

PILAR DEVELOPMENT CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, THE EXECUTIVE JUDGE OF THE REGIONAL TRIAL COURT OF PAMPANGA, SITTING AT SAN FERNANDO, PAMPANGA, CLERK OF COU...

G.R. No. 85817. August 23, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal by certiorari under Rule 45 of the Revised Rules of Court from the Decision of the Court of Appeals in CA SP No. 09507, entitled "Pilar Development Corporation v. The Executive Judge of the RTC of Pampanga, et al."

Petitioner, a subdivision developer, obtained a loan from Banco Filipino Savings and Mortgage Bank (BF) in the total amount of P8,944,650.00. The loan was secured by a real estate mortgage constituted on various parcels of land located in San Fernando, Pampanga.

On January 25, 1985, by virtue of a Monetary Board (MB) Resolution, finding respondent BF insolvent and incapable of continuing its business, ordered respondent BF to cease operations and placed it under a receiver.

In March 1985, the MB decided that respondent BF could no longer be rehabilitated and appointed respondent Carlota P. Valenzuela as its liquidator. About this time, the majority stockholders of respondent BF filed a petition with the Supreme Court, in the name of respondent BF (G.R. No. 70054), challenging the propriety of the MB resolutions placing respondent BF under a receiver and ordering its liquidation.

In its Resolution of August 29, 1985, the Supreme Court restrained respondent Carlota P. Valenzuela from conducting "further acts of liquidation" of respondent BF.

In a letter dated May 21, 1986, respondent BF asked respondent Ex-Officio Sheriff to extrajudicially foreclose the various parcels of land mortgaged by petitioner to resume its loan of P8,944,650.00 on the ground that petitioner had defaulted in its payment of the loan. Accordingly, on July 17, 1986, respondent Ex-officio Sheriff issued the corresponding notice of extrajudicial sale and scheduled the public auction sale on July 18, 1986 of the mortgaged assets (Decision, pp. 2-3; Rollo, pp. 20-21).

Petitioner filed with the Court of Appeals a petition for prohibition with a prayer for the issuance of a writ of preliminary injunction to nullify the notice of the extrajudicial sale dated June 17, 1986, announcing the sale at a public auction of petitioner's property.

The petition was anchored on the theory that respondent Carlota Valenzuela had no authority to act as liquidator of respondent BF because the authority given her by the MB had been revoked by the Supreme Court in its Resolution of August 29, 1985 in G.R. No. 70054, which restrained respondents from conducting "further acts of liquidation." As petitioner's argument goes, in the absence of the authority of the liquidation, all the proceedings

for the extrajudicial foreclosure of petitioner's mortgaged property, are null and void. Hence, the propriety of the writ of prohibition against respondents Judge and Ex-Officio Sheriffs.

On July 17, 1986, the Court of Appeals required respondents to comment on the petition and at the same time issued a temporary restraining order, enjoining respondents from conducting the scheduled public auction "until further orders."

After private respondents filed their comments, the Court of Appeals denied the petition for prohibition and lifted the temporary restraining order in its Decision promulgated on June 2, 1988 and the motion for reconsideration of petitioner in its Resolution dated November 14, 1988 (Decision, pp. 7-8; Rollo, pp. 25-26).

In this appeal, petitioner claims that the Court of Appeals committed reversible errors when it held that respondent Carlota P. Valenzuela's authority to order the foreclosure was not covered by the restraining order of the Supreme Court, and that prohibition would not lie against respondent Judge and Ex-officio Sheriff because the latter did not act in grave abuse of discretion in proceeding with the foreclosure sale (Petition, pp. 5-6; Rollo, pp. 11-12).

Our Resolution in G.R. No. 70054 restrained respondents from conducting "further acts of liquidation" of respondent BF but did not interfere in any way with the authority of the liquidator, under Section 29 of the R.A. No. 265, as amended, in gathering and preserving the assets of respondent BF, including the collection of receivables due the bank and the foreclosure of mortgages to collateralize loans extended by said bank.

Clearly, the restraining order issued by this Court in G.R. No. 70054 was directed against acts of the liquidator considered prejudicial to respondent BF. The acts sought to be enjoined and annulled by petitioner are beneficial to respondent BF. They are not acts in connection with or in furtherance of the liquidation of BF. On that score alone, petitioner has no cause of action to prohibit respondents Judge and Ex-Officio Sheriff from proceeding with the foreclosure sale.

The legal prop of petitioner's action having been removed, it follows that the petition for prohibition to enjoin the foreclosure sale and to nullify all the proceedings taken by respondents Judge and Ex-Officio Sheriff in connection with the said foreclosure sale, collapses.

The propriety of the petition for prohibition filed with the Court of Appeals was highly doubtful. It appears that petitioner went directly to the Court of Appeals praying for the issuance of temporary restraining order and a writ of prohibition immediately after respondent Ex-officio Sheriff issued on June 17, 1986 the notice of extrajudicial sale and announced the date of the foreclosure sale. The special civil action of prohibition is available only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law (Sec. 2, Rule 65, Revised Rules of Court; *Solidum v. Hernandez*, 7 SCRA 320 [1963]; *Caparas v. Ofina*, 9 SCRA 462 [1963]; *AFAG Veteran's Corp. Inc. v. Pineda*, 15 SCRA 254 [1965]). Petitioners should have called respondent Judge's attention to the acts of respondent Ex-officio Sheriff complained of. The petition is not even clear how respondent Judge, aside from being the presiding judge of the court of which respondent Ex-officio Sheriff is the Clerk of Court, got impleaded as a party-respondent.

WHEREFORE, premises considered, the petition is DENIED with costs against petitioners.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Bellosillo, JJ., concur.

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