

EN BANC

[G.R. No. 74851, December 09, 1999]

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.
INTERMEDIATE APPELLATE COURT AND BF HOMES, INC.,
RESPONDENTS.**

R E S O L U T I O N

MELO, J.:

On September 14, 1992, the Court passed upon the case at bar and rendered its decision, dismissing the petition of Rizal Commercial Banking Corporation (RCBC), thereby affirming the decision of the Court of Appeals which canceled the transfer certificate of title issued in favor of RCBC, and reinstating that of respondent BF Homes.

This will now resolve petitioner's motion for reconsideration which, although filed in 1992 was not deemed submitted for resolution until in late 1998. The delay was occasioned by exchange of pleadings, the submission of supplemental papers, withdrawal and change of lawyers, not to speak of the case having been passed from one departing to another retiring justice. It was not until May 3, 1999, when the case was re-raffled to herein *ponente*, but the record was given to him only sometime in the late October 1999.

By way of review, the pertinent facts as stated in our decision are reproduced herein, to wit:

On September 28, 1984, BF Homes filed a "Petition for Rehabilitation and for Declaration of Suspension of Payments" (SEC Case No. 002693) with the Securities and Exchange Commission (SEC).

One of the creditors listed in its inventory of creditors and liabilities was RCBC.

On October 26, 1984, RCBC requested the Provincial Sheriff of Rizal to extra-judicially foreclose its real estate mortgage on some properties of BF Homes. A notice of extra-judicial foreclosure sale was issued by the Sheriff on October 29, 1984, scheduled on November 29, 1984, copies furnished both BF Homes (mortgagor) and RCBC (mortgagee).

On motion of BF Homes, the SEC issued on November 28, 1984 in SEC Case No. 002693 a temporary restraining order (TRO), effective for 20 days, enjoining RCBC and the sheriff from proceeding with the public auction sale. The sale was rescheduled to January 29, 1985.

On January 25, 1985, the SEC ordered the issuance of a writ of preliminary injunction upon petitioner's filing of a bond. However,

petitioner did not file a bond until January 29, 1985, the very day of the auction sale, so no writ of preliminary injunction was issued by the SEC. Presumably, unaware of the filing of the bond, the sheriffs proceeded with the public auction sale on January 29, 1985, in which RCBC was the highest bidder for the properties auctioned.

On February 5, 1985, BF Homes filed in the SEC a consolidated motion to annul the auction sale and to cite RCBC and the sheriff for contempt. RCBC opposed the motion.

Because of the proceedings in the SEC, the sheriff withheld the delivery to RCBC of a certificate of sale covering the auctioned properties.

On February 13, 1985, the SEC in Case No. 002693 belatedly issued a writ of preliminary injunction stopping the auction sale which had been conducted by the sheriff two weeks earlier.

On March 13, 1985, despite SEC Case No. 002693, RCBC filed with the Regional Trial Court, Br. 140, Rizal (CC 10042) an action for mandamus against the provincial sheriff of Rizal and his deputy to compel them to execute in its favor a certificate of sale of the auctioned properties.

In answer, the sheriffs alleged that they proceeded with the auction sale on January 29, 1985 because no writ of preliminary injunction had been issued by SEC as of that date, but they informed the SEC that they would suspend the issuance of a certificate of sale to RCBC.

On March 18, 1985, the SEC appointed a Management Committee for BF Homes.

On RCBC's motion in the mandamus case, the trial court issued on May 8, 1985 a judgment on the pleadings, the dispositive portion of which states:

"WHEREFORE, petitioner's `Motion for Judgment on the pleadings is granted and judgement is hereby rendered ordering respondents to execute and deliver to petitioner the Certificate of the Auction Sale of January 29, 1985, involving the properties sold therein, more particularly those described in Annex `C' of their Answer." (p. 87, Rollo.)

On June 4, 1985, B.F. Homes filed an original complaint with the IAC pursuant to Section 9 of B.P. 129 praying for the annulment of the judgment, premised on the following:

"x x x: (1) even before RCBC asked the sheriff to extra-judicially foreclose its mortgage on petitioner's properties, the SEC had already assumed exclusive jurisdiction over those assets, and (2) that there was extrinsic fraud in procuring the judgment because the petitioner was not impleaded as a party in the mandamus case, respondent court did not acquire jurisdiction over it, and it was deprived of its right to be heard." (*CA Decision*, p. 88, Rollo).

On April 8, 1986, the IAC rendered a decision, setting aside the decision of the trial court, dismissing the mandamus case and suspending issuance to RCBC of new land titles, "*until the resolution of case by SEC in Case No. 002693,*" disposing as follows:

WHEREFORE, the judgment dated May 8, 1985 in Civil Case No. 10042 is hereby annulled and set aside and the case is hereby dismissed. In view of the admission of respondent Rizal Commercial Banking Corporation that the sheriff's certificate of sale has been registered on BF Homes' TCT's . . . (here the TCTs were enumerated) the Register of Deeds for Pasay City is hereby ordered to suspend the issuance to the mortgagee-purchaser, Rizal Commercial Banking Corporation, of the owner's copies of the new land titles replacing them *until the matter shall have been resolved by the Securities and Exchange Commission in SEC Case No. 002693.*"

(p. 257-260, Rollo; also pp. 832-834, 213 SCRA 830 [1992];
Emphasis in the original.)

On June 18, 1986, RCBC appealed the decision of the then Intermediate Appellate Court (now, back to its old revered name, the Court of Appeals) to this Court, arguing that:

1. Petitioner did not commit extrinsic fraud in excluding private respondent as party defendant in Special Civil Case No. 10042 as private respondent was not indispensable party thereto, its participation not being necessary for the full resolution of the issues raised in said case.
2. SEC Case No. 2693 cannot be invoked to suspend Special Civil Case No. 10042, and for that matter, the extra-judicial foreclosure of the real estate mortgage in petitioner's favor, as these do not constitute actions against private respondent contemplated under Section 6(c) of Presidential Decree No. 902-A.
3. Even assuming *arguendo* that the extra-judicial sale constitute an action that may be suspended under Section 6(c) of Presidential Decree No. 902-A, the basis for the suspension thereof did not exist so as to adversely affect the validity and regularity thereof.
4. The Regional Trial court had jurisdiction to take cognizance of Special Civil Case No. 10042.
5. The Regional Trial court had jurisdiction over Special Civil Case No. 10042."

(p. 5, Rollo.)

On November 12, 1986, the Court gave due course to the petition. During the pendency of the case, RCBC brought to the attention of the Court an order issued by the SEC on October 16, 1986 in Case No.002693, denying the consolidated Motion

to Annul the Auction Sale and to cite RCBC and the Sheriff for Contempt, and ruling as follows:

WHEREFORE, the petitioner's "Consolidated Motion to Cite Sheriff and Rizal Commercial Banking Corporation for Contempt and to Annul Proceedings and Sale," dated February 5, 1985, should be as is, hereby DENIED.

While we cannot direct the Register of Deeds to allow the consolidation of the titles subject of the Omnibus Motion dated September 18, 1986 filed by the Rizal Commercial banking Corporation, and therefore, denies said Motion, neither can this Commission restrain the said bank and the Register of Deeds from effecting the said consolidation.

SO ORDERED.

(p. 143, Rollo.)

By virtue of the aforesaid order, the Register of Deeds of Pasay City effected the transfer of title over subject pieces of property to petitioner RCBC, and the issuance of new titles in its name. Thereafter, RCBC presented a motion for the dismissal of the petition, theorizing that the issuance of said new transfer certificates of title in its name rendered the petition moot and academic.

In the decision sought to be reconsidered, a greatly divided Court (Justices Gutierrez, Nocon, and Melo concurred with the *ponente*, Justice Medialdea; Chief Justice Narvasa, Justices Bidin, Regalado, and Bellosillo concurred only in the result; while Justice Feliciano dissented and was joined by Justice Padilla, then Justice, now Chief Justice Davide, and Justice Romero; Justices Griño-Aquino and Campos took no part) denied petitioner's motion to dismiss, finding basis for nullifying and setting aside the TCTs in the name of RCBC. Ruling on the merits, the Court upheld the decision of the Intermediate Appellate Court which dismissed the mandamus case filed by RCBC and suspended the issuance of new titles to RCBC. Setting aside RCBC's acquisition of title and nullifying the TCTs issued to it, the Court held that:

. . . whenever a distressed corporation asks the SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert such preference, but . . . stand on equal footing with other creditors. Foreclosure shall be disallowed so as not to prejudice other creditors, or cause discrimination among them. If foreclosure is undertaken despite the fact that a petition for rehabilitation has been filed, the certificate of sale shall not be delivered pending rehabilitation. Likewise, if this has also been done, no transfer of title shall be effected also, within the period of rehabilitation. The rationale behind PD 902-A, as amended, is to effect a feasible and viable rehabilitation. This cannot be achieved if one creditor is preferred over the others.

In this connection, the prohibition against foreclosure attaches as soon as a petition for rehabilitation is filed. Were it otherwise, what is to prevent the petitioner from delaying the creation of a Management Committee and in the meantime dissipate all its assets. The sooner the SEC takes over and imposes a freeze on all the assets, the better for all concerned.

Then Justice Feliciano (joined by three other Justices), dissented and voted to grant the petition. He opined that the SEC acted prematurely and without jurisdiction or legal authority in enjoining RCBC and the sheriff from proceeding with the public auction sale. The dissent maintain that Section 6 (c) of Presidential Decree 902-A is clear and unequivocal that, claims against the corporations, partnerships, or associations shall be suspended only upon the appointment of a management committee, rehabilitation receiver, board or body. Thus, in the case under consideration, only upon the appointment of the Management Committee for BF Homes on March 18, 1985, should the suspension of actions for claims against BF Homes have taken effect and not earlier.

In support of its motion for reconsideration, RCBC contends:

The restraining order and the writ of preliminary injunction issued by the Securities and Exchange Commission enjoining the foreclosure sale of the properties of respondent BF Homes were issued without or in excess of its jurisdiction because it was violative of the clear provision of Presidential Decree No. 902-A, and are therefore null and void; and

Petitioner, being a mortgage creditor, is entitled to rely solely on its security and to refrain from joining the unsecured creditors in SEC Case No. 002693, the petition for rehabilitation filed by private respondent.

We find the motion for reconsideration meritorious.

The issue of whether or not preferred creditors of distressed corporations stand on equal footing with all other creditors gains relevance and materiality only upon the appointment of a management committee, rehabilitation receiver, board, or body. Insofar as petitioner RCBC is concerned, the provisions of Presidential Decree No. 902-A are not yet applicable and it may still be allowed to assert its preferred status because it foreclosed on the mortgage prior to the appointment of the management committee on March 18, 1985. The Court, therefore, grants the motion for reconsideration on this score.

The law on the matter, Paragraph (c), Section 6 of Presidential Decree 902-A, provides:

Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary to preserve the rights of the parties-litigants to and/or protect the interest of the investing public and creditors; Provided, however, that the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as