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FIRST DIVISION

[G.R. No. 163011, June 07, 2007]

DUVAZ CORPORATION, PETITIONER, VS. EXPORT AND INDUSTRY BANK, RESPONDENT.

D E C I S I O N

GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court is the Decision[1] dated March 26, 2004 of the Court of Appeals (CA) in *CA-G.R. SP No. 75903*, nullifying an earlier Order of the Regional Trial Court (RTC) of Makati City, Branch 143, which granted petitioner's prayer for a writ of preliminary injunction in its Civil Case No. 02-1029, an action for reformation of instrument thereat instituted by the petitioner against the herein respondent, Export and Industry Bank (EIB).

The relevant facts, pertaining to the sole issue of whether the CA gravely erred when it nullified the RTC's order granting petitioner's prayer for a writ of preliminary injunction in Civil Case No. 02-1029, are as follows:

During the period 1994-1995, RDR Property Holdings, Inc. (RDR), which was a subsidiary of petitioner Duvaz Corporation (Duvaz) until it was eventually absorbed by the latter, obtained various loans from the then Urban Banking Corporation (Urban Bank) to finance its real estate business. These loans were secured by real estate mortgages on seventeen (17) condominium units and thirty (30) parking slots at *The Peak Condominium* situated at 107 Alfaro St., Salcedo Village, Makati City.

Sometime after it declared a bank holiday on April 25, 2000, Urban Bank was acquired and merged with respondent EIB.

Meanwhile, as a consequence of RDR being absorbed by petitioner Duvaz, the latter acquired all the assets and liabilities of the former, more specifically RDR's loan obligations with Urban Bank, which loan obligations were later transferred to respondent EIB as a result of the corporate merger of the two banks.

With the 1997 Asian financial crisis sending the Philippine economy into turmoil, petitioner Duvaz defaulted in the payment of its loan obligations with Urban Bank as they fell due. On record, petitioner and Urban Bank mutually agreed to the restructuring of the former's indebtedness. By virtue of said loan restructuring, petitioner executed in favor of Urban Bank twelve (12) promissory notes for P20 Million each and one (1) promissory note for P23 Million, or a total of P263 Million, with a uniform interest rate of 18.75% per annum, and all to mature on October 31, 2000.

Respondent EIB took over the operations of Urban Bank sometime before maturity of the restructured loans. Eventually, the restructured loans matured and became due and demandable. Because the loans remained unpaid, however, respondent EIB required petitioner Duvaz to submit a mutually acceptable plan for the payment of the loan which, as of June 30, 2002, already amounted to P562,157,530.02 inclusive of interest and penalty charges. However, instead of submitting any proposal for a plan of payment, as required by respondent, petitioner protested the total amount of obligation being demanded upon.

On August 8, 2002, respondent EIB sent a final demand letter to petitioner to settle its obligations.

It was on account of said demand letter that on August 29, 2002, in the RTC of Makati City, petitioner Duvaz filed against respondent EIB a complaint for reformation of instrument with prayer for a temporary restraining order and/or writ of preliminary injunction to enjoin EIB, as defendant in the suit, from commencing any foreclosure proceedings on the mortgaged properties of the petitioner as plaintiff. In its complaint, docketed in the same court as Civil Case No. 02-1029 and raffled to Branch 143 thereof, Duvaz alleged that its real agreement of *dacion en pago* with Urban Bank (EIB's predecessor-in-interest), which true agreement was intended for the full and complete settlement of its entire obligation, was not reflected in the loan-restructuring agreement that was entered into in 1998, hence, the need to modify the terms thereof to reflect the parties' true intention.

Pending determination of the merit of petitioner's prayer for a writ of preliminary injunction, the parties mutually agreed to maintain the *status quo ante*. The trial court, therefore, found no need to issue any temporary restraining order.

Eventually, however, *via* an Order[2] dated September 25, 2002, the court granted the preliminary injunction prayed for by Duvaz, to wit:

> WHEREFORE, in the interest of justice and equity, the Court GRANTS the injunction prayed for and accordingly orders defendant [to refrain] from initiating any foreclosure proceedings until further orders from this Court. Bond is fixed at TEN MILLION PESOS (P10,000,000.00). (Words in brackets added.)
>
> SO ORDERED.

In time, EIB moved for reconsideration but its motion was denied by the court in its subsequent order of January 8, 2003.

Therefrom, EIB went to the CA on a petition for *certiorari*, thereat docketed as *CA-G.R. SP No. 75903.*

As stated at the threshold hereof, the CA, in its herein assailed Decision of March 26, 2004, nullified the challenged orders of the trial court pertaining to the preliminary injunction it issued in favor of Duvaz, thus:

> WHEREFORE, premises considered, the instant petition for certiorari is hereby GRANTED. Accordingly, the assailed orders are ANNULLED AND SET ASIDE and a new one issued DENYING [petitioner's] prayer for a writ

of preliminary injunction.

SO ORDERED.

In granting EIB's certiorari petition and nullifying the questioned orders of the trial court, the appellate court notes Duvaz' failure to show in its complaint and at the hearing of its application for preliminary injunction the indubitable existence of its right to the injunctive relief. In the precise words of the CA:

> In the case at bar, [petitioner] sought to enjoin [respondent] from foreclosing its mortgage properties on the ground that their alleged agreement entered into in 1998 is in reality a *dacion en pago* and not a *loan-restructuring agreement* which is the written contract. In short, [petitioner's] alleged right emanates from an alleged *dacion en pago* which is yet to be proven in Court. This right is, therefore, contingent and future which cannot be protected by a writ of preliminary injunction. Moreover, the parol evidence rule proscribes the varying of the terms of a written agreement except in certain cases. [Petitioner] claims that its case falls under the exception, but then this is harping on the exception, not the rule, which is yet to be proven during trial. If indeed, there is such an agreement as *dacion en pago*, then only at that time can we say that [petitioner] possesses the right to be protected. But of course, this is merely conjectural and a future proposition, if not assumption, which is, however, insufficient to support the grant of a writ of preliminary injunction. (Words in brackets supplied.)

Hence, this recourse by petitioner Duvaz, it being its submission that the CA gravely erred -

1. xxx in failing to recognize that Duvaz has an actual, existing **right in esse** that may properly be protected by writ of preliminary injunction.

2. xxx when it reversed the lower court, because it failed to comprehend the trial court's basis and rationale in granting the injunctive writ. The appellate court committed serious error in finding that Duvaz's "alleged right emanates from an alleged dacion en pago which is yet to be proven in court," and that such right, being "contingent and future, xxx cannot be protected by a writ of preliminary injunction." In fact, Duvaz has more than one clear legal right in esse to protect.

3. xxx in holding that "the parole evidence rule proscribing the varying of the terms of a written agreement, except in certain cases," applies in this instance, as to bar Duvaz from proving the existence of the agreement for dacion en pago by parole evidence.

4. xxx in granting [EIB's] petition and lifting the preliminary injunction against EIB's foreclosure of the mortgaged properties of Duvaz, because the challenged Decision effectively allows EIB to carry out extrajudicial foreclosure based on a **sham** and **simulated** agreement made in contravention of law, thereby enabling respondent bank to **unjustly enrich** itself at petitioner's expense to