

**JOSE C. ZULUETA, PETITIONER, VS. HON. ANDRES REYES, JUDGE,
COURT OF FIRST INSTANCE OF RIZAL, GOVERNMENT SERVICE
INSURANCE SYSTEM (GSIS) AND PROVINCIAL SHERIFF OF RIZAL,
RESPONDE...***G.R. No. 21807. May 29, 1967*

Ponente: CASTRO, J.

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This is a petition for certiorari, prohibition, and injunction with preliminary prohibitory injunction, filed by the petitioner Jose C. Zulueta, against the Court of First Instance of Rizal, the Government Service Insurance System (GSIS), and the provincial sheriff of Rizal. The petitioner seeks to nullify all the proceedings had in connection with civil case 5741 before the said respondent court, and, specifically, the orders a quo of July 13 and August 8 and 23, 1963, in civil case 7078, denying his application for a pre-liminary injunction and allowing the respondent sheriff to proceed with the extra-judicial foreclosure of the real estate mortgages constituted on his properties in favor of the respondent GSIS.

The petitioner applied for and was granted by the respondent GSIS five real estate loans under four separate mortgage contracts in the total sum of P3,117,000. The amounts of the loans, the dates when the mortgages were contracted, and the monthly amortizations are stated hereunder:

Amount of Loan

Date of

Mortgage Contract

Monthly Amortization

114,000.00*

Sept. 25, 1956

P 4,606.50

P 415,000.00[*]

Sept. 25, 1956

1,232.54

190,000.00

Feb. 6, 1957

2,205.90

1,000,000.00

April 5, 1957

11,574.76

1,398,000.00

Oct. 15, 1957

16,106.91

For the payment of these loans, the petitioner offered as collaterals a parcel of land located in Pasig, Rizal, known as the Antonio Subdivision, covered by TCTS Nos. 26105, 37177 and 50356 of the Rizal cadastre, and another parcel of land situated at 1203 A. Mabini St., Ermita, Manila, covered by TCT No. 42397 of the Manila cadastre, known as the Antonio Apartments, together with all existing and further improvements thereon. Some of the uniform pertinent conditions of the mortgage contracts are the following:

"That if the Mortgagor shall at any time fail or refuse to pay any of the amortizations on the indebtedness, or the interest when due, * * *, then all the amortizations and other obligations of the Mortgagor * * *, shall become due, payable, and defaulted and the Mortgagee may immediately foreclose this mortgage judicially or extra-judicially * * *." (Paragraph 4 of mortgage contracts)

"That all receipts from sale of houses and lots in the Antonio Subdivision shall be assigned in favor of and made payable to the System, to be applied in payment of the principal and interest on this loan until the same is fully liquidated which condition shall be embodied in all contracts to sell absolutely or otherwise of any of the houses and lots in said subdivision." (Condition No. 4, mortgage contracts; Unilateral Agreement executed by petitioner on August 23, 1957, copy of which is attached as ANNEX I)

"That upon every release the System shall secure fire insurance on the buildings in the process of construction with the Property Insurance Fund of the GSIS for an amount equivalent to the sum released * * *," and "that the payment of the premiums due on the insurance of the buildings shall be borne by the applicant." (Mortgage contract, April 4, 1957).

The amounts representing the first four loans were fully released by the GSIS to the petitioner who executed promissory notes in connection therewith providing that the monthly amortizations thereon shall be payable at the end of every month until the principal obligation is paid, with interest thereon at the rate of 7% per annum, and that

"In case of non-payment of any installment of the note and/or other notes executed by JOSE C. ZULUETA and SOLEDAD D. RAMOS in favor of the Government Service Insurance System when the same becomes due and payable, then the unpaid balance of this promissory note shall, at the option of the Government Service Insurance System, immediately become due and demandable, and if for the enforcement of the payment thereof the Government Service Insurance System shall bring an action in court and/or resort to extra-judicial foreclosure of the mortgage given as a security for the payment of this obligation, then we, JOSE C. ZULUETA and SOLEDAD D. RAMOS bind ourselves, JOINTLY, SEVERALLY, and SOLIDARILY, to pay attorney's fees as provided for in the mortgage contract in addition to the legal fees and other incidental expenses incurred thereof." (see p. 8 of Annex D to Petition)

Of the fifth loan of P1,398,000, the sum of P960,439.46 was released to the petitioner; the balance of P437,249.54, the petitioner alleges in his amended complaint, "has not yet been released to" him (see par. 3 of amended complaint, annex 15 of Answer to Petition; see also annex D of Petition, p. 2), although the GSIS asserts that said latter sum was released to the petitioner's contractor Llorente O. Yarisantos, pursuant to Resolution No.

2524 of the respondent GSIS Board of Trustees, adopted on September 25, 1957, which, in its paragraph 4, states

"4. That releases on this loan shall be made in favor of Llorente O. Yarisantos as payment by the applicant (petitioner) to the former for advances made by him in payment of cost of labor and materials used in the construction of houses in the Antonio Subdivision; provided, that upon satisfaction of accounts due and payable to said Llorente O. Yarisantos, releases may be made in favor of the applicant;" (Annex 4 of Answer to Pe-tition, p. 2.)

On October 17, 1958 and thereafter up to March 19, 1962, the GSIS made repeated demands upon the petitioner for payment of the arrearages in his real estate loans aforementioned and called his attention to his failure to remit to it the proceeds of the sale of units of the Antonio Subdivision. In the GSIS notice of October 17, 1958, the petitioner was warned that his failure to settle his arrearages "will be construed as the right of this office to proceed immediately with foreclosure proceedings of the mortgage in accordance with the terms and conditions of the Mortgage Contract executed by you in favor of the Government Service Insurance System, to satisfy the mortgage indebtedness, the daily interest thereon, attorney's fees and all other ex-penses in connection with the proceedings." (see annex 5 of Answer to Petition; see also annexes 5-A, 6, 7, 8, 8-A, 9, 10 (petitioner's reply), 11, 11-A, 11-B, 11-C, 12, 12-A, 12-B, and 12-C, inclusive.).

On March 19, 1962 the GSIS filed with the office of the Provincial Sheriff of Rizal a petition for extra-judicial fore-closure, alleging that the petitioner was in arrears in the payment of his monthly amortizations of the mortgage indebtedness and that he has never turned over to it the proceeds of the sale of units in the Antonio Subdivision, inspite of repeated demands on him. To forestall the intended foreclosure, the petitioner requested the GSIS to suspend the foreclosure sale for 15 days and asked that another accounting of his arrearages be made, which request was denied.

On April 12, 1962 the petitioner filed a complaint for "DAMAGES WITH PRELIMINARY INJUNCTION," in the Court of First Instance of Rizal, docketed as Civil Case No. 7078,[1] against the respondents sheriff and GSIS, alleging among other things, that of the total amount of P3,117,000 the sum of P417,000 has not yet been released to him by the GSIS, resulting in the stoppage of the construction of his 153 buildings in the Antonio Subdivision, and compelling him to use P417,000 of his own funds to complete their construction; that the GSIS released said sum fraudulently to his contractor L.O. Yarisantos or to his mate-rial suppliers, contrary to the written agreements he has with the GSIS not to release any portion of his loan to anybody without his authority, and inspite of his letter of October 8, 1957 requesting the GSIS not to release said amount to L.O. Yarisan-tos; that he had repeatedly asked for a statement of his accounts, but the GSIS did not accede to his request, resulting in uncertainty and doubt as to the exact amount of his indebtedness and delay in the payment of his amortizations, if any; that without notice to nor demand made on him, the GSIS advertised in the newspapers for the sale of his Antonio Subdivision as a step toward extra-judicial foreclosure thereof; that there having been no demand on him, he cannot be in default in the payment of his mortgage indebtedness, and hence the GSIS was without authority to extra-judicially foreclose his said properties; that if the GSIS had given him the opportunity to examine the status of his real accounts, such examination would reveal no such arrearages and interests on his amortizations; that be-cause of the pending extra-judicial foreclosure, his tenants in the Antonio Subdivision refused to pay their monthly amor-tizations, causing him to suffer actual damages daily of P1,600 since March 28, 1962, and moral damages of P200,000; and that the GSIS through the respondent sheriff is determined to pro-ceed with the auction sale scheduled for April 16, 1962.

On April 13, 1962 the respondent court issued a temporary restraining order directing the respondent sheriff to hold in abeyance the public auction sale scheduled for April 16, 1962, until after the application for preliminary injunction shall have been resolved. After the hearing on the application for preliminary injunction, because the

petitioner raised the question of accounting in relation to his mortgage indebtedness, the respondent court on April 25, 1962 issued an order directing the accountants of the parties to sit together and make an accounting of the petitioner's obligation and for the parties to abide by the joint report to be submitted by them. On June 6, 1962 the petitioner paid the sum of P276,455.32 in PW bonds, which the GSIS accepted, but the latter manifested to the respondent court that such payment still left arrearages in the sum of P1,064,746.11. On February 15, 1963 the parties submitted to the respondent court a "Joint Manifestation," wherein the GSIS submitted a statement of accounts as of December 31, 1962 (annex 18-B of Answer to Petition), making it appear that the petitioner's total arrearages amounted to P1,371,088.15 (annex 18-C of Answer to Petition), broken down as follows:

Loan of P 415,000.00 - 7 mos. -	P 32,733.23
Loan of P 114,000.00 - 7 mos. -	P 9,428.50
Loan of P 190,000.00 - 7 mos. -	P 15,714.37
Loan of P 1,000,000.00 -12 mos. -	P 152,945.40
Loan of P 1,398,000.00 - - - - -	P1,022,135.81
Foreclosure expenses - - - - -	P 2,231.05
Surcharge - - - - -	P 278.33
Fire Insurance - - - - -	P 118,313.89
Surcharge - - - - -	P 17,307.77
T o t a l - - - - -	P 1,371,088.35

The petitioner, in the same "Joint Manifestation", questions the correctness of certain items in the amount of total ar-rearages presented by the respondent GSIS, as follows:

"A. The GSIS charged interest for partial releases before full release of each loan, which as of May 21, 1962, amounted to P72,000, more or less;

"B. The GSIS charged plaintiff alleged arrears on the last loan of P1,398,000.00 a portion of which (P437,000) is the subject of a court case in Branch XX of the Court of First Instance of Manila;

"C. Annex B above, includes a bill for P118,313.89 and a surcharge of P17,307.77, allegedly for fire insurance premiums,"

all of which items, the petitioner claims, "he does not owe the defendant, and hence should not have been included in the state-ments of GSIS." The parties agreed "to submit the case on the issues without presentation of further testimonial and documentary evidence, except to support their respective memoranda." In its order of July 13, 1963 the respondent court denied the petitioner's application for preliminary injunction. The petitioner moved to have this order set aside. After due hearing, the respondent court, in its order of August 8, 1963, de-nied the petitioner's motion for reconsideration and directed the respondent sheriff to proceed with the foreclosure proceedings. This order reads in part:

"* * * It may be noted that the allegations in the complaint as well as those raised during the pre-trials in chambers and in open Court show that the only question at issue refers to accounting and that defend-ant's right to foreclose insofar as it is based on violation of the mortgage contract resulting from non-payment of the amortization has not been contested.

"WHEREFORE, after considering the memorandum of the parties it appearing that the defendant will suffer more damages if the foreclosure is stayed and in view of the manifestation of its counsel that the said defendant is willing to post a bond in the amount of P500,000.00, conditioned to pay the plaintiff all cost and damages he may suffer by reason of the foreclosure the motion for reconsideration is hereby denied, and defendant GSIS is directed to post the said bond in the sum of P600,000.00. Upon posting and approval of said bond, the sheriff is directed to proceed with the foreclosure proceedings."

The GSIS as required posted a P600,000 bond which the respondent court approved in its order of August 23, 1963.

The petitioner is now before us, by virtue of the present petition, contending that the respondent court abused its discretion in denying his application for a preliminary injunction and allowing the extra-judicial foreclosure to proceed, thus depriving him of his day in court and of his property rights without due process of law. He argues (1) that the mortgage debt is not yet due and demandable; (2) that there was never any valid demand by the GSIS upon him to pay his mortgage debt, without which demand extra-judicial foreclosure cannot be had; (3) that by effecting the foreclosure sale of his Antonio Subdivision, the GSIS would be collecting from him a mortgage debt, a large part of which (P437,000) has not yet been released to him; and (4) that by resorting to foreclosure, the GSIS would be collecting from him amounts which he has never contracted for, namely, P72,000 representing interest on partial releases before full release of each loan, P118,313.89 representing fire insurance premiums, and P17,307.77 representing surcharges on the fire insurance premiums.

In support of the first ground, namely, that the mortgage debt is not yet due and demandable, the petitioner maintains that no accounting has been had between him and the GSIS up to the present; that it was precisely because of this that he raised the question during the hearing on his application for preliminary injunction and in the "Joint Manifestation" submitted to the respondent court on February 15, 1963; and that without resolving the issue of accounting, the respondent court immediately directed the respondent sheriff to proceed with the extra-judicial foreclosure sale of his Antonio Sub-division.

It is true that the respondent court, in its order of August 8, 1963, pertinent portions of which were quoted earlier in this decision, made no finding on the petitioner's actual mortgage indebtedness, and did not consider or discuss the general statement of accounts submitted by the petitioner and the respondent GSIS in their "Joint Manifestation". Neither did the court make a determination of whether in fact all of the sum of P1,371,088.15 is due and demandable as claimed by the GSIS, or as claimed by the former, a substantial part thereof, or P644,121.66 of the last and fifth loan,² is not yet due and demandable. But while this may be so, when the respondent court directed the respondent sheriff to proceed with the extra-judicial foreclosure "based on violation of the mortgage contract resulting from non-payment of the amortization (which) has not been contested," we can infer that the respondent court deemed it unnecessary to resolve the issue of accounting. And we agree.

In the "Joint Manifestation", the petitioner questions the correctness of certain items, as follows:

"A. The GSIS charged interest for partial releases before full release of each loan, which as of May 21, 1962, amounted to P72,000, more or less;

"B. The GSIS charged plaintiff alleged arrears on the last loan of P1,398,000.00 a portion of which (P437,000) is the subject of a court case in Branch XX of the Court of First Instance of Manila;

"C. Annex B above, includes a bill for P118,313.89 and a surcharge of P17,307.77, allegedly for fire insurance premiums."

The petitioner claims that item B above should not be included as a part of his mortgage indebtedness that is due and demandable, because this sum was released not to him, but to his contractor L.O. Yarisantos and other persons without his knowledge and consent, in violation of the agreement he had with, and of the notices he sent to, the GSIS requesting the latter specifically not to release any part of his mortgage loan to anybody without his consent.

These alleged unauthorized releases and the treasury warrants covering them, are correlated below:³

Statement of Payments

Annex A-1

(T/W 405847 - P 18,600.00 - 12/16/57

Advance from GSIS

(T/W 838 17,250.00 - 12/16/57

Materials- - P 54,480.00

(T/W 839 18,630.00 - 12/16/57

(T/W 408425 - P 16,250.00 - 2/14/58

(T/W 427 - 16,250.00 - 2/14/58

(T/W 428 - 6,400.00 - 2/14/58

(T/W 429 - 19,650.00 - 2/14/58

Advance from GSIS

(T/W 430 - 19,475.00 - 2/14/58

Materials - - - - P170,729.90

(T/W 431 - 11,564.00 - 2/14/58

(T/W 432 - 10,500.00 - 2/14/58

(T/W 433 - 19,688.00 - 2/14/58

(T/W 434 - 16,904.35 - 2/14/58

(T/W 435 - 13,978.75 - 2/14/58

Advance from GSIS

Materials - - - - P 14,334.67

(T/W 409468 - P 14,354.67 - 3/14/58

Advance from GSIS

Materials - - - - P 17,175.00

(T/W 409805 - P 17,175.00 - 3/15/58

Advance from GSIS

(T/W 410237 - P 14,085.00 - 4/8/58

Materials - - - P 30,873.00

(T/W 410238 - 16,788.00 - 4/8/58

Advance from GSIS

(T/W 410388 - P 18,190.00 - 4/15/58

Materials - - - - P 36,770.00

(T/W 410389 - 18,580.00 - 4/15/58

Advance from GSIS

(T/W 410441 - P 20,000.00 - 4/17/58

Materials - - - - P 34,811.00

(T/W 410443 - 14,811.60 - 4/16/58

Advance from GSIS

(T/W 411687 - P 19,727.60 - 4/24/58

Materials - - - - P 39,720.00

(T/W 411688 - 19,992.80 - 4/24/58

Advance from GSIS

(T/W 411854 - P 18,670.00 - 4/28/58

Materials - - - - P 38,615.32

(T/W 411855 - 19,945.32 - 5/29/58

These releases were made by the GSIS pursuant to Resolution No. 2524 of its Board of Trustees, adopted on September 25, 1957, which approved the last and fifth loan of P1,398,000 and it was among the conditions of such approval that "releases on this loan shall be made in favor of Llorente O. Yarisantos as payment by the

applicant (petitioner) to the former for advances made by him in payment of costs of labor and materials used in the construction of houses in the Antonio Subdivision; * * *." (par. 4, annex 4, p. 2). The petitioner, through his manager A.B. Martinez, credited these releases in favor of Yarisantos, as evidenced by a "Statement of Payments to L.O. Yarisantos" dated January 23, 1959 (annex 3), which, significantly antedated the first letter of the petitioner of April 23, 1959 to the GSIS (annex A), wherein he complained about the illegal releases made to L.O. Yarisantos and informed the GSIS that "I do not consider them as valid obligations against me in your favor." And in his answer to the complaint filed by Yarisantos against him and the GSIS with the Court of First Instance of Manila, in Civil Case No. 39166, for the recovery of a sum of money which, the complainant alleged, amounts to more than four million pesos, the petitioner sought to recover from the complainant, as counterclaim, the said sum allegedly released to the latter which, in effect, the petitioner desired to set off against whatever amount the complainant might recover from him, and the former, on his part, admitted that "said amount may be considered as part of the payment made by the petitioner to him * * *." (see p. 9, Answer to Petition). The said counterclaim reads as follows:

"That when the construction was in full swing, arrangements were had with the GSIS under which plaintiff, upon prior authority of defendant could have materials ordered by him for the project paid from defendant's loan credit with the GSIS;

"That plaintiff, without securing the prior authority of defendants, was able to have paid the amount of P417,638.94 from defendants' GSIS loan credit bills for materials certified by him to have been used or to be used in the project, but which he diverted for use in his other projects, or sold later on at prices more than double their procurement cost;

"That from these unauthorized payments of P417,638.34 he gained a profit of at least 50% realized from the use by him for his other projects the materials thus purchased or from the resale of them; thus, he illegally earned from the use of defendants' own money the approximate amount of P208,819.17, which he should account to defendants;

"That the total claim of defendants against plaintiff under this counterclaim is P626,457.51." (see GSIS Memorandum, pp. 10-11).

Upon the above undisputed facts, it is our view that the releases made were above board. The petitioner can have no cause for complaint, for the releases were made and paid to suppliers of materials used in the construction of his 153 houses in the Antonio Subdivision. Moreover, having charged them to the credit of his contractor Yarisantos, the petitioner must be deemed to have ratified them, and is estopped from questioning their validity and regularity.

The petitioner further claims that item A above should not be included as a part of his mortgage indebtedness that is due and demandable, because the interest computed on the aforesaid fifth mortgage loan should start to run only after the said loan is finally ascertained, adding that the interest thereon starts to run only from the time of the last release thereof. This claim is untenable.

Paragraph 1 of the mortgage contracts executed by the petitioner provides, among other things, that the loan is "repayable by the MORTGAGOR within ten (10) years, to be released to the MORTGAGOR upon the latter signing a promissory note or notes in favor of the MORTGAGOR." From the underlined portion can be inferred that a loan becomes effective immediately upon the signing of the promissory note by, and release being made to, the mortgagor, for the petitioner was required to sign a promissory note for every release made on his five loans. It is provided in each note that the loan shall earn "interest at the rate of seven (7%) per annum compounded monthly," this, aside from paragraph 13 of each mortgage contract making provisions to the same effect (par. 13, annex E, p. 4.). Absurd therefore is the argument of the petitioner that the GSIS cannot charge interest on releases,

and that he should start to pay the principal obligation together with the interest thereon only after the whole amount of his loan is finally released. A release on the mortgage loans, once made, immediately earns interest, and the mortgagor must pay the principal and the corresponding interest thereon when these fall due (par. 4, mortgage contract).

The petitioner further claims that item C above should likewise not be included as a part of his mortgage indebtedness that is due and demandable, because the sums therein mentioned are not liquidated, and their inclusion in the statement of accounts submitted by the GSIS is premature. There is no merit to this argument. The amounts in question representing fire insurance premiums and surcharges thereon were arrived at by the GSIS on the basis of rates fixed in the fire insurance policies and on the face values thereof which were agreed upon by the petitioner and the GSIS as the proper equivalents of the amounts of the mortgage loans released to him (see pars. 9-11, Mortgage Deed, April 4, 1957; par. 5, Mortgage Deed, Oct. 29, 1957; par. 8, Mortgage Deed, Sept. 25, 1956; and par. 9, Mortgage Deed, Feb. 6, 1957), and the insertions of these provisions in the mortgage contracts is anchored on section 23, C.A. 186, as amended, providing in part that "the Board * * * shall also make proper provisions for the insurance of all property which shall be held by it as security."

As a final argument, the petitioner maintains that there is neither basis for nor necessity of proceeding with the extra-judicial foreclosure sale of his Antonio Subdivision, because among other things, the GSIS is being paid by way of direct payments made by several subdivision lot buyers in the Antonio Subdivision; that he had always manifested his willingness to update his accounts should arrears be found to be due on the mortgage indebtedness; and that, as a matter of fact, to show his good faith, he has offered to assign as many of the mortgaged properties as will be sufficient to guaranty the full claim of the GSIS if only to allay the fears of the latter, if the extra-judicial foreclosure sale will not be pursued. These arguments merit scant consideration.

The record shows that as regards the alleged direct payments by the subdivision lot buyers, as early as October, 1958, until immediately prior to the filing of the present extra-judicial foreclosure proceedings on March 19, 1962, the petitioner was in arrears in his monthly amortizations and that he has never turned over to the GSIS the proceeds of the sale of houses and lots in his Antonio Subdivision, in spite of repeated demands on him beginning October 17, 1958 (see annexes 5, 5-A, 6, 7, 8, 8-A, 9, 10 (petitioner's reply), 11, 11-A, 11-B, 11-C, 12, 12-A, 12-B and 12-C). Without basis as well is his pretended willingness to update his accounts should arrears be found to be due. The numerous unheeded demands for the payment of his mortgage indebtedness completely refute this manifestation of the petitioner.

There being no real, genuine and substantial controversy as to the amounts due and demandable under the mortgages in question, and there being no valid defense that can be interposed against their collection, a restraining order in the meanwhile to resolve the unnecessary question of accounting will not serve any purpose. It will only delay if not defeat the statutory remedy of extra-judicial foreclosure afforded to the GSIS by Act No. 3135, as amended by Act 4118. The issuance of a restraining order will, on insufficient grounds, interfere with the exercise of the right of foreclosure. The mortgagee's right to foreclosure will then be subject to the control of the mortgagor's whims and caprices.

The right of the GSIS to foreclose extra-judicially the five separate and independent mortgages is thus unassailable. For its right to foreclose springs from the failure of the petitioner to comply with the specific conditions embodied in the mortgage contracts which had the effect of accelerating the time for the payment of the entire mortgage indebtedness, and rendering the mortgaged properties subject to foreclosure and sale (Gov't. of P.I. vs. Fernandez, Espejo, 57 Phil., 496, 497-499; see also Hawaiian Philippine Co. vs. Hernaez, 45 Phil. 746, 749; Bank of P.I. vs. Ty Camco Sobrino, 57 Phil., 801, 804; Vasquez vs. Jocson and Araneta, 62 Phil., 537, 544).

ACCORDINGLY, the petition is dismissed, and the preliminary injunction heretofore issued by this Court is dissolved, at petitioner's cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

* The first two loans are covered by one mortgage contract.

[1] The petitioner filed an amended complaint on April 24, 1962.

2 The amounts of the arrearages on the first four mortgage loans are not contested by the petitioner.

3 See Annex E, page 15.

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