

THIRD DIVISION

[G.R. No. 168746, November 05, 2009]

EQUITABLE PCI BANK, INC., PETITIONER, VS. HON. SALVADOR Y. APURILLO IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT OF TACLOBAN CITY, BRANCH 8, AND YKS REALTY DEVELOPMENT, INC., RESPONDENTS.

DECISION

PERALTA, J.:

This is a petition for review on *certiorari*, under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision^[1] dated June 27, 2005, of the Court of Appeals (CA) in CA-G.R. SP No. 85484, dismissing the petition.

The factual and procedural antecedents are as follows:

YKS Realty Development, Inc. was a client of Philippine Commercial International Bank (PCIB) and Equitable Banking Corporation (EBC), the predecessors of herein petitioner Equitable PCI Bank, Inc. In their commercial transactions, PCIB and EBC granted YKS a series of loans and credit facilities secured by real estate mortgages.

The EBC Account

Through its transactions with EBC, YKS was granted a series of credit lines by the former. The entire line was secured by a Real Estate Mortgage on two properties covered by Transfer Certificates of Title (TCT) Nos. T-22461 and T-22460 owned by YKS situated in Tacloban City. The credit line was initially in the amount of P4,000,000.00,^[2] but as a result of several amendments to the real estate mortgage, the initial loan consideration of P4,000,000.00 ballooned to P53,000,000.00.^[3] YKS also alleged that EBC made its officers sign a blank surety agreement making it appear that the said corporate officers made themselves liable to the extent of P85,000,000.00.^[4]

By June 29, 1998, through Promissory Note (PN) Nos. BD-98-084,^[5] BD-98-086,^[6] BD-98-093^[7] and BD-98-097,^[8] EBC partially released the total amount of P10,400,000.00 from the said credit line of P53,000,000.00.^[9]

On March 12, 2001, EBC demanded YKS to pay its outstanding obligations, but the latter failed to heed the demand.

On May 23, 2001, EBC filed before the Office of the Clerk of Court, of the Regional Trial Court (RTC) of Tacloban City, an extrajudicial petition for the sale of the mortgaged properties in order to satisfy the mortgage indebtedness in the amount of P10,400,000.00, exclusive of interests, penalties, and other charges,^[10] docketed

as EJP No. 1399.

On May 31, 2001, Sheriff Leonardo G. Aguilar, issued a Notice of Extra-Judicial Sale, [11] setting the auction sale of the subject properties in the morning of June 29, 2001.

The PCIB Account

On August 13, 1997, YKS obtained a dollar denominated loan from PCIB in the amount of US\$2,500,000.00, evidenced by PN No. 095/97-344. [12] However, while the loan was booked as a dollar denomination loan, it was actually converted to peso and was released to YKS in peso at the prevailing currency exchange rate of P26.00 to a dollar, more or less, or in the amount of P65,000,000.00, more or less. [13]

The credit line/loan accommodation with PCIB was secured by real estate mortgages over the properties of YKS in Tacloban City covered by TCT Nos. T-22457, T-22458, T-22459, T-22266, T-23066, T-23145, T-26055, T-26056, T-22697, T-42170, and T-16659. [14] In one of the promissory notes executed by YKS, PN No. 366-00756-98, [15] dated December 24, 1998, it appeared that the total obligation of YKS was P140,967,120.36. It also stated therein that the purpose of the loan was for "working capital" and that it would mature six years after date or on December 17, 2004.

On the same day, December 24, 1998, PCIB credited the amount of P103,240,277.90 to YKS' account as proceeds of the loan under "PN No. 756/98." [16] At the same time, PCIB debited the amount of \$2,633,680.55 from YKS' account as payment of the loan principal and interest for the converted dollar denominated loan under PN No. 095/97-344. [17]

On January 23, 2001, PCIB sent YKS a letter [18] demanding the latter to pay its total obligation, which the former pegged at P162,295,233.54, exclusive of interest, penalty, and other charges. PCIB also warned YKS that its failure to heed the demand would result in the filing of appropriate actions against it, including the foreclosure of the mortgaged properties.

In a letter [19] received by PCIB's counsel on May 8, 2001, YKS protested the principal amount of the loan and reiterated its previous request for a breakdown of the amount, but PCIB ignored the request.

On May 23, 2001, petitioner filed a Petition for Sale [20] before the Office of the Executive Judge, RTC, Tacloban City, praying that the mortgaged properties be sold thru extrajudicial foreclosure proceedings to the highest bidder, in the manner and form prescribed by law.

On May 25, 2001, Sheriff Luis G. Copuaco issued a Sheriff's Notice of Extrajudicial Foreclosure Sale [21] setting the public auction of the mortgaged properties in the morning of June 29, 2001 at the RTC, Branch 7, *Bulwagan ng Katarungan*, Tacloban City.

Thus, on June 19, 2001, as a result of the filing of the two petitions for sale, YKS filed before the RTC a Complaint^[22] for Declaratory Relief, Annulment or Declaration of Nullity of Foreclosure, Application for Foreclosure, Notice of Foreclosure Sale, Documents, Interest, Etc., Release of Mortgages, Injunction, and Damages, later docketed as Civil Case No. 2001-06-93.

YKS alleged therein, among other things, that the two petitions for sale are defective, since they do not specify the correct amount of the claims. The petitions also include amounts that were not covered by the real estate mortgages, among which are the quantified penalties which were not mentioned in the mortgages. YKS added that the promissory notes should not be allowed to be the bases for the enforcement of payment through extrajudicial foreclosure since their validity are still in question. YKS pointed out that the EBC credit line that was extended to it was for the amount of P53,000,000.00, however, in its petition for sale, the availments for the said credit line was only P10,400,000.00. Accordingly, the entire property cannot be foreclosed to satisfy the indebtedness of only P10,400,000.00.

YKS also insisted that PN No. 366-00756-98, which was the basis of PCIB's petition for sale is null and void and lacks consideration, or at the very least, is erroneously bloated. In addition, the said promissory note has not yet matured at the time the petition for sale was filed, considering that it would mature only on December 17, 2004; thus, the debt is not yet due and demandable. YKS claimed that its corporate officers were induced to sign blank surety agreements which were later on filled in by petitioner to reflect erroneous loan amounts. Moreover, the amounts appearing in the promissory notes are different from the one claimed by petitioner in its petition for sale.

To buttress its application for temporary restraining order and writ of preliminary injunction, YKS posited that the continuance of the questioned acts of petitioner despite its claim that there were no valid obligations and no valid basis for extrajudicial foreclosure proceedings is a clear and wanton violation of its rights and would effectively render any favorable judgment of the court ineffectual if the same were not granted pending determination of the main action.

Ultimately, YKS prayed, among other things, that judgment be rendered declaring the two petitions for sale and notices of extrajudicial sale void; declaring the promissory notes that were used as basis for the petition void and without valid consideration; ordering the release of the subject properties from their respective real estate mortgages; declaring that there is no legal default with respect to PN No. 366-00756-98 because the said promissory note was to mature only on December 17, 2004; declaring the bank's act of making the properties liable beyond the individual assigned loan values void; directing the bank to specify the extent of its claims against each of the properties using the assigned value; ordering the bank to make an accounting, summary and computation of its actual releases and the payments made by it for the purpose of determining the true and correct principal amount and the total of whatever obligations it may have with the bank; and that a temporary restraining order and subsequently a preliminary injunction be issued enjoining EBC and PCIB from committing or proceeding *pendente lite* with the posting of notices of sale, conduct foreclosure sales, execute certificate of sales and its subsequent registration with the register of deeds, execution of deeds of final sale, and disturbing the *status quo ante litem*.

On June 25, 2001, the RTC heard YKS' application for temporary restraining order. After hearing the respective arguments of the parties and weighing the pros and cons in issuing the same, the RTC issued a temporary restraining order on June 27, 2001.^[23] In the meantime, the hearing for the application of the writ of preliminary injunction was set for July 13, 2001. On the said hearing date, the parties jointly manifested that they will just be submitting position papers together with the other necessary documents to abbreviate the proceedings.

On December 3, 2001, after the parties have submitted their respective pleadings, the RTC issued a Resolution^[24] granting YKS' application for a writ of preliminary injunction, the dispositive portion of which reads:

WHEREFORE, premises considered, plaintiff['s] prayer for the issuance of a Writ of Preliminary Injunction is hereby given Due Course and Granted and the defendants, their agents, representatives or any persons or entities acting in their behalf are hereby directed to maintain the *status quo ante litem* and to cease and desist from posting or publishing any notice of sale with respect to properties subject of this case, conducting any foreclosure sale, executing any Certificate of Sale, registering the same with the Register of Deeds, executing any Deed of Final Sale and/or other consolidation document, paying any capital gains, documentary and other transfer taxes or any other act that shall disturb the *status quo ante litem* until further order of this Court. This Writ of Preliminary Injunction shall become effective and operative upon posting by the plaintiff of the necessary bond in the sum of P3,000,000.00.

SO ORDERED.^[25]

In granting the writ, the RTC ratiocinated that it was not equitable and just for petitioner to foreclose and sell the two properties that were mortgaged to EBC for its credit line availments of only P10,400,000.00 out of the P53,000,000.00. As for the PCIB loan, the RTC opined that the same was not yet due and demandable since it was stipulated on Promissory Note No. 366-00756-98 that the obligation will be satisfied *via* a one time payment, single payment, on December 17, 2004.

Petitioner filed a motion for reconsideration, but it was denied in the Resolution^[26] dated May 20, 2004. In denying the motion, the RTC noted that there are certain ambiguities in the PCIB promissory note that need to be resolved. In addition, the discrepancies between the promissory note, the credit memo, and the demand letter are too substantial for the RTC to ignore.

Aggrieved, petitioner sought recourse before the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 85484,^[27] wherein it prayed for the nullification of the resolutions of the RTC granting the writ of preliminary injunction and denying its motion for reconsideration.

Petitioner claimed that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it granted the writ of preliminary injunction despite the absence of a clear and convincing right on the part of YKS and despite

the absence of any showing of grave and irreparable injury.^[28]

On June 27, 2005, the CA rendered a Decision^[29] denying the petition for lack of merit and ordered the RTC to proceed with the trial of the main case on its merits. The decretal portion of the Decision reads:

WHEREFORE, premises considered, the petition for *certiorari* is **DENIED** for lack of merit. The court a *quo* is ordered to proceed with the trial on the merits of the main case. In the meantime, the preliminary injunction issued shall remain in force until the merits of the main case are resolved.

SO ORDERED.^[30]

Hence, the petition assigning the following errors:

I.

The honorable court of appeals committed a serious and reversible error when it upheld the finding of the trial court that private respondent is entitled to the writ of preliminary injunction.^[31]

II.

the honorable court of appeals erred in holding that private respondent has a right to be protected by the injunctive writ by reason of the dispute in the amount of the principal obligation.^[32]

Petitioner argues that since YKS is a delinquent debtor, it had all the right to foreclose the mortgaged properties. Petitioner contends that it had a choice between two remedies, *i.e.*, foreclose the mortgage or to file an ordinary suit for collection. Since it opted to foreclose the mortgage, it was improper on the part of the RTC to enjoin such legitimate exercise of its option in order to satisfy the obligations owing to it. In light of the undisputed fact that YKS defaulted in paying its obligation, the bank was justified in foreclosing the property and such valid act cannot be enjoined by the RTC.

Petitioner insists that YKS' right to enjoin the foreclosure of the mortgages is not clear and convincing, as it will not be deprived of its absolute ownership over the mortgaged property since it may exercise its right of redemption within one year after its sale. Petitioner adds that YKS failed to show that it would suffer grave and irreparable injury if the foreclosure sale was not enjoined. Moreover, petitioner maintains that YKS has no right to be protected by the injunctive writ based on the discrepancies in the amount of the principal obligation.

On its part, YKS contends that there was no grave abuse of discretion on the part of the CA in issuing the injunctive writ. The CA correctly affirmed the RTC because it saw that there was a need to maintain the status *quo ante* while the case is being