

## THIRD DIVISION

**[ G.R. No. 147443, February 11, 2008 ]**

**LPBS COMMERCIAL, INC., Petitioner, vs. HON. VENANCIO J. AMILA, in his capacity as Presiding Judge of the Regional Trial Court of Tagbilaran City, Br. 3 and THE FIRST CONSOLIDATED BANK (FCB) OF BOHOL, INC., Respondents.**

### DECISION

**YNARES-SATIAGO, J.:**

This petition for *certiorari*<sup>[1]</sup> assails the January 17, 2001 Order<sup>[2]</sup> of the Regional Trial Court of Bohol, Branch 3 denying petitioner's Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction. Also assailed is the February 22, 2001 Order<sup>[3]</sup> denying the Motion for Reconsideration.

In 1991, petitioner obtained several loans from respondent First Consolidated Bank (FCB) of Bohol Inc. By July 1997, petitioner's loan with respondent bank amounted to P11.5 Million with an average interest rate of 15.5% per annum. The loan was covered by several Promissory Notes and secured with a Real Estate Mortgage<sup>[4]</sup> covering five parcels of land.

In October 1997, petitioner's loan obligation was restructured and consolidated into three Promissory Notes<sup>[5]</sup> executed as follows:

October 16, 1997	P4,775,000.00
October 23, 1997	P5,150,000.00
November 10, 1997	P1,575,000.00

Consequently, the old Promissory Notes were deemed cancelled and superseded by the new ones which provided for an increased interest rate of 20% per annum for the first two notes, and 30% per annum for the third note.

On June 11, 1998, petitioner filed a Complaint<sup>[6]</sup> for Reformation of Documents, Recovery of Excessive Interest Payments, Damages, Injunction with Preliminary Injunction and/or Temporary Restraining Order against respondent bank before the Regional Trial Court of Bohol (RTC-Bohol) docketed as Civil Case No. 6200. The RTC-Bohol, through Executive Judge Achilles L. Melicor subsequently issued an Order directing the special raffle of Civil Case No. 6200 and denying petitioner's application for TRO.<sup>[7]</sup> The case was eventually assigned to RTC-Bohol Branch 3 which was presided by Judge Fernando G. Fuentes III.

In its complaint, petitioner alleged that additional oppressive and excessive charges were unilaterally imposed by respondent bank in violation of their agreement. Petitioner claimed that the interest rates applicable to the aggregate loan is only

20% and not 30% as reflected in the third Promissory Note dated November 10, 1997; and that the term of the promissory notes was six months and not 30 days.

In its Answer,<sup>[8]</sup> respondent bank alleged that the imposition of the additional charge of 5% per annum based on the outstanding principal and the total amount of the unpaid interest was in accordance with the provisions of the Promissory Notes. Respondent bank added that contrary to petitioner's claim, the parties did not have any agreement providing for a maturity period of six months.

Despite being given countless opportunities to settle the matter, the parties were unable to reach an agreement. In the course of the protracted proceedings, Judge Fuentes was replaced by Judge Venancio J. Amila. Noting the slow progress of the case in the hearing held on May 11, 2000, Judge Amila gave the parties a last chance to settle before finally proceeding to pre-trial.<sup>[9]</sup>

Meanwhile, on November 10, 2000, respondent bank filed an "*Application for the Extra-Judicial Foreclosure of the Real Estate Mortgage*." On December 11, 2000, petitioner filed an "*Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*" to enjoin foreclosure. When said motion was heard on December 20, 2000, petitioner asked the trial court to reset the hearing claiming the possibility of an amicable agreement between the parties. The trial court reset the hearing to January 15, 2001, but on January 12, 2001, petitioner again filed an urgent motion for the postponement of the hearing which the trial court denied. During the January 15, 2001 hearing, respondent bank manifested that there has been no settlement between the parties and moved for the resolution of petitioner's pending motion for the issuance of a TRO.

On January 17, 2001, the trial court issued an Order denying the motion for issuance of a TRO, thus:

*WHEREFORE, considering that there has been a long default of plaintiff to pay its loan obligation to defendant bank according to the reconstructed promissory notes, the foreclosure of the mortgaged properties is therefore due and proper. However, as the propriety of additional interests allegedly unilaterally imposed by defendant are being questioned by plaintiff, the foreclosure should be limited only to the uncontested agreement in fairness to both, which is the amount of the loan and the interest therein due as mutually agreed by the parties. The penalties and all other additional increments thereto shall be the subject of hearing to determine its propriety or justification.*

*SO ORDERED.*<sup>[10]</sup>

Petitioner moved for reconsideration but was denied by the trial court. Hence, this petition.

The order denying petitioner's motion for issuance of a TRO is an interlocutory order on an incident which does not touch on the merits of the case or put an end to the proceedings.<sup>[11]</sup> The remedy against an interlocutory order is not certiorari, but an appeal in case of an unfavorable decision. Only if there are circumstances that clearly demonstrate the inadequacy of an appeal that the remedy of certiorari is allowed,<sup>[12]</sup> none of which is present in the instant case.