

RENE KNECHT, PETITIONER, VS. THE COURT OF APPEALS, DEVELOPMENT BANK OF THE PHILIPPINES, LUZ RUBIO, ELIZABETH KEON, UNITED COCONUT PLANTERS BANK, DBP GOVERNOR RECIO GARCIA, ET AL...

G.R. No. 56122. November 18, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court to annul and set aside the Decision dated October 28, 1980 of the Court of Appeals in CA-G.R. No. SP-09227 entitled "RENE KNECHT, petitioner versus HON. TOMAS R. LEONIDAS, as Judge CFI of Manila, Branch XXXVIII, ET AL., respondents" and the Resolution dated January 21, 1981 of the same court, denying petitioner's motion for reconsideration. In said case, the Court of Appeals upheld the trial court's Order dated March 26, 1979, denying petitioner's prayer for the issuance of a writ of preliminary injunction in Civil Case No. 113873.

The facts as found by the Court of Appeals are as follows:

"xxx [O]n December 5, 1969, petitioner Rene Knecht and respondent Levy R. Garcia bought a parcel of land located at No. 1314 A. Mabini St., Ermita, Manila, including an eleven-storey building known as the "Tower Hotel" and other improvements standing on the lot, which was then mortgaged to respondent Development Bank of the Philippines, hereinafter to be referred to as DBP. The buyers assumed the mortgage and the DBP approved the assumption. From December 5, 1969 to August 20, 1973, petitioner did not pay the amortizations to the DBP supposedly for just causes, among which was his inability to take possession and management of the Hotel.

xxx [O]n August 21, 1973, a decision based upon a compromise agreement was rendered in Civil Case No. 89501 of the Court of First Instance of Manila, Branch XIV, which enabled petitioner to regain possession and management of the Hotel. Petitioner claims that in February, 1977, he executed a deed of trust, supposedly antedated November 15, 1976, in favor of respondent Elizabeth Keon, assigning to said respondent 50% interest, in the equity of petitioner in the Tower Hotel, and constituting petitioner as mere trustee in the management of the Hotel.

In April, 1977, petitioner opened a savings account with the respondent United Coconut Planters Bank, hereinafter to be referred to as UCPB, in the name of the Tower Hotel, and included respondent Elizabeth Keon's name as one of those with the right to withdraw monies therefrom. On May 4, 1977, petitioner claims that respondent Elizabeth Keon took over the management of the Hotel.

On August 18, 1977, DBP foreclosed the mortgage over the disputed property. The property was sold at public auction pursuant to Art (sic) 3135, as amended by Art (sic) 4114, with the DBP as the highest bidder for the sum of P6,292,300.00. On August 22, 1977, a certificate of sale was issued by the Ex-officio Sheriff of Manila in favor of the DBP, and same was registered on September 5, 1977 with the Registry of Deeds. The DBP leased the Hotel to respondent Luz Rubio" (Rollo, pp. 24-25).

On February 17, 1978, petitioner filed with the trial court an action for the nullification of the foreclosure sale with preliminary injunction (Civil Case No. 113873). In his prayer for the issuance of a writ of preliminary injunction, petitioner asked the trial court, among other reliefs, to stop the running of the one-year redemption period and to restore to him the possession and management of the Tower Hotel and all its equipment and facilities.

On September 2, 1978, the one-year period expired without the petitioner exercising said right and without the trial court issuing a writ of preliminary injunction to restrain the running of the redemption period.

On March 26, 1979, the trial court issued two separate orders. The first order reads as follows:

"The resolution of the question as to whether or not this court is empowered to suspend the period of redemption of the foreclosed property in dispute is withheld until after the trial since the same necessitates the presentation of special facts and circumstances for consideration of the court" (Annex "2"; Rollo, p. 213).

The second order reads as follows:

"The right to the disputed property not having been clearly established in favor of the plaintiff, the petition for the issuance of a preliminary mandatory injunction to restore the possession and management of the disputed property in his favor is hereby denied" (Annex "3"; Rollo, p. 214).

On May 26, 1979, petitioner filed with the Court of Appeals a petition for certiorari with preliminary mandatory injunction, alleging that the trial court in issuing the two aforementioned orders had "decided a novel question of substance not in accordance with law and with the applicable decisions of the appellate court and departed from the accepted and usual course of judicial proceeding thereby causing petitioner irreparable injury and leaving him without remedy except to file this petition" (Rollo, p. 281).

On October 28, 1980, the Court of Appeals rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, the petition should be, as it is hereby dismissed, with costs against petitioner. The restraining order issued by this Court is hereby dissolved" (Rollo, p. 30).

In a resolution dated January 21, 1981, the Court of Appeals denied petitioner's motion for reconsideration (Rollo, p. 32).

Hence, this petition.

Pending the resolution of the petition, respondent DBP advertised in the Philippine Star the sale through sealed bidding of the Tower Hotel (Rollo, p. 185).

On February 20, 1989, we directed the parties to maintain the status quo and enjoined the respondent DBP from selling the Tower Hotel and its fixtures to a third party without prior approval of the Court pending resolution of the petition for review on its merits. This Court further resolved to require petitioner to post a cash bond or surety bond from a reputable company of indubitable solvency in the amount of P1,000,000.00 within ten (10) days from receipt hereof (Rollo, p. 202). On March 17, 1989, petitioner posted the required bond (Rollo, p. 229).

Petitioner contends that the Court of Appeals erred in sustaining the trial court's order which denied the prayer for a writ of preliminary mandatory injunction (Rollo, p. 13).

For petitioner to be entitled to the injunctive writ, he must show that there exists a right to be protected and that the facts against which the injunction is directed are violative of said right (*Searth Commodities Corporation v. Court of Appeals*, 207 SCRA 622 [1992]).

Petitioner does not deny that since December 5, 1969, he has failed to pay the amortizations on the loan granted to him by DBP. He justifies his non-payment of the amortizations by raising "just causes," among which were his detention by the military and the non-restructuring of his loan by respondent DBP (Rollo, p. 16). These so-called "just causes" are within the competence of the court to determine in the main case for the nullification of the foreclosure sale. The validity of the same may be proven at the trial of the case.

As stated earlier, because of petitioner's failure to pay his amortizations due respondent DBP, the latter foreclosed the Tower Hotel on August 18, 1977 after several postponements were granted to petitioner. On September 5, 1977, a Sheriff's Certificate of Sale in favor of DBP was registered. It was only on February 17, 1978 when petitioner filed a complaint for the nullification of the foreclosure sale.

The object of the writ of injunction is to preserve the status quo, which is the last actual peaceable uncontested status that preceded the pending controversy (*Rodulfa v. Alfonso*, 76 Phil. 225 [1946]).

The status quo before petitioner filed his complaint for nullification of foreclosure sale was that respondent DBP was in possession of the Tower Hotel. Thus, it cannot be said that petitioner Knecht was in actual, peaceful and uncontested possession of the Tower Hotel at the time he filed his complaint with the trial court.

Moreover, it is a settled rule in this jurisdiction that a writ a preliminary mandatory injunction is not proper where its purpose is to take property out of one's possession and place the same in the hands of another without a prima facie showing of the title of the latter (*Navarro v. Court of Appeals*, 205 SCRA 429 [1992]).

It is worth noting that petitioner has registered a notice of lis pendens over the disputed property with the Registry of Deeds of Manila (Rollo, p. 278), which notice will bind any prospective buyer to the outcome of the civil case pending before the trial court. With said precautionary notice, petitioner is adequately protected of whatever rights he may still have over the Tower Hotel.

WHEREFORE, the petition is DENIED and the decision of the Court of Appeals is AFFIRMED. The restraining order issued by this Court is LIFTED.

SO ORDERED.

Cruz, (Chairman) and Davide, Jr., JJ., concur.
Bellosillo, J., on leave.

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