

SECOND DIVISION

[G.R. NO. 134617, February 13, 2006]

**SPS. LUIS K. S. LIM AND CHUA SIAM, EVARISTO LIM AND
FEDERAL MEDICAL & PHARMACEUTICALS, INC., PETITIONERS,
VS. THE COURT OF APPEALS, BANK OF THE PHILIPPINE ISLANDS
AND LEVY DUKA, RESPONDENTS.**

DECISION

GARCIA, J.:

By this petition^[1] for review on certiorari with prayer for a temporary restraining order and writ of preliminary injunction, petitioners seek the reversal and setting aside of the decision^[2] dated July 10, 1998 of the Court of Appeals (CA) in *CA-G.R. SP No. 47085*, sustaining an earlier order of the Regional Trial Court (RTC) of Manila, Branch 55, denying petitioners' application for a writ of preliminary injunction in its Civil Case No. 97-86459.

In its Resolution^[3] of February 15, 1999, as reiterated in its subsequent Resolution^[4] of February 9, 2000, the Court, thru its Third Division, denied the prayer for a temporary restraining order.

The facts:

Herein petitioners, the spouses Luis K.S. Lim and Chua Siam and Evaristo Lim are the principal stockholders of co-petitioner Federal Medical & Pharmaceuticals, Inc., a corporation engaged in the sale of medical equipment and supplies.

In the pursuit of their business, petitioners secured and obtained several loans from respondent Bank of the Philippine Islands (BPI) amounting to P11,000,000.00, to secure which the spouses Luis K.S. Lim and Chua Siam executed a real estate mortgage over their property covered by Transfer Certificate of Title No. 29518. Petitioners defaulted in the payment of their loan obligation which had ballooned to P18,865,509.00, inclusive of interest and surcharges. Hence, in a letter dated September 15, 1997, BPI demanded of the petitioners to pay in full their overdue account. Responding thereto, petitioners sent two (2) letters to BPI submitting proposals to settle their matured obligation. Evidently, BPI rejected petitioners' offer because it filed with the respondent Sheriff of Manila, Levy Duka, a petition for the extrajudicial foreclosure of the real estate mortgage.

On December 8, 1997, petitioners, obviously to prevent the extrajudicial foreclosure proceedings from taking place, filed with the RTC, Manila a complaint^[5] for *Damages and Injunction With Prayer for a Temporary Restraining Order* against BPI and the respondent sheriff. Docketed in said court as Civil Case No. 97-86459 and raffled to Branch 55 thereof, the complainants prayed, *inter alia*, for a writ of

preliminary injunction to stop the foreclosure proceedings. On the same date - December 8, 1997 - the trial court issued a temporary restraining order enjoining the foreclosure sale of the mortgaged property scheduled on December 9, 1997, and set the hearing on the application for a writ of preliminary injunction to December 12, 1997.

In an Order^[6] dated December 16, 1997, the trial court denied petitioners' application for preliminary injunction and lifted its earlier temporary restraining order, saying:

The writ of preliminary injunction prayed for should be DENIED. The plaintiffs' [petitioners'] evidence simply consisted of proposals to settle the loans, or request for the re-structuring of the same. Plaintiffs did not deny that the loans were already due and that they have defaulted in the payment therefor. The foreclosure of the mortgage thus becomes a matter of right on the part of the defendant [respondent] bank, for such is the security of the loans and its foreclosure is a condition of the document. Of course, requests for extension to pay, or proposals for re-structuring of the loans, do not novate a contract and suspend its execution. This is academic and fundamental. The principles of offer and acceptance must be recalled. The fundamental requisites for the existence of an enforceable contract must be remembered.

Plaintiffs have not thus established, so far, a clear legal right to the relief prayed for. Their right to the suspension of the foreclosure is not in esse, free from doubt and dispute. Necessarily, this Court cannot grant them the relief. (Word in bracket ours; Emphasis in the original).

With their motion for reconsideration having been denied by the trial court in its subsequent Order^[7] of March 6, 1998, petitioners went to the CA on a petition for certiorari, thereat docketed as *CA-G.R. SP No. 47085*, insisting that the trial court committed grave abuse of discretion in issuing its orders of December 16, 1997 and March 6, 1998, *supra*, and claiming that they were deprived of due process because they received a copy of BPI's petition for extrajudicial foreclosure only on November 24, 1997 and that on the following day - November 25, 1997 - they received the respondent sheriff's *Notice to Parties of Sheriff's Auction Sale*^[8] setting the auction sale on December 9, 1997. Petitioners thus argued that they had no opportunity to comment on BPI's foreclosure petition, adding that they were misled by BPI when the latter assured them that it would study their proposals when in fact a petition for extrajudicial foreclosure was already filed with the respondent sheriff.

As stated at the threshold hereof, the CA, in its decision^[9] dated July 10, 1998, upheld the trial court's questioned orders and accordingly dismissed petitioners' recourse thereto. Partly says the CA in its assailed decision:

...This Court finds the respondent court's reasoning on this point to be unassailable. Thus:

The writ of preliminary injunction prayed for should be DENIED. The plaintiffs' evidence simply consisted of proposals to settle the loans, or a request for the re-structuring of the same. Plaintiffs did not deny that the loans were already due