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FIRST DIVISION

[G.R. No. 153852, October 24, 2012]

SPOUSES HUMBERTO P. DELOS SANTOS AND CARMENCITA M. DELOS SANTOS, PETITIONERS, VS. METROPOLITAN BANK AND TRUST COMPANY, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

A writ of preliminary injunction to enjoin an impending extrajudicial foreclosure sale is issued only upon a clear showing of a violation of the mortgagor's unmistakable right.[1]

This appeal is taken by the petitioners to review and reverse the decision promulgated on February 19, 2002,[2] whereby the Court of Appeals (CA) dismissed their petition for *certiorari* that assailed the denial by the Regional Trial Court in Davao City (RTC) of their application for the issuance of a writ of preliminary injunction to prevent the extrajudicial foreclosure sale of their mortgaged asset initiated by their mortgagee, respondent Metropolitan Bank and Trust Company (Metrobank).

Antecedents

From December 9, 1996 until March 20, 1998, the petitioners took out several loans totaling P12,000,000.00 from Metrobank, Davao City Branch, the proceeds of which they would use in constructing a hotel on their 305-square-meter parcel of land located in Davao City and covered by Transfer Certificate of Title No. I-218079 of the Registry of Deeds of Davao City. They executed various promissory notes covering the loans, and constituted a mortgage over their parcel of land to secure the performance of their obligation. The stipulated interest rates were 15.75% *per annum* for the long term loans (maturing on December 9, 2006) and 22.204% *per annum* for a short term loan of P4,400,000.00 (maturing on March 12, 1999).[3] The interest rates were fixed for the first year, subject to escalation or de-escalation in certain events without advance notice to them. The loan agreements further stipulated that the entire amount of the loans would become due and demandable upon default in the payment of any installment, interest or other charges.[4]

On December 27, 1999, Metrobank sought the extrajudicial foreclosure of the real estate mortgage[5] after the petitioners defaulted in their installment payments. The petitioners were notified of the foreclosure and of the forced sale being scheduled on March 7, 2000. The notice of the sale stated that the total amount of the obligation was P16,414,801.36 as of October 26, 1999.[6]

On April 4, 2000, prior to the scheduled foreclosure sale (*i.e.*, the original date of

March 7, 2000 having been meanwhile reset to April 6, 2000), the petitioners filed in the RTC a complaint (later amended) for damages, fixing of interest rate, and application of excess payments (with prayer for a writ of preliminary injunction). They alleged therein that Metrobank had no right to foreclose the mortgage because they were not in default of their obligations; that Metrobank had imposed interest rates (i.e., 15.75% *per annum* for two long-term loans and 22.204% *per annum* for the short term loan) on three of their loans that were different from the rate of 14.75% *per annum* agreed upon; that Metrobank had increased the interest rates on some of their loans without any basis by invoking the escalation clause written in the loan agreement; that they had paid P2,561,557.87 instead of only P1,802,867.00 based on the stipulated interest rates, resulting in their excess payment of P758,690.87 as interest, which should then be applied to their accrued obligation; that they had requested the reduction of the escalated interest rates on several occasions because of its damaging effect on their hotel business, but Metrobank had denied their request; and that they were not yet in default because the long-term loans would become due and demandable on December 9, 2006 yet and they had been paying interest on the short-term loan in advance.

The complaint prayed that a writ of preliminary injunction to enjoin the scheduled foreclosure sale be issued. They further prayed for a judgment making the injunction permanent, and directing Metrobank, namely: (a) to apply the excess payment of P758,690.87 to the accrued interest; (b) to pay P150,000.00 for the losses suffered in their hotel business; (c) to fix the interest rates of the loans; and (d) to pay moral and exemplary damages plus attorney's fees.[7]

In its answer, Metrobank stated that the increase in the interest rates had been made pursuant to the escalation clause stipulated in the loan agreements; and that not all of the payments by the petitioners had been applied to the loans covered by the real estate mortgage, because some had been applied to another loan of theirs amounting to P500,000.00 that had not been secured by the mortgage.

In the meantime, the RTC issued a temporary restraining order to enjoin the foreclosure sale.[8] After hearing on notice, the RTC issued its order dated May 2, 2000,[9] granting the petitioners' application for a writ of preliminary injunction.

Metrobank moved for reconsideration.[10] The petitioners did not file any opposition to Metrobank's motion for reconsideration; also, they did not attend the scheduled hearing of the motion for reconsideration.

On May 19, 2000, the RTC granted Metrobank's motion for reconsideration, holding in part,[11] as follows:

> xxx [I]n the motion at bench as well as at the hearing this morning defendant Metro Bank pointed out that in all the promissory notes executed by the plaintiffs there is typewritten inside a box immediately following the first paragraph the following:
>
> > "At the effective rate of 15.75% for the first year subject to upward/downward adjustments for the next year thereafter."

Moreover, in the form of the same promissory notes, there is the additional stipulation which reads:

> *"The rate of interest and/or bank charges herein-stipulated, during the term of this Promissory Note, its extension, renewals or other modifications, may be increased, decreased, or otherwise changed from time to time by the bank without advance notice to me/us in the event of changes in the interest rates prescribed by law of the Monetary Board of the Central Bank of the Philippines, in the rediscount rate of member banks with the Central Bank of the Philippines, in the interest rates on savings and time deposits, in the interest rates on the Bank's borrowings, in the reserve requirements, or in the overall costs of funding or money;"*

There being no opposition to the motion despite receipt of a copy thereof by the plaintiffs through counsel and finding merit to the motion for reconsideration, this Court resolves to reconsider and set aside the Order of this Court dated May 2, 2000.

x x x x

SO ORDERED.

The petitioners sought the reconsideration of the order, for which the RTC required the parties to submit their respective memoranda. In their memorandum, the petitioners insisted that they had an excess payment sufficient to cover the amounts due on the principal.

Nonetheless, on June 8, 2001, the RTC denied the petitioners' motion for reconsideration,[12] to wit:

> The record does not show that plaintiffs have updated their installment payments by depositing the same with this Court, with the interest thereon at the rate they contend to be the true and correct rate agreed upon by the parties.
>
> Hence, even if their contention with respect to the rates of interest is true and correct, they are in default just the same in the payment of their principal obligation.
>
> WHEREFORE, the MOTION FOR RECONSIDERATION is denied.

Ruling of the CA

Aggrieved, the petitioners commenced a special civil action for *certiorari* in the CA, ascribing grave abuse of discretion to the RTC when it issued the orders dated May 19, 2000 and June 8, 2001.

On February 19, 2002, the CA rendered the assailed decision dismissing the petition

for *certiorari* for lack of merit, and affirming the assailed orders,[13] stating:

> Petitioners aver that the respondent Court gravely abused its discretion in finding that petitioners are in default in the payment of their obligation to the private respondent.
>
> We disagree.
>
> The Court below did not excessively exercise its judicial authority not only in setting aside the May 2, 2000 Order, but also in denying petitioners' motion for reconsideration due to the faults attributable to them.
>
> When private respondent Metrobank moved for the reconsideration of the Order of May 2, 2000 which granted the issuance of the writ of preliminary injunction, petitioners failed to oppose the same despite receipt of said motion for reconsideration. The public respondent Court said –
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> > "For resolution is the Motion for Reconsideration filed by the defendant Metropolitan Bank and Trust Company, dated May 12, 2000, a copy of which was received by Atty. Philip Pantojan for the plaintiffs on May 16, 2000. <u>There is no opposition nor appearance for the plaintiffs</u> this morning at the scheduled hearing of said motion x x x".
>
> Corollarily, the issuance of the Order of June 8, 2001 was xxx based on petitioners' [being] remiss in their obligation to update their installment payments.
>
> The Supreme Court ruled in this wise:
>
> > To justify the issuance of the writ of *certiorari*, the abuse of discretion on the part of the tribunal or officer must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.
>
> Petitioners likewise discussed at length the issue of whether or not the private respondent has collected the right interest rate on the loans they obtained from the private respondent, as well as the propriety of the application of escalated interest rate which was applied to their loans by the latter. In the instant petition, questions of fact are not generally permitted, the inquiry being limited essentially to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion in issuing the questioned Orders, neither is the instant petition available to correct mistakes in the judge's findings and conclusions, nor to cure erroneous conclusions of law and fact, if there be any.
>
> Certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.

A review of facts and evidence is not the province of the extraordinary remedy of *certiorari*.

WHEREFORE, the petition is **DENIED** for lack of merit. The assailed Orders of the respondent Court are **AFFIRMED**.

SO ORDERED.

The petitioners moved for reconsideration of the decision, but the CA denied the motion for lack of merit on May 7, 2002.[14]

Hence, this appeal.

Issues

The petitioners pose the following issues, namely:

1. Whether or not the Presiding Judge in issuing the 08 June 2001 Order, finding the petitioners in default of their obligation with the Bank, has committed grave abuse of discretion amounting to excess or lack of jurisdiction as the same run counter against the legal principle enunciated in the Almeda Case;

2. Assuming that the Presiding Judge did not excessively exercise [his] judicial authority in the issuance of the assailed orders, notwithstanding [their] consistency with the legal principle enunciated in the Almeda Case, whether or not the petitioners can avail of the remedy under Rule 65, taking into consideration the sense of urgency involved in the resolution of the issue raised;

3. Whether or not the Petition lodged before the Court of Appeals presented a question of fact, and hence not within the province of the extraordinary remedy of *certiorari*.[15]

The petitioners argue that the foreclosure of their mortgage was premature; that they could not yet be considered in default under the ruling in *Almeda v. Court of Appeals*,[16] because the trial court was still to determine with certainty the exact amount of their obligation to Metrobank; that they would likely prevail in their action because Metrobank had altered the terms of the loan agreement by increasing the interest rates without their prior assent; and that unless the foreclosure sale was restrained their action would be rendered moot. They urge that despite finding no grave abuse of discretion on the part of the RTC in denying their application for preliminary injunction, the CA should have nonetheless issued a writ of *certiorari* considering that they had no other plain and speedy remedy.

Metrobank counters that *Almeda v. Court of Appeals* was not applicable because that ruling presupposed the existence of the following conditions, to wit: (*a*) the escalation and de-escalation of the interest rate were subject to the agreement of the parties; (*b*) the petitioners as obligors must have protested the highly escalated