

ACTIVE WOOD PRODUCTS, INC., PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND STATE INVESTMENT HOUSE, INC., RESPONDENTS.

G.R. NO. 70144. March 26, 1990

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-70144/>

GUTIERREZ, JR., J.:

The issue raised in this petition for review is the legality of the trial court's order nullifying an extrajudicial foreclosure sale which proceeded as scheduled despite its order for the issuance of a writ of preliminary injunction to enjoin the sale on auction upon the filing of P1,000,000.00 bond by the petitioner within fifteen (15) days from notice.

On June 7, 1982, petitioner Active Wood Products, Co., Inc., filed an action for injunction against private respondent State Investment House, Inc., with the Court of First Instance of Malolos, Bulacan, alleging, among others that it had mortgaged two parcels of land in favor of the private respondent to secure an indebtedness of P6,420,490.00, that the private respondent had been charging usurious interests on the loan and refused to adjust them to reasonable levels despite demands by the petitioner, that instead, the respondent poised to extrajudicially foreclose the mortgaged properties. It prayed that pending trial on the merits, a restraining order be issued ordering the respondent to refrain from proceeding with the foreclosure sale.

On June 9, 1982, the lower court issued the restraining order and set the hearing on the application for a writ of preliminary injunction.

On August 24, 1982, the private respondent filed a motion to lift the restraining order and an opposition to the issuance of a preliminary prohibitory injunction.

On November 10, 1982, the lower court denied the motion to lift the restraining order but ordered the petitioner to post, within ten (10) days from notice a bond in the amount of P6,000,000.00.

On December 16, 1982, the petitioner prayed again for a clear-cut temporary restraining order to enjoin the government agents from enforcing writs of execution issued by government entities such as the Ministry of Labor, military courts and other trial courts to the end that the properties of the then plaintiff under the custody of the court would be preserved. This order was issued by the Court on December 17, 1982. Thereafter, the petitioner moved for the reduction of the amount of the bond. This was granted by the Court on January 14, 1983 in the amount of P3 million.

On March 10, 1983, the respondent moved for relief from the burden of the restraining order considering the provisions of B. P. 224 on the lifetime of restraining orders and the unexplained failure of the petitioner to put up the required bond.

On June 23, 1983, the respondent filed a manifestation notifying the court that it would proceed with the foreclosure sale inasmuch as the June 9, 1982 restraining order had ceased to have any force and effect.

The respondent then filed on June 28, 1983 a petition for extrajudicial foreclosure with the office of the Provincial Sheriff of Bulacan.

An urgent ex-parte motion was filed by the petitioner on July 2, 1983 for a special temporary restraining order to restrain the sheriff and the clerk of court of Malolos, Bulacan from proceeding with the foreclosure sale of the properties subject matter of the case and to maintain the status quo until further court orders.

On July 28, 1983, the sheriff issued a Notice of Sheriff's sale setting the public auction sale of the properties on August 24, 1983.

On August 3, 1983, the lower court relieved the respondent of the burden of the restraining order dated June 9, 1982 and denied the petitioner's motion for the issuance of a special temporary restraining order.

On August 19, 1983, the petitioner filed with the then Intermediate Appellate Court a petition for certiorari and prohibition questioning the August 3, 1983 order of the lower court and praying for a further reduction of the bond, the annulment of the Notice of Sheriff's Sale, the fixing of the period to file the bond, and the enjoining of the sheriff from proceeding with the foreclosure sale.

Thereafter, the petitioner filed several motions for reduction of the injunction bond in the lower court. Meanwhile, the private respondent, on September 13, 1983 requested the sheriff to sell the foreclosed properties and the latter scheduled the auction sale for October 3, 1983.

On motion of the petitioner, the lower court, however, ordered the sheriff on September 29, 1983 to defer the auction sale. The private respondent moved for reconsideration of the order.

On October 7, 1983, the petitioner withdrew its petition for certiorari from the Intermediate Appellate Court.

On November 3, 1983, the lower court lifted and set aside its order of September 29, 1983. It ordered the striking out of the petitioner's motions to reduce the bond and to restore the restraining order.

On November 4, 1983, the sheriff set the date of the auction sale on November 29, 1983 and notified the parties.

On November 28, 1983, the lower Court, on motion of the petitioner issued the following order:

"WHEREFORE, the Orders dated August 3, 1983 and November 3, 1983, are hereby reconsidered and set aside. Upon the filing of an injunction bond of P1,000,000.00 by the plaintiff, let corresponding Writ of Preliminary Injunction issue and for this purpose, plaintiff is given a period of fifteen (15) days from receipt hereof to file the injunction bond for the approval of the Court. (Rollo, p. 28)

However, on November 29, 1983, the sheriff proceeded with the auction sale and the properties were sold to the private respondent as the highest bidder in the amount of P7.5 million.

On December 13, 1983, the petitioner moved to cite the sheriff in contempt of court and to nullify the auction sale. Later, the petitioner prayed for a reduction of the injunction bond and an extension of the period granted for its filing.

On February 27, 1984, the lower court dismissed the motion to cite the sheriff in contempt but declared the auction sale void for having been conducted within the 15-day period granted for posting the bond. A motion for reconsideration was filed but the same was denied. On April 17, 1984, a writ of preliminary injunction was issued to enjoin the sheriff from proceeding with the foreclosure sale.

Thereafter, the private respondent filed a petition for certiorari before the respondent appellate court alleging grave abuse of discretion on the part of the lower court in nullifying the foreclosure sale of November 29, 1983

and the corresponding certificate of sale. It contended that no restraining order or preliminary injunction had been issued to enjoin ex-officio Provincial Sheriff of Bulacan, Victorino P. Evangelista from proceeding with the sale.

The respondent appellate court on October 2, 1984 ruled in favor of the private respondent stating that since Section 4, Rule 58 of the Rules of Court provides that a writ of preliminary injunction can be issued only when the bond is filed (a condition sine qua non, citing *San Miguel v. Elbinias*, 127 SCRA 312 [1984] and *Commodity Finance, Inc. v. Jimenez*, 91 SCRA 57 [1979]), the writ becomes effective only after its issuance and not before. Furthermore, the lower court's order denying the motion to cite ex-officio Provincial Sheriff Evangelista in contempt of court for lack of an express order to stop the sale was noted. The respondent appellate court argues: "If the sheriff who conducted the sale could not be held in contempt of court because there was no order for him not to proceed with the sale, how could the sale made in the absence of a stop order be invalid?"

Hence, this petition questioning the nullification of the sale. We initially denied the petition in a resolution dated May 8, 1985 but acting upon a motion for reconsideration, gave it due course.

The petitioner contends that the decision of the respondent appellate court "reduced the proceedings for issuance of a writ of preliminary injunction into a footrace, a game wherein the fruits of victory belong to the fleetest," and has "encouraged the adverse parties to beat the writ of the Court and to perform fully the acts sought to be enjoined, with the hope that at the hearing, they will just inform the Court that there is nothing more to enjoin." (Rollo, p. 16)

For its part, the private respondent adopts the reasoning of the respondent appellate court that the foreclosure sale was valid because there was no valid restraining order nor a writ issued to enjoin the sheriff as there was not a single bond posted by the petitioner since the commencement of the latter's civil action in 1982. It alleges that the order merely granted a fifteen-day period to file the bond and nothing more. Moreover, the private respondent relies on the proposition that the mortgagee has the right to foreclose a mortgage upon the mortgagor's failure to pay the amount demandable. It also asserts that the ground relied upon by the trial court to nullify the sale is not among those sanctioned by Act 3135 on extrajudicial foreclosure of mortgage. Under Act 3135, the sale may be declared void if there are irregularities in the proceedings.

A review of the factual circumstances of the case fully convinces this Court that the nullification is valid and proper.

It is not disputed that the ex-officio Provincial Sheriff, Victorino P. Evangelista, who is also the Clerk of Court of Branch 6 of the Regional Trial Court of Malolos, had immediate personal notice of the November 28, 1983 order ordering the issuance of a writ of preliminary injunction upon the filing of a bond within fifteen (15) days from petitioner's receipt of the same order (Rollo, pp. 14-15, 30; Regional Trial Court Order dated April 17, 1984). He, therefore, disregarded a court order of which he had notice substituting his personal judgment on the applicable law for that of the court. Despite the notice had one day before the auction sale on November 29, 1983, and within the 15-day period given to the applicant to post a bond, the sheriff proceeded with the foreclosure sale.

This Court has ruled that injunction lies only when there exists a right to be protected and a violation of said right which is threatened or impending (*Sales v. Securities and Exchange Commission*, G.R. No. 54330, January 13, 1989; *Buayan Cattle Co., Inc. v. Quintilla*, 128 SCRA 276 [1984]). The petitioner has shown that it had legitimate grounds in applying for a writ of preliminary injunction, i.e., to preserve the status quo so that it will not be stripped of its rights of ownership and dominion over its properties pending the final determination of whether a permanent injunction could be had.

The petitioner also had the right to pursue its claims against the private respondent and not be hampered by the

extrajudicial foreclosure sale of the properties involved in this case. The trial court was correct in finding that the petitioner satisfied the substantial requirements for granting an injunction. The injunction bond, which is a formal requirement for the issuance of the writ was yet to be filed.

A plain reading of the November 28, 1983 order of the lower court reveals no other possible interpretation than that the actions sought to be stopped or suspended must be stopped. The sheriff cannot take it upon himself to give an absurd or strained interpretation or having understood it, to ignore it altogether. The order says that the orders lifting the previous restraining order are "reconsidered and set aside." The words, "let a corresponding writ of preliminary injunction issue" clearly mean that the lower court, in the exercise of its discretionary powers, ordered that the foreclosure sale be enjoined. The manner in which the order was worded is as ordinary and usual as in other orders granting writs. It is a normal procedure for a court to require the applicant to post a bond first to support a writ which is ordered to be issued.

The contention of the private respondent that no injunction is effective while no bond is filed is without merit. Precisely, the petitioner was given fifteen (15) days to file the bond and have it approved by the court. The clear import of the words in the order of the trial court manifest the intention to postpone or stop all further acts against the petitioner's ownership of the properties involved in this case. Only after fifteen (15) days and disapproval of the bond or the failure to file it could the sheriff move. The respondent could have the order set aside but he cannot defy or render it inutile. The Court finds that the ruling in *San Miguel v. Elbinias*, *supra* and *Commodity Finance, Inc. v. Jimenez*, *supra*, cited by the respondents is not applicable. In those cases, what was disputed was the reasonableness of the exercise of discretion by the trial court in fixing the amount of the injunction bond at an alleged exorbitant price. What we are concerned with in the instant case is whether an injunction was already granted and whether the trial court thereafter validly nullified the act sought to be enjoined.

In stating that the posting of a bond is a condition sine qua non to the issuance of the writ, and that the purpose of the bond is to secure the adverse party of damages that may be suffered in case of wrongful issuance, the Court in the *San Miguel* case merely emphasized the significance of the bond, the amount of which can be fixed by the judge. The Court did not in any manner suggest that the injunction may be disregarded since it becomes effective only after the bond ordered to be filed is actually filed. Otherwise, as in this case, the sheriff and the respondent would race with the petitioner and the bonding company trying to sell the properties before the bond can be filed with the court.

It is our ruling, therefore, not only for reasons of propriety but more significantly for an orderly administration of justice that the auction sale should have been stayed, at least in the meantime, in obedience to the order granting the writ.

It is very apparent from the records that the trial court was already in possession of certain data and had already considered relevant factors when it ruled in favor of the petitioner's application for the writ. To proceed with the sale, though previously set, would be to frustrate and contradict the lower courts resolve, after careful consideration, to enjoin the same. However, since the trial court decided not to cite the sheriff for contempt, we respect its exercise of discretion and decide not to reverse its ruling on the contempt charge. But we have to remind sheriffs that it is precisely precipitate acts such as that displayed in this case which make them the weakest link in the efforts to maintain our people's faith and confidence in the justice system. Sheriffs must at all times show a high degree of professionalism in the performance of their duties.

The nullification of the foreclosure sale has restored the orderly disposition of the case. The alleged failure of the petitioner to file the injunction bond became a moot issue when the trial court finally allowed the filing of the injunction bond thus completing the conditions for the grant of the writ. The contention that the nullification of

the sale is disallowed by Article 3135 is likewise without merit.

The Court concludes that the trial court was justified in nullifying the foreclosure sale conducted by the sheriff because the order dated November 28, 1983 was already effective to enjoin it.

The petitioner adds, in its memorandum, this additional issue for our consideration: whether or not the extrajudicial foreclosure of the mortgage was premature or invalid since the certification made by the petitioner's accountant (Rollo, pp. 185-186) shows that the substantial amount of P8,561,395.40 was already paid prior to the commencement of the extrajudicial proceedings.

The Court rules that this issue calls for a determination of facts which is not properly within our jurisdiction. Contrary to the averment of the petitioner, the issue is not legal but factual which, as we have held, "only the trial court has the jurisdiction to resolve because it is beyond the function of this court to make its own findings of essential or important facts different from those of the trial court, especially in the presence of conflicting claims of the parties and without the evidence being properly presented before it." (*Celebre v. Zaragoza*, G.R. No. 75866, February 23, 1989).

WHEREFORE, CONSIDERING ALL THE FOREGOING, the decision of the then Intermediate Appellate Court is REVERSED and SET ASIDE. The orders of the court a quo dated February 27, 1984 and April 17, 1984 are hereby REINSTATED.

Fernan, C.J., (Chairman), Bidin, and Cortes, JJ., concur.
Feliciano, J., in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.