage] and the promissory notes it issued in favor of the latter, entitles [BPI] to extrajudicially foreclose the mortgaged properties.

x x x x

To [o]ur mind, the grounds relied upon by [the trial court], do not justify the issuance of a writ of preliminary injunction in favor of [TML]. Under the factual setting of this case, [TML] has no right to be protected from the impending foreclosure of its properties. Certainly, the said foreclosure is authorized under the [real estate mortgage] and the promissory notes voluntarily executed by [TML] in favor of [BPI]. Needless to say, [BPI's] exercise of its right to foreclose the subject properties does not, in any way, constitute a violation of [TML's] property rights. On the contrary, the foreclosure of the mortgage is to enforce the contractual obligation of [BPI].[11]

The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse. For the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage.[12] In the absence of a clear legal right, the issuance of a writ of injunction constitutes grave abuse of discretion.

From the foregoing, it is apparent that the trial court committed grave abuse of discretion when it revoked its previous order and subsequently issued a writ of preliminary injunction simply on the following grounds: “(a) that [TML's] mortgage debt is unliquidated; (b) that [TML] stands to suffer great and irreparable damages if it wins the case but, in the process, loses its mortgaged properties to [BPI], or even worse, to third parties; and, (c) that, considering, the brief redemption period under the General Banking Act, [TML's] chance to redeem its properties would be next to impossible.”

In *Selegna Management and Development Corporation v. United Coconut Planters Bank*,^[13] we ruled that the debt is considered liquidated despite the alleged lack of accounting:

A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of the relevant promissory notes and related documentation. Failure to furnish a debtor a detailed statement of account does not ipso facto result in an unliquidated obligation.

Petitioners executed a Promissory Note, in which they stated that their principal obligation was in the amount of P103,909,710.82, subject to an interest rate of 21.75 percent per annum. Pursuant to the parties' Credit Agreement, petitioners likewise know that any delay in the payment of the principal obligation will subject

them to a penalty charge of one percent per month, computed from the due date until the obligation is paid in full.

It is in fact clear from the agreement of the parties that when the payment is accelerated due to an event of default, the penalty charge shall be based on the total principal amount outstanding, to be computed from the date of acceleration until the obligation is paid in full. Their Credit Agreement even provides for the application of payments. It appears from the agreements that the amount of total obligation is known or, at the very least, determinable.

Moreover, when they made their partial payment, petitioners did not question the principal, interest or penalties demanded from them. They only sought additional time to update their interest payments or to negotiate a possible restructuring of their account. Hence, there is no basis for their allegation that a statement of account was necessary for them to know their obligation. We cannot impair respondent's right to foreclose the properties on the basis of their unsubstantiated allegation of a violation of due process.[14]

Clearly, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. Once again, our holding in *Selegna* is relevant and sound:

x x x Injunction is not designed to protect contingent or future rights. It is not proper when the complainant's right is doubtful or disputed.

x x x x

Petitioners do not have any clear right to be protected. As shown in our earlier findings, they failed to substantiate their allegations that their right to due process had been violated and the maturity of their obligation forestalled. Since they indisputably failed to meet their obligations in spite of repeated demands, we hold that there is no legal justification to enjoin respondent from enforcing its undeniable right to foreclose the mortgaged properties.

In any case, petitioners will not be deprived outrightly of their property. Pursuant to Section 47 of the General Banking Law of 2000, mortgagors who have judicially or extrajudicially sold their real property for the full or partial payment of their obligation have the right to redeem the property within one year after the sale. They can redeem their real estate by paying the amount due, with interest rate specified, under the mortgage deed; as well as all the costs and expenses incurred by the bank.[15]

Lastly, as the Court of Appeals had done, we clarify that our disposition in this case pertains only to the propriety of the trial court's Orders issuing a writ of preliminary injunction in favor of TML to enjoin the foreclosure of TML's mortgaged properties. We do not dispose herein of the main case pending before the RTC, Branch 194, Parañaque City docketed as Civil Case No. 02-0504.

All told, there is no reversible error in the appellate court's decision, reversing and setting aside the Orders dated 22 August 2003 and 27 November 2003 of the trial court and lifting the writ of preliminary injunction issued in favor of TML.

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 81932 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Noel G. Tijam with Associate Justice Martin S. Villarma, Jr. (now a Member of

this Court) and Arturo G. Tayag, concurring. Rollo pp. 39-51.

[2] Penned by Judge Leoncio Real-Dimagiba. Id. at 181-182 and 187.

[3] Id. at 41.

[4] Id. at 106.

[5] Id. at 165.

[6] Id. at 182.

[7] Id. at 187.

[8] Id. at 50.

[9] Id. at 55.

[10] Equitable PCI-Bank, Inc. v. OJ-Mark Trading, Inc., G.R. No. 165950, 11 August 2010, 628 SCRA 79, 88.

[11] Rollo, pp. 46-48.

[12] Supra note 10.

[13] 522 Phil. 671 (2006).

[14] Id. at 687-688.

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