

**FILIPINAS MARBLE CORPORATION, PETITIONER, VS. THE
HONORABLE INTERMEDIATE APPELLATE COURT, THE HONORABLE
CANDIDO VILLANUEVA, PRESIDING JUDGE OF BR. 144, RTC,
MAKATI; DEVELOPMENT ...**

G.R. No. 68010. May 30, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review seeks to annul the decision and resolution of the appellate court which upheld the trial court's decision denying the petitioner's prayer to enjoin the respondent from foreclosing on its properties.

On January 19, 1983, petitioner Filipinas Marble Corporation filed an action for nullification of deeds and damages with prayer for a restraining order and a writ of preliminary injunction against the private respondents. In its complaint, the petitioner alleged in substance that it applied for a loan in the amount of \$5,000,000.00 with respondent Development Bank of the Philippines (DBP) in its desire to develop the full potentials of its mining claims and deposits; that DBP granted the loan subject, however, to sixty onerous conditions, among which are: (a) petitioner shall have to enter into a management contract with respondent Bancom Systems Control, Inc. [Bancom]; (b) DBP shall be represented by no less than six (6) regular directors, three (3) to be nominated by Bancom and three (3) by DBP, in Filipinas Marble's board, one of whom shall continue to be the chairman of the board; (c) the key officers/executives [the President and the officers for finance, marketing and purchasing] to be chosen by Bancom for the corporation shall be appointed only with DBP's prior approval and all these officers are to be made directly responsible to DBP; DBP shall immediately designate Mr. Alvaro Torio, Assistant Manager of DBP's Accounting Department as DBP's Comptroller in the firm whose compensation shall be borne by Filipinas Marble; and (d) the \$5 million loan shall be secured by: 1) a final mortgage on the following assets with a total approved value of P48,630,756.00 x x x; 2) the joint and several signatures with Filipinas Marble of Mr. Pelagio M. Villegas, Sr., Trinidad Villegas, and Jose E. Montelibano and 3) assignment to DBP of the borrower firm's right over its mining claims; that pursuant to these above-mentioned and other "take it or leave it" conditions, the petitioner entered into a management contract with Bancom whereby the latter agreed to manage the plaintiff company for a period of three years; that under the management agreement, the affairs of the petitioner were placed under the complete control of DBP and Bancom, including the disposition and disbursement of the \$5,000,000 or P37,500,000 loan; that the respondents and their directors/officers mismanaged and misspent the loan, after which Bancom resigned with the approval of DBP even before the expiration date of the management contract, leaving petitioner desolate and devastated; that among the acts and omissions of the respondents are the following: (a) failure to purchase all the necessary machinery and equipment needed by the petitioner's project for which the approved loan was intended; (b) failure to construct a processing plant; (c) abandonment of imported machinery and equipment at the pier; (d) purchase of unsuitable lot for the processing plant at Binan; (e) failure to develop even a square meter of the quarries in Romblon or Cebu; and (f) nearly causing the loss of petitioner's rights over its Cebu claims; and that instead of helping petitioner get back on its

feet, DBP completely abandoned the petitioner's project and proceeded to foreclose the properties mortgaged to it by petitioner without previous demand or notice.

In essence, the petitioner in its complaint seeks the annulment of the deeds of mortgage and deed of assignment which it executed in favor of DBP in order to secure the \$5,000,000.00 loan because it is petitioner's contention that there was no loan at all to secure since what DBP "lent" to petitioner with its right hand, it also got back with its left hand; and that, there was failure of consideration with regard to the execution of said deeds as the loan was never delivered to the petitioner. The petitioner further prayed that pending the trial on the merits of the case, the trial court immediately issue a restraining order and then a writ of preliminary injunction against the sheriffs to enjoin the latter from proceeding with the foreclosure and sale of the petitioner's properties in Metro Manila and in Romblon.

Respondent DBP opposed the issuance of a writ of preliminary injunction stating that under Presidential Decree No. 385, DBP's right to foreclose is mandatory as the arrearages of petitioner had already amounted to P123,801,265.82 as against its total obligation of P151,957,641.72; that under the same decree, no court can issue any restraining order or injunction against it to stop the foreclosure since Filipinas Marble's arrearages had already reached at least twenty percent of its total obligations; that the alleged non-receipt of the loan proceeds by the petitioner could, at best, be accepted only in a technical sense because the money was received by the officers of the petitioner acting in such capacity and, therefore, irrespective of whoever is responsible for placing them in their positions, their receipt of the money was receipt by the petitioner corporation and that the complaint does not raise any substantial controversy as to the amount due under the mortgage as the issues raised therein refer to the propriety of the manner by which the proceeds of the loan were expended by the petitioner's management, the allegedly precipitate manner with which DBP proceeded with the foreclosure, and the capacity of the DBP to be an assignee of the mining lease rights.

After a hearing on the preliminary injunction, the trial court issued an order stating:

"The Court has carefully gone over the evidence presented by both parties, and while it sympathizes with the plight of the plaintiff and of the pitiful condition it now has found itself, it cannot but adhere to the mandatory provisions of P.D. 385. While the evidence so far presented by the plaintiff corporation appears to be persuasive, the same may be considered material and relevant to the case. Hence, despite the impressive testimony of the plaintiff's witnesses, the Court believes that it cannot enjoin the defendant Development Bank of the Philippines from complying with the mandatory provisions of the said Presidential Decree. It having been shown that plaintiff's outstanding obligation as of December 31, 1982 amounted to P151,957,641.72 and with arrearages reaching up to 81% against said total obligation, the Court finds the provisions of P.D. 385 applicable to the instant case. It is a settled rule that when the statute is clear and unambiguous, there is no room for interpretation, and all that it has to do is to apply the same."

On appeal, the Intermediate Appellate Court upheld the trial court's decision and held:

"While petitioner concedes 'that Presidential Decree No. 385 applies only where it is clear that there was a loan or where the loan is not denied' (p. 14 - petition), it disclaims receipt of the \$5 million loan nor benefits derived therefrom, and bewails the onerous conditions imposed by DBP Resolution No. 385 dated December 7, 1977, which allegedly placed the petitioner under the complete control of the private respondents DBP and Bancom Systems Control, Inc. (Bancom, for short). The plausibility of petitioner's statement that it did not receive the \$5 million loan is more apparent than real. At the hearing for injunction before the counsel for DBP stressed that \$2,625,316.83 of the \$5 million loan was earmarked to finance the acquisition of machinery, equipment and spare parts for petitioner's Diamond gang-saw, which machineries were actually imported by petitioner Filipinas Marble Corporation and arrived in the Philippines. Indeed, a summary of releases to petitioner covering the period June 1978 to October 1979 (Exh. 2, Injunction) showed disbursements amounting to

millions of pesos for working capital and opening of letter of credits for the acquisition of its machineries and equipment. Petitioner does not dispute that releases were made for the purchase of machineries and equipment but claims that such imported machineries were left to the mercy of the elements as they were never delivered to it.

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"Apart from the foregoing, petitioner is patently not entitled to a writ of preliminary injunction for it has not demonstrated that at least 20% of its outstanding arrearages has been paid after the foreclosure proceedings were initiated. Nowhere in the record is it shown or alleged that petitioner has paid in order that it may fall within the exception prescribed on Section 2, Presidential Decree No. 385."

Dissatisfied with the appellate court's decision, the petitioner filed this instant petition with the following assignments of errors:

"1. There being 'persuasive' evidence that the \$5 million proceeds of the loan were not received and did not benefit the petitioner per finding of the lower court which should not be disturbed unless there is grave abuse of discretion, it must follow that PD 385 does not and cannot apply;

"2. If there was no valid loan contract for failure of consideration, the mortgage cannot exist or stand by itself being a mere accessory contract. Additionally, the chattel mort-gage has not been registered., Therefore, the same is null and void under Article 2125 of the New Civil Code; and

"3. PD 385 is unconstitutional as a 'class legislation', and violative of the due process clause."

With regard to the first assignment of error, the petitioner maintains that since the trial court found "persuasive evidence" that there might have been a failure of consideration on the contract of loan due to the manner in which the amount of \$5 million was spent, said court committed grave abuse of discretion in holding that it had no recourse but to apply P.D. 385 because the application of this decree requires the existence of a valid loan which, however, is not present in petitioner's case. It likewise faults the appellate court for upholding the applicability of the said decree.

Sections 1 and 2 of P.D. No. 385 respectively provide:

"Section 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty (20%) of the total outstanding obligations, including interest and other charges, as appearing in the book of accounts and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institution of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations, and/or guarantees on which the arrearages are less than twenty percent (20%).

"Section 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower, and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings."

Presidential Decree No. 385 was issued primarily to see to it that government financial institutions are not denied substantial cash inflows, which are necessary to finance development projects all over the country, by large borrowers who, when they become delinquent, resort to court actions in order to prevent or delay the government's collection of their debts and loans.

The government, however, is bound by basic principles of fairness and decency under the due process clause of the Bill of Rights. P.D. 385 was never meant to protect officials of government lending institutions who take over the management of a borrower corporation, lead that corporation to bankruptcy through mismanagement or misappropriation of its funds, and who, after ruining it, use the mandatory provisions of the decree to avoid the consequences of their misdeeds.

The designated officers of the government financing institution cannot simply walk away and then state that since the loans were obtained in the corporation's name, then P.D. 385 must be peremptorily applied and that there is no way the borrower corporation can prevent the automatic foreclosure of the mortgage on its properties once the arrearages reach twenty percent (20%) of the total obligation no matter who was responsible.

In the case at bar, the respondents try to impress upon this Court that the \$5,000,000.00 loan was actually granted and released to the petitioner corporation and whatever the composition of the management which received the loan is of no moment because this management was acting in behalf of the corporation. The respondents also argue that since the loan was extended to the corporation, the release had to be made to the then officers of that borrower corporation.

Precisely, what the petitioner is trying to point out is that the DBP and Bancom people who managed Filipinas Marble misspent the proceeds of the loan by taking advantage of the positions that they were occupying in the corporation which resulted in the latter's devastation instead of its rehabilitation. The petitioner does not question the authority under which the loan was delivered but stresses that it is precisely this authority which enabled the DBP and Bancom people to misspend and misappropriate the proceeds of the loan thereby defeating its very purpose, that is, to develop the projects of the corporation. Therefore, it is as if the loan was never delivered to it and thus, there was failure on the part of the respondent DBP to deliver the consideration for which the mortgage and the assignment of deed were executed.

We cannot, at this point, conclude that respondent DBP together with the Bancom people actually misappropriated and misspent the \$5 million loan in whole or in part although the trial court found that there is "persuasive" evidence that such acts were committed by the respondent. This matter should rightfully be litigated below in the main action. Pending the outcome of such litigation, P.D. 385 cannot automatically be applied for if it is really proven that respondent DBP is responsible for the misappropriation of the loan, even if only in part, then the foreclosure of the petitioner's properties under the provisions of P.D. 385 to satisfy the whole amount of the loan would be a gross mistake. It would unduly prejudice the petitioner, its employees and their families.

Only after trial on the merits of the main case can the true amount of the loan which was applied wisely or not, for the benefit of the petitioner be determined. Consequently, the extent of the loan where there was no failure of consideration and which may be properly satisfied by foreclosure proceedings under P.D. 385 will have to await the presentation of evidence in a trial on the merits. As we have ruled in the case of *Central Bank of the Philippines v. Court of Appeals*, (139 SCRA 46, 52-53; 56):

"When Island Savings Bank and Sulpicio M. Tolentino entered into an P80,000.00 loan agreement on April 28, 1965, they undertook reciprocal obligations, the obligation or promise of each party is the consideration for that of the other. (*Penacio v. Ruaya*, 110 SCRA 46 [1981]; x x x."

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"The fact that when Sulpicio M. Tolentino executed his real estate mortgage, no consideration was then in existence, as there was no debt yet because Island Savings Bank had not made any release on the loan, does not make the real estate mortgage void for lack of consideration. It is not necessary that any consideration should pass at the time of the execution of the contract of real mortgage (*Bonnevie v. Court of Appeals*, 125 SCRA 122 [1983]). It may either be a prior or subsequent matter. But when the consideration is subsequent to the

mortgage, the mortgage can take effect only when the debt secured by it is created as a binding contract to pay (Parks v. Sherman, Vol. 2, pp. 5-6). And, when there is partial failure of consideration, the mortgage becomes unenforceable to the extent of such failure (Dow, et al. v. Poore, Vol. 172 N.E. p. 82, cited in Vol. 59, 1974 ed. C.J.S. p. 138). x x x."

Under the admitted circumstances of this petition, we, therefore, hold that until the trial on the merits of the main case, P.D. 385 cannot be applied and thus, this Court can restrain the respondents from foreclosing on petitioner's properties pending such litigation.

The respondents, in addition, assert that even if the \$5 million loan were not existing, the mortgage on the properties sought to be foreclosed was made to secure previous loans of the petitioner with respondent and therefore, the foreclosure is still justified.

This contention is untenable. Two of the conditions imposed by respondent DBP for the release of the \$5 million loan embodied in its letter to petitioner dated December 21, 1977 state:

"A. The interim loan of \$289,917.32 plus interest due thereon which was used for the importation of one Savage Diamond Gangsaw shall be liquidated out of the proceeds of this \$5 million loan. In addition, FMC shall also pay DBP, out of the proceeds of above foreign currency loan, the past due amounts on obligation with DBP.

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"B. Conversion into preferred shares of P2 million of FMC's total obligations with DBP as of the date the legal documents for this refinancing shall have been executed or not later than 90 days from date of advice of approval of this accommodation."

The above conditions lend credence to the petitioner's contention that the "original loan had been converted into 'equity shares', or preferred shares; therefore, to all intents and purposes, the only 'loan' which is the subject of the foreclosure proceedings is the \$5 million 'loan' in 1978."

As regards the second assignment of error, we agree with the petitioner that a mortgage is a mere accessory contract and, thus, its validity would depend on the validity of the loan secured by it. We, however, reject the petitioner's argument that since the chattel mortgage involved was not registered, the same is null and void. Article 2125 of the Civil Code clearly provides that the non-registration of the mortgage does not affect the immediate parties. It states:

"Art. 2125. In addition to the requisites stated in article 2085, it is indispensable, in order that a mortgage may be validly constituted that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties.

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The petitioner cannot invoke the above provision to nullify the chattel mortgage it executed in favor of respondent DBP.

We find no need to pass upon the constitutional issue raised in the third assignment of error. We follow the rule stated in *Alger Electric, Inc. v. Court of Appeals*, (135 SCRA 37, 45):

"We see no necessity of passing upon the constitutional issues raised by respondent Northern. This Court does not decide questions of a constitutional nature unless absolutely necessary to a decision of a case. If there exists some other grounds of construction, we decide the case on a non-constitutional determination. (See *Burton v. United States*, 196 U.S. 283; *Siler v. Louisville & Nashville R. Co.*, 123 U.S. 175 *Berta College v. Kentucky*, 211 U.S. 45)."

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is GRANTED. The orders of the Intermediate Appellate Court dated April 17, 1984 and July 3, 1984 are hereby ANNULLED and SET ASIDE. The trial court is ordered to proceed with the trial on the merits of the main case. In the meantime, the temporary restraining order issued by this Court on July 23, 1984 shall remain in force until the merits of the main case are resolved.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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