

## THIRD DIVISION

**[ G.R. No. 190134, July 08, 2015 ]**

**SPOUSES ROGELIO AND SHIRLEY T. LIM, AGUSAN INSTITUTE OF TECHNOLOGY, REPRESENTED BY DR. SHIRLEY T. LIM, PRESIDENT AND AS ATTORNEY-IN-FACT OF FELIX A. CUENCA, MARY ANN M. MALOLOT, AND REY ADONIS M. MEJORADA PETITIONERS, VS. HONORABLE COURT OF APPELAS, TWENTY-SECOND DIVISION, CAGAYAN DE ORO CITY, MINDANAO STATION; SHERIFF ARCHIBALD C. VERGA, AND HIS DEPUTIES, REGIONAL TRIAL COURT, BRANCH 33, HALL OF JUSTICE, LIBERTAD, BUTUAN CITY; AND FIRST CONSOLIDATED BANK, RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before us is a Petition for *Certiorari*, Prohibition and Mandamus with Prayer for a Temporary Restraining Order and/or Writ of Preliminary

Injunction under Rule 65 of the Rules of Court which seeks to annul and set aside the Resolutions dated" July 2, 2009<sup>[1]</sup> and September 30, 2009<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 01822-MIN.

The facts follow:

Between the periods March 25, 1996 to July 13, 2000, petitioners executed several real estate mortgages and chattel mortgage in favor of respondent First Consolidated Bank (*hereafter private respondent bank*), through its branch in Butuan City.

The loans obtained by petitioners were released on different dates and are summarized as follows:

<b>Date the Loan was Granted</b>		<b>Principal Amount</b>
March 19, 1996	Agusan Institute of Technology (owned by petitioners) was granted an Interim Financing Loan.	P 8,000,000.00
March 25, 1996	Agusan Institute of Technology was granted a second Interim Financing Loan.	2,000.000.00
March 27, 1996	Agusan Institute of Technology was granted a third Interim Financing Loan.	1,500,000.00

July 17, 1996	Rogelio Lim was granted a commercial loan.	300,000.00
October 20, 1996	Rogelio Lim was granted a second commercial loan.	1,300,000.00
October 31, 1996	Rogelio Lim was granted a fourth commercial loan.	60,000.00
February 5, 1997	Agusan Institute of Technology was granted a loan the entire proceeds of which was used to pay off the three Interim Financing Loans.	9,512,400.00
February 5, 1997	Agusan Institute of Technology was granted a loan.	1,987,600.00
July 20, ,1997	Agusan Institute of Technology was granted another loan.	3,400,000.00
April 19, 1999	Agusan Institute of Technology was granted a loan.	45,000.00
June 30, 1999	Agusan Institute of Technology was granted a loan.	10,100,000.00

Private respondent bank admitted that the aforementioned loans were paid by Agusan Institute of Technology except for the 7<sup>th</sup>, 8<sup>th</sup> and 11<sup>th</sup> loans. Petitioners failed to religiously pay said loans as they became due and demandable, hence, private respondent bank was forced to file for an application for Extra-judicial Foreclosure of Real Estate Mortgage and Chattel Mortgage on December 28, 2000.

In response, petitioners filed an action for-revocation and annulment of real estate mortgage and chattel mortgage with plea for the issuance of. a temporary restraining order and preliminary injunction with the Regional Trial Court (RTC) of Butuan City. In its complaint, petitioners alleged that the contracts of mortgage cannot be foreclosed because Agusan Institute of Technology had already fully paid its obligation with private respondent Bank if the latter did not charge exorbitant and excessive interests and penalties in the computation-of all payments made by the former. Petitioners assert that the total payments they tendered to private respondent bank constituted overpayments to the loan., They allege that there is no legal and factual basis or necessity for private respondent bank to effect the foreclosure of the real and personal properties mortgaged to secure the loan.

To prove their cause of action, petitioners presented one witness, petitioner Shirley Lim, who testified that, due to private respondent bank's illegal application for the extrajudicial foreclosure of its mortgages, she suffered social humiliation, wounded feelings, sleepless nights and mental anxieties. Interesting to note, however, that despite petitioners' claims regarding overpayments of their loan obligations, no documentary evidence was ever attached to the complaint proving that indeed there were overpayments made and when it were actually made.

After proper hearing on petitioners' application for issuance of a writ of preliminary injunction, the RTC issued the writ ordering private respondent Bank to desist from foreclosing the said contracts of mortgage.

Trial on the merits then ensued.

On December 28, 2007, the RTC rendered a Decision<sup>[3]</sup> lifting the writ of preliminary injunction and ruling in favor of private respondent Bank. The *fallo* of said judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendant Bank and against the plaintiff Agusan Institute of Technology, declaring, directing and ordering the following:

- a) The dismissal of the instant complaint.
- b) The plaintiff Agusan Institute of Technology (AIT) as represented by Dr. Shirley T. Lim to pay defendant Bank the following:
  - 1. The outstanding balance of the 7<sup>th</sup> loan (P9,512,400.00) which as of May 23, 2005 amounts to P20,213,240.55 until fully paid.
  - 2. The outstanding balance of the 8<sup>th</sup> loan (P1,987,600.00) which amounts to P3,742,841.63 as of May 23, 2005 until fully paid.
  - 3. The outstanding balance of the 11<sup>th</sup> loan (P10,100,000.00) which amounts to P46,569,275.26 as of May 23, 2005 until fully paid.
- c) Attorney's fees in the amount of 10% of the outstanding obligations.
- d) Litigation expenses in the amount of P30,000.00.
- e) Exemplary damages in the amount of P50,000.00.
- f) The writ of preliminary injunction is hereby ordered lifted and of no force and effect.

SO ORDERED.<sup>[4]</sup>

Dissatisfied, petitioners appealed to the CA.

In a Resolution dated July 2, 2009, the CA denied petitioners' appeal with prayer for the issuance "of a Temporary Restraining Order (*TRO*) and/or Writ of Preliminary Injunction.

The CA held that injunction is an extraordinary remedy to be resorted to when there is a pressing necessity to avoid injurious consequences that cannot be remedied under any standard compensation. To be entitled to an injunctive writ, the applicants must show, *inter alia*, the existence of a clear and unmistakable right and an urgent and paramount necessity for the writ to prevent serious damages. The CA held that it neither appears from the facts shown by the *TRO* application that great or irreparable injury would result to petitioners before the matter can be heard, nor did petitioners show any clear and positive right to be entitled to the protection of the ancillary relief of *TRO*.<sup>[5]</sup>

Petitioners filed a motion for reconsideration, however, the same was denied in a Resolution dated September 30, 2009.

Hence, the present petition.

Petitioners raise the following grounds to support their petition:

## I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE JULY 2, 2009 RESOLUTION WHICH DENIED PETITIONERS' APPLICATION FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER, DESPITE THE FACT THAT PETITIONERS HAVE SHOWN THEIR CLEAR ENTITLEMENT TO THE ISSUANCE OF INJUNCTIVE RELIEF.

## II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE SEPTEMBER 30, 2009 RESOLUTION WHICH DENIED PETITIONERS' MOTION FOR RECONSIDERATION OF THE RESOLUTION DATED JULY 2, 2009 DENYING PETITIONERS' APPLICATION FOR THE ISSUANCE OF INJUNCTIVE RELIEF, AND IN NOT ACTING ON THE MERITS ON PETITIONERS' SUPPLEMENTAL TO THE MOTION FOR RECONSIDERATION, DESPITE THE FACT THAT PETITIONERS HAVE CLEARLY SHOWN THAT GREAT AND IRREPARABLE INJURY WOULD BE COMMITTED AGAINST THEM IF THEIR PLEA FOR INJUNCTIVE RELIEF WOULD NOT BE ISSUED IN THEIR FAVOR AND THAT PETITIONERS RAISED COGENT GROUNDS IN THEIR SUPPLEMENTAL MOTION.<sup>[6]</sup>

In essence, at issue is whether or not the CA, in denying petitioners' application for a writ of preliminary injunction, committed grave abuse of discretion amounting to lack of jurisdiction.

We rule in the negative.

Section 5, Rule 58 of the Rules of Court provides that a temporary restraining order may be issued only if it appears from the facts shown by affidavits or by verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard. Thus:

*Section 5. Preliminary injunction not granted without notice; exception. - No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.*

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single sala court may issue *ex parte* a temporary