

## FIRST DIVISION

[ G.R. No. 171336, October 04, 2007 ]

**POLYSTYRENE MANUFACTURING COMPANY, INC., PETITIONER,  
VS. PRIVATIZATION AND MANAGEMENT OFFICE, RESPONDENT.**

### D E C I S I O N

**GARCIA, J.:**

Via this petition for review under Rule 45 of the Rules of Court, petitioner Polystyrene Manufacturing Company, Inc. (PMCI, for short) seeks to nullify and set aside the Decision<sup>[1]</sup> dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 76211, entitled "*Polystyrene Manufacturing Company, Inc. v. Privatization and Management Office*," as effectively reiterated in its Resolution<sup>[2]</sup> of January 20, 2006.

As borne by the records, the undisputed facts are:

In 1973, PMCI obtained a loan of US\$1,100,000.00 from Mitsubishi International Corporation (MIC) payable in eight (8) years with interest at the rate of 8% *per annum*. Signing as guarantor for the loan was the Development Bank of the Philippines (DBP). In compliance with a prerequisite for the granting of such guarantee, PMCI executed in favor of DBP a Deed of Mortgage on its polystyrene plant as security for any and all obligations that the latter may incur under or by virtue of the issuance of the guarantee.

Subsequently, MIC ceded all its rights and claims arising from the aforesaid loan accommodation to the Bank of Tokyo. On December 17, 1973, DBP informed the Bank of Tokyo that it is guaranteeing the payment of PMCI's principal loan obligation and the interests thereon, subject, *inter alia*, to the following condition:

[PMCI] shall provide insurance coverage on all insurance amounts mortgaged to the DBP equivalent to at least the outstanding balance of the total accommodations to cover such risks and in such amounts ... as may be required by the DBP, the insurance to be placed by DBP.

Following a conflagration which burned down PMCI's insured polystyrene plant, DBP, as insurance beneficiary, collected on the policy. It turned out, however, that the insurance proceeds were insufficient to cover PMCI's alleged loan obligations. Soon enough, DBP served notice of its intention to foreclose extrajudicially the mortgage on PMCI's assets to satisfy what was still owing to DBP which, per its records and computation, amounted to P43,602,245.51. PMCI interposed an opposition, claiming that the figure did not reflect the true and accurate amount of its obligation. Accordingly, PMCI demanded and DBP acceded to the suspension of the foreclosure until a reconciliation of the accounts shall have been arrived at. As a *quid pro quo*, however, DBP required and secured the issuance by PMCI of six (6) postdated

checks in the total amount of P3,000,000.00, subject to the result of the reconciliation.

Of the checks thus issued, three (3) for P1.5 million were eventually encashed, after which PMCI issued a stop-payment order on the remaining checks, believing that it had overpaid DBP.

On September 27, 1985, in the Regional Trial Court (RTC) of Makati, PMCI filed a suit for injunction to enjoin DBP, as defendant therein, from proceeding with the foreclosure proceedings. Docketed as Civil Case No. 11819, the complaint was raffled to Branch 60 of the court. Answering, DBP alleged that it initiated the foreclosure proceedings pursuant to Presidential Decree (P.D.) No. 385<sup>[3]</sup> and that PMCI had not paid 20% of the outstanding arrearages, as required by the same P.D. No. 385. DBP likewise alleged that the issue raised by PMCI in its complaint is only one of accounting.

By Order<sup>[4]</sup> dated November 5, 1985, the trial court, finding PMCI's case to be outside the ambit of P.D. No. 385, and on the postulate that a "significant and tremendous" discrepancy obtains between the PMCI's and DBP's respective accounting records and taking note of the payments thus far made by PMCI which indicated over-payment, issued the desired writ of preliminary injunction in PMCI's favor, disposing as follows:

WHEREFORE, premises considered, let a writ of preliminary injunction be issued prohibiting and enjoining the defendant [DBP] from proceeding with the foreclosure of the mortgaged properties of the plaintiff [PMCI] upon the latter's filing and approval of a bond in the amount of P300,000.00 .... (Words in bracket added).

After the denial of its motion for reconsideration, DBP went to the CA on a petition for *certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. No. 09201-SP. At about this time, DBP had assigned its rights and interest over non-performing assets to the National Government which, in turn, constituted the Asset and Privatization Trust (APT) as trustee of the transferred accounts. Respondent Privatization Management Office (PMO) would later be created to assume the powers, duties, records, properties and obligations of the now defunct APT.

Eventually, the CA rendered judgment setting aside the assailed November 5, 1985 Order of the RTC.

Therefrom, PMCI appealed to this Court in *G.R. No. 77631*, entitled *Polystyrene Manufacturing Co., Inc. v. Courts of Appeals and DBP*. In a Decision<sup>[5]</sup> dated May 9, 1999, the Court set aside that of the appellate court and directed the trial court to conduct another hearing in accordance with the procedure set forth in P.D. No. 385 to determine the propriety of the issuance of a temporary restraining order (TRO) or a writ of preliminary injunction. Dispositively, the Decision reads:

**WHEREFORE**, the assailed decision and resolution of respondent Court of Appeals are hereby ANNULLED and SET ASIDE. The Regional Trial Court, Branch 149 of the National Capital Judicial Region at Makati, Metro Manila, or to which Civil Case No. 11819 is presently assigned, is hereby **DIRECTED** to expediently conduct another hearing in accordance with

the procedure set forth in Section 2 of Presidential Decree No. 385, as explained in this decision, to determine the propriety of the issuance of a [TRO] or a writ of preliminary injunction, and thereafter to forthwith proceed with the trial and adjudication of the case on the merits with appropriate dispatch.

SO ORDERED.

Apparently, in view of the adverted appeal taken to this Court in *G.R. No. 77631*, the trial court had the main case - Civil Case No. 11819 - archived.

Some nine (9) years after this Court's Decision in *G.R. No. 77631* achieved finality, [6] DBP filed an *Omnibus Motion* dated June 22, 1999 where it prayed the trial court to retrieve Civil Case No. 11819 from the archives, to revive and then dismiss the same for PMCI's failure to prosecute. On April 7, 2000, the trial court denied the prayer for dismissal. It ordered, however, the reinstatement of the case and for the joinder of APT as party-defendant.

What transpired next is summarized by the CA in its herein assailed decision, as follows:

On June 21, 2000, APT filed its Answer ... [followed by its] Manifestation ... that its term of existence will expire on December 31, 2000 .... On January 29, 2001, ... Privatization and Management Office (PMO) filed a Manifestation and Motion with entry of appearance .... The trial court allowed the substitution of PMO as party defendant in the case.

On February 6, 2001, PMO filed a Manifestation and Motion ... for the dismissal of the case for failure to prosecute. This motion was denied by the trial court in an Order dated June 28, 2001.

[PMCI] filed a motion ... that DBP be dropped as one of the defendants in the case. In an Order dated November 6, 2001, the trial court ruled that there is no basis for [PMCI] to insist on PMO's filing of a separate Answer where it is clear that PMO is successor agency of APT. **Thereafter, the trial court set the case for pre-trial.**

**In a Motion** for Reconsideration ..., **[PMCI] prayed** to set aside the November 6, 2001 Order and **to set the case for hearing as directed by the Supreme Court ....**

In an Order dated **January 31, 2002**, the trial court **denied** [PMCI's] November 22, 2001 motion for reconsideration xxx. [and] ... stated that after it resolved to proceed with the pre-trial, it is again faced with the motion ... that another hearing be conducted in accordance with the procedure set forth in Section 2 of P.D. 385. Thus, it resolved to deny [PMCI's] motion ... to allow the parties to proceed to pre-trial ...to simplify the issues ... and in the process obtain a reconciliation of accounts.

[PMCI] filed a petition for certiorari [with the] CA .... assailing the January 31, 2002 Order. This was, however, dismissed ....

Finally, in an Order dated **June 18, 2002**, the trial court **dismissed [Civil Case No. 11819] with prejudice** due to [PMCI's] failure to prosecute for an unreasonable length of time and to appear at the scheduled pre-trial. In another Order dated September 5, 2002, the trial court likewise denied [PMCI's] motion for ...reconsideration.<sup>[7]</sup> (Words in brackets and emphasis added.)

From the trial court's June 18, 2002 order of dismissal immediately referred to above, PMCI appealed to the CA in *CA-G.R. CV No. 76211*, interposing the argument that the trial court's order directing the parties to go into pre-trial completely ignored the May 9, 1999 Decision of this Court in *G.R. No. 77631* which enjoined it to conduct a hearing, in accordance with the procedure set forth in Section 2 of P.D. No. 385, for the purpose of determining whether a TRO or a preliminary injunction writ should issue.

On August 31, 2005, the appellate court issued the herein assailed decision<sup>[8]</sup> affirming the appealed June 18, 2002 Order of the trial court, as reiterated in its subsequent Order of September 5, 2002, and accordingly dismissed PMCI's appeal. PMCI's motion for reconsideration was denied by the appellate court in its resolution<sup>[9]</sup> of January 20, 2006.

Hence, this recourse of petitioner PMCI on the submission that the CA erred in ruling that petitioner:

1. xxx had failed to exert any effort to execute the May 9, 1990 decision of this Court, nor to press for the issuance of a [TRO] or a writ of preliminary injunction;
2. xxx had failed to establish its right to the issuance of a writ of preliminary injunction.

On the main, petitioner argues that the onus on setting the case for hearing in compliance with this Court's directives as embodied in its Decision in *G.R. No. 77631* rested on the trial court.

In its *Comment*,<sup>[10]</sup> respondent PMO, on the other hand, alleges that the trial court - and necessarily the CA - acted judiciously in decreeing the dismissal of the main case for failure to prosecute and non-appearance at the scheduled pre-trial. It added the observation that the real reason behind such failure to prosecute lies in the negligence of the petitioner's former counsel who failed to turn over the case records to the petitioner.

We **GRANT** the petition.

Looming large in the resolution of this petition is P.D. No. 385<sup>[11]</sup> which provides a mandatory mechanism to enable government financial institutions (GFIs) to effectively collect delinquent loan accounts unhampered by distracting legal niceties and technicalities usually invoked by borrowers in foreclosure cases.<sup>[12]</sup> As couched, Section 2, in relation to the preceding Section 1,<sup>[13]</sup> of the decree, at once requires GFIs, such as DBP, to initiate foreclosure proceedings once a borrower is