

SANTIAGO SYJUCO, INC., PETITIONER, VS. HON. JOSE TECSON, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH V, EUGENIO LIM, ARAMIS LIM, MARIO LI...

G.R. No. 56014. September 21, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and prohibition praying that the orders of respondent Judge of different dates specified in the petition be declared as null and void having been issued in grave abuse of discretion and that the enforcement thereof be permanently enjoined.

The factual milieu of this case, although requiring quite an extended relation, is quite simple.

On May 8, 1967, private respondents executed a consolidated promissory note in favor of petitioner by virtue of which they bound themselves to pay petitioner the principal sum of P2 ,460,000. The payment of this loan was secured by a mortgage on the parcels of land covered by Transfer Certificates of Title Nos. 75413 and 75415 of the Register of Deeds of Manila, together with all the improvements thereon. The maturity of the promissory note was extended to November 8, 1967. Having failed to pay said loan, petitioner started proceedings for the extrajudicial foreclosure of the mortgage and a sale by public auction in connection therewith was scheduled for December 27, 1968 after proper publication.

To forestall this foreclosure, private respondents filed on December 24, 1968 Civil Case No. 75180 in the Court of First Instance of Manila, Branch V, in which they prayed that the mortgage be declared void on the ground that the loan was usurious. That litigation ended in favor of the petitioner when this Court denied the petition for review of the decision of the Court of Ap-peals upholding that of the trial court in favor of petitioner.

Evidently in a move to delay the foreclosure proceedings under the final decision aforementioned, private respondents filed another action, namely, Civil Case No. 112762 before another branch of the Court of First Instance of Manila, Branch IX, in which they sought to declare the proposed foreclosure sale void for lack of republication. At first, Branch IX issued the restraining order prayed for, but subsequently on January 18, 1979, it lifted the said restraining order and denied the petition for preliminary injunction. Reconsideration of such action was denied.

Undaunted by such developments, respondents moved for the consolidation of the two cases, Civil Case No. 75180 and Civil Case No. 112762. But respondent Judge refused to agree to such consolidation precisely on the ground that Civil Case No. 75180 had already been decided with finality by the Supreme Court.

In a separate move, on December 15, 1977, private respondents filed in the already decided suit, Civil Case No. 75180, an urgent motion to stop the sheriff of Manila from conducting the auction sale on the ground of lack of republication of the notice of sale.

On January 7, 1978, petitioner filed its comment on such motion and pointed out that to end all disputes it had republished the notice of sale. Nevertheless, on February 19, 1979, respondent Judge issued a restraining order restraining the auction sale. Later, however, on March 6, 1979, respondent Judge lifted the restraining order on the ground that "this case had been finally decided by our Highest Tribunal which decision is long final and executory," and directing that the sale at public auction of the plaintiffs properties proceed as scheduled.

On the same date, however, or a few hours later, upon mere verbal motion of counsel for respondents and without prior notice to petitioner, respondent Judge issued an order reconsidering the one that he had just issued and granted a postponement of the scheduled auction sale on the condition that private respondents would file a bond within five (5) days and providing for the continuation of the auction sale in case of failure to post the bond. A motion for reconsideration of that action was denied.

On March 9, 1979, private respondents filed an urgent motion for extension of time to file a bond asking for 15 days. Respondent Judge granted them only five days. But as petitioner was furnished a copy of the motion by mail and the motion was submitted for resolution upon receipt, it had no opportunity to oppose the same before the Judge granted it. And unaware that respondent Judge had already granted the motion on March 22, 1979, petitioner filed its opposition.

Upon learning of the handwritten order granting private respondents an extension of time to file their bond, on March 23, 1979, petitioner filed a motion for reconsideration. On March 15, 1979, private respondents filed their bond. And on March 26, 1979, they filed their reply to opposition to urgent motion for extension of time to file bond.

In still another move to forestall the foreclosure of the mortgage in question, on June 28, 1979, respondents filed a motion to discharge the mortgage on the ground that the bond they posted had novated the mortgage.

On August 10, 1979, respondent Judge issued an order resolving the pending incidents in the following manner:

(two motions for reconsideration filed by petitioner on March 17, 1979 and March 23, 1979.

On August 20, 1979, private respondents filed a motion for reconsideration of the order of August 10, 1979. And on September 12, 1979, petitioner filed its own motion for reconsideration of the same order, together with an opposition to the motion for reconsideration of private respondents. On September 24, 1979, private respondents filed their opposition to the motion for reconsideration and reply to opposition.

On October 8, 1979, respondent Judge issued an order denying both motions.

Subsequently, on October 19, 1979, private respondents filed a motion for reconsideration of the order of October 8, 1979 which they set for hearing upon receipt. On November 7, 1979, respondent Judge granted the said motion on the ground that no opposition had been filed thereto.

On November 10, 1979, petitioner filed a manifestation and opposition in which it pointed out that its copy of the motion for reconsideration was served on it by mail and that it was only on November 7, 1979 that it received the motion.

The record shows that on November 29, 1980, respondent Judge issued an order requiring private respondents to file an additional bond of P3,000,000 and then *motu proprio* on January 28, 1980 respondent Judge issued the following order:

"The records of this case show that on August 10, 1979, the Court had issued an order granting the plaintiffs a period of four (4) months within which to sell the property mortgaged with the defendants and subject-matter of this suit, conditioned upon an additional guaranty bond of P3,000,000.00 in favor of the latter under the

same terms and conditions as the original warranty bond of P6,000,000.00, to be filed by the plaintiffs ten (10) days from receipt of the said order. It appears, however, that to this date and despite the extensions granted by the Court, the plaintiffs failed to file the said additional guaranty bond.

"Under all the facts obtaining in this case, and considering that the four-months grace period clearly meant and intended in the aforesaid order of August 10, 1979 granted to the plaintiffs is supposed to expire at most at the end of December, 1979, in justice to all concerned and in the interest of clarity, without prejudice to the outcome of the pending incident between the parties, and further subject to an additional guaranty bond of P3,000,000.00 to be filed by the plaintiffs five (5) days from receipt hereof, said plaintiffs are hereby given an extension of two (2) months from this date within which to sell the mortgaged property involved in this case, deposit the proceeds of the sale in Court for proper disposition in accordance with the Order of August 10, 1979, hereinabove adverted to.

"SO ORDERED." (Annex X of Petition)

To have a clearer picture of all the foregoing incidents vis-a-vis the prayer in the petition herein asking this Court to enjoin certain orders of respondent Judge, in brief, as pointed out by private respondents in their comment of February 4, 1981, the restraining order which this Court issued on February 3, 1981 had the effect of suspending the proceedings in Civil Case No. 75180 as follows:

"a) Order of February 19, 1979 (Annex 'A' of the Petition) restraining the Sheriff of Manila from proceeding with the sale on public auction of plaintiffs properties scheduled on March 6, 1979;

"b) Order of March 6, 1979 (Annex 'B' of the Petition) reconsidering and setting aside the order of the court of even date allowing execution and public auction sale upon filing of a P6,000,000.00 bond which was duly complied with by the private respondents and approved in the Order of April 2, 1979 issued by the respondent court;

"c) Order of August 10, 1979 (Annex 'C' of the Petition) granting the plaintiff's (Private respondents herein) motion to sell mortgaged in a private sale upon the filing of an additional bond of P3,000,000.00 and denying the plaintiffs' motion to discharge mortgage as well as defendant's (petitioner herein) motion for reconsideration;

"d) Order of October 8, 1979 (Annex 'S' of the Petition) denying the parallel motions for reconsideration of the order of August 10, 1979 filed by the parties;

"e) Order of November 7, 1979 (Annex 'U' of the Petition) setting for trial plaintiff's motion for reconsideration of Order denying motion to discharge mortgage dated August 10, 1979 on November 12, 1979. It is hereby worthy to note that at the hearing of November 12, 1980 parties have agreed to submit, and have duly submitted, their respective Pre-Trial briefs;

"f) Order of December 21, 1979 (Annex 'Z' of the Petition) granting motion for postponement filed by Atty. Paterno R. Canlas, counsel for the plaintiffs (herein respondents) of the hearing scheduled on said date and postponing it to January 15, 1980;

"g) Order of January 28, 1980 (Annex 'X' of the Petition) granting the plaintiffs an extension of two (2) months from said date within which to sell the mortgaged property involved in this case and ordering plaintiffs to file an additional guaranty bond of P3,000,000.00, within five (5) days from receipt of this order;

"h) Order of March 28, 1980 (Annex 'BB' of the Petition) resetting the hearing set on said date to April 11 and 14, 1980 upon motion of Atty. Canlas, counsel for plaintiffs (private respondents herein);

"i) Order of May 8, 1980 (Annex 'GG' of the Petition) resetting for the hearing the case on May 19, 1980. Plaintiffs hereby manifest that the incident on the motion for reconsideration of the Order of August 10, 1979 denying motion to discharge mortgage was heard on January 15, 1980, May 19, 1980 and subsequently on

June 15, 1980 with private respondents presenting oral and documentary evidence in accordance with their Pre-trial brief and in support of their motion to discharge mortgage." (Rollo, p. 182)

It is now claimed by respondents that the herein petition has been filed prematurely because, according to them, there are still pending in the courts below hearings in connection with their motion to discharge the mortgage in question since they have filed the bonds required by respondent Judge in Civil Case No. 75180 and certain motions in Civil Case No. 112762.

Viewing the whole record, We see that this whole case boils down to two (2) main issues, namely: (1) whether or not the pendency of Civil Case No. 112762 constitutes a bar to the foreclosure and auction sale, the legality and validity of which has already been upheld by this Court in a final and executory judgment; and (2) whether or not the filing of the bonds above referred to by respondents resulted in the novation of the mortgage, hence, the foreclosure thereof can no longer proceed.

On the first issue, it is safe to say that the complaint in Civil Case No. 112762 became moot and academic when, as stated in their comment of January 7, 1978 filed with the respondent court, petitioner pointed out that it had actually republished the notice of sale precisely to end all disputes on the matter of republication.

As to the second issue, the theory of private respondents that their filing of the bonds of P6,000,000 and P3,000,000 as required by respondent Judge had the effect of making the mortgage no longer operative, since the bonds could be considered as substitute securities for respondents' obligation to petitioner cannot hold water. It is important to note, in the first place, that in the language of the bonds themselves, said bonds were for the sole purpose of guaranteeing the "payment of whatever damages the defendants may suffer only as a result of the suspension or postponement of the scheduled auction sale of the plaintiffs' mortgaged properties." In no manner can such language be construed to mean that petitioner had agreed to forego the mortgage in its favor just because of the filing of said bonds.

More importantly, in its comment of November 23, 1981, petitioner submitted to this Court a certification of the Insurance Commissioner to the effect that the bondsmen of respondents, namely, " Travellers Multi-Indemnity Insurance Corporation and Travellers Insurance and Surety Corporation are one and the same entity and that the Certificate of Authority of Travellers Insurance and Surety Corporation to transact non-life insurance business in the Philippines was not renewed on July 1, 1981 for cause. The company has been ordered to cease and desist from taking any new risks of any kind or character until such time as its authority to do business is restored by this Commission."

From the said certification, it results that the bonds much relied upon by private respondents have already virtually lost their force and effect as of July 1, 1981.

It might be true, as contended by private respondents, that the aforementioned certification of the Insurance Commissioner may not, by itself alone, have the effect of annulling the bonds filed by private respondents. But it is obvious that under the circumstances, considering that the authority of respondents' bondsmen to continue doing business has at least been suspended by proper authority for cause, it is not unreasonable for petitioner to be apprehensive as to whether or not it can still recover on said bonds. Of course, private respondents' offer to file a new bond may remedy the situation. But until accepted by petitioner, which from what the records show it is not disposed to do, all discussions regarding said bonds vis-a-vis the points of novation, etc. raised by private respondents would seem to be an exercise in futility.

The above premises considered, we believe that, by and large, there is no further impediment to the auction sale of the properties of private respondents secured under the foreclosure proceedings so far taken already by the parties concerned.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered granting the prayer of the petition, and the Orders of respondent Judge of February 19, 1979, March 6, 1979, August 10, 1979, October 8, 1979, November 7, 1979, December 21, 1979, January 28, 1980, March 28, 1980 and May 8, 1980 are hereby set aside, and the preliminary injunction heretofore issued by this Court on August 10, 1981 is hereby made permanent, and the bond of P1,000,000.00 filed in connection therewith is hereby ordered cancelled. The sheriff may now proceed with the auction sale.

No costs.

Guerrero and Escolin, JJ.,concur.

Aquino and Abad Santos, JJ.,in the result.

Concepcion, Jr., and De Castro, JJ.,no part.

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