

FIRST DIVISION

[G.R. NO. 165662, May 03, 2006]

**SELEGNA MANAGEMENT AND DEVELOPMENT CORPORATION;
AND SPOUSES EDGARDO AND ZENAIDA ANGELES, PETITIONERS,
VS. UNITED COCONUT PLANTERS BANK,* RESPONDENT.**

DECISION

PANGANIBAN, CJ:

A writ of preliminary injunction is issued to prevent an extrajudicial foreclosure, only upon a clear showing of a violation of the mortgagor's unmistakable right. Unsubstantiated allegations of denial of due process and prematurity of a loan are not sufficient to defeat the mortgagee's unmistakable right to an extrajudicial foreclosure.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the May 4, 2004 Amended Decision^[2] and the October 12, 2004 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP No. 70966. The challenged Amended Decision disposed thus:

"WHEREFORE, the Motion for Reconsideration is GRANTED. The July 18, 2003 Decision is hereby REVERSED and SET ASIDE and another one entered GRANTING the petition and REVERSING and SETTING ASIDE the March 15, 2002 Order of the Regional Trial Court, Branch 58, Makati City in Civil Case No. 99-1061."^[4]

The assailed Resolution denied reconsideration.

The Facts

On September 19, 1995, Petitioners Selegna Management and Development Corporation and Spouses Edgardo and Zenaida Angeles were granted a credit facility in the amount of P70 million by Respondent United Coconut Planters Bank (UCPB). As security for this credit facility, petitioners executed real estate mortgages over several parcels of land located in the cities of Muntinlupa, Las Piñas, Antipolo and Quezon; and over several condominium units in Makati. Petitioners were likewise required to execute a promissory note in favor of respondent every time they availed of the credit facility. As required in these notes, they paid the interest in monthly amortizations.

The parties stipulated in their Credit Agreement dated September 19, 1995,^[5] that failure to pay "any availment of the accommodation or interest, or any sum due" shall constitute an event of default,^[6] which shall consequently allow respondent

bank to "declare [as immediately due and payable] all outstanding availments of the accommodation together with accrued interest and any other sum payable." [7]

In need of further business capital, petitioners obtained from UCPB an increase in their credit facility.[8] For this purpose, they executed a Promissory Note for P103,909,710.82, which was to mature on March 26, 1999.[9] In the same note, they agreed to an interest rate of 21.75 percent per annum, payable by monthly amortizations.

On December 21, 1998, respondent sent petitioners a demand letter, worded as follows:

"Gentlemen:

"With reference to your loan with principal outstanding balance of [P103,909,710.82], it appears from the records of United Coconut Planters Bank that you failed to pay interest amortizations amounting to [P14,959,525.10] on the Promissory Note on its due date, 30 May 1998.

"x x x x x x x x x

"Accordingly, formal demand is hereby made upon you to pay your outstanding obligations in the total amount of P14,959,525.10, which includes unpaid interest and penalties as of 21 December 1998 due on the promissory note, eight (8) days from date hereof."
[10]

Respondent decided to invoke the acceleration provision in their Credit Agreement. Accordingly, through counsel, it relayed its move to petitioners on January 25, 1999 in a letter, which we quote:

"Gentlemen:

"x x x x x x x x x

"It appears from the record of [UCPB] that you failed to pay the monthly interest due on said obligation since May 30, 1998 as well as the penalty charges due thereon. Despite repeated demands, you refused and continue to refuse to pay the same. Under the Credit Agreements/Letter Agreements you executed, failure to pay when due any installments of the loan or interest or any sum due thereunder, is an event of default.

"Consequently, we hereby inform you that our client has declared your principal obligation in the amount of [P103,909,710.82], interest and sums payable under the Credit Agreement/Letter Agreement/Promissory Note to be immediately due and payable.

"Accordingly, formal demand is hereby made upon you to please pay within five (5) days from date hereof or up to January 29, 1999 the principal amount of [P103,909,710.82], with the interest,

penalty and other charges due thereon, which as of January 25, 1999 amounts to [P17,351,478.55]."^[11]

Respondent sent another letter of demand on March 4, 1999. It contained a final demand on petitioners "to settle in full [petitioners'] said past due obligation to [UCPB] within five (5) days from [petitioners'] receipt of [the] letter."^[12]

In response, petitioners paid respondent the amount of P10,199,473.96 as partial payment of the accrued interests.^[13] Apparently unsatisfied, UCPB applied for extrajudicial foreclosure of petitioners' mortgaged properties.

When petitioners received the Notice of Extra Judicial Foreclosure Sale on May 18, 1999, they requested UCPB to give them a period of sixty (60) days to update their accrued interest charges; and to restructure or, in the alternative, to negotiate for a takeout of their account.^[14]

On May 25, 1999, the Bank denied petitioners' request in these words:

"This is to reply to your letter dated May 20, 1999, which confirms the request you made the previous day when you paid us a visit.

"As earlier advised, your account has been referred to external counsel for appropriate legal action. Demand has also been made for the full settlement of your account.

"We regret that the Bank is unable to grant your request unless a definite offer is made for settlement."^[15]

In order to forestall the extrajudicial foreclosure scheduled for May 31, 1999, petitioners filed a Complaint^[16] (docketed as Civil Case No. 99-1061) for "Damages, Annulment of Interest, Penalty Increase and Accounting with Prayer for Temporary Restraining Order/Preliminary Injunction." All subsequent proceedings in the trial court and in the CA involved only the propriety of issuing a TRO and a writ of preliminary injunction.

Judge Josefina G. Salonga,^[17] then executive judge of the Regional Trial Court (RTC) of Makati City, denied the Urgent Ex-parte Motion for Immediate Issuance of a Temporary Restraining Order (TRO), filed by petitioners. Judge Salonga denied their motion on the ground that no great or irreparable injury would be inflicted on them if the parties would first be heard.^[18] Unsatisfied, petitioners filed an Ex-Parte Motion for Reconsideration, by reason of which the case was eventually raffled to Branch 148, presided by Judge Oscar B. Pimentel.^[19]

After due hearing, Judge Pimentel issued an Order dated May 31, 1999, granting a 20-day TRO on the scheduled foreclosure of the Antipolo properties, on the ground that the Notice of Foreclosure had indicated an inexistent auction venue.^[20] To resolve that issue, respondent filed a Manifestation^[21] that it would withdraw all its notices relative to the foreclosure of the mortgaged properties, and that it would re-post or re-publish a new set of notices. Accordingly, in an Order dated September 6, 1999,^[22] Judge Pimentel denied petitioners' application for a TRO for having been

rendered moot by respondent's Manifestation.^[23]

Subsequently, respondent filed new applications for foreclosure in the cities where the mortgaged properties were located. Undaunted, petitioners filed another Motion for the Issuance of a TRO/Injunction and a Supplementary Motion for the Issuance of TRO/Injunction with Motion to Clarify Order of September 6, 1999.^[24]

On October 27, 1999, Judge Pimentel issued an Order^[25] granting a 20-day TRO in favor of petitioners. After several hearings, he issued his November 26, 1999 Order, ^[26] granting their prayer for a writ of preliminary injunction on the foreclosures, but only for a period of twenty (20) days. The Order states:

"Admitted by defendant witness is the fact that in all the notices of foreclosure sale of the properties of the plaintiffs x x x it is stated in each notice that the property will be sold at public auction to satisfy the mortgage indebtedness of plaintiffs which as of August 31, 1999 amounts to P131,854,773.98.

"x x x x x x x x x

"As the court sees it, this is the problem that should be addressed by the defendant in this case and in the meantime, the notice of foreclosure sale should be held in abeyance until such time as these matters are clarified and cleared by the defendants x x x Should the defendant be able to remedy the situation this court will have no more alternative but to allow the defendant to proceed to its intended action.

"x x x x x x x x x

"WHEREFORE, premises considered, and finding compelling reason at this point in time to grant the application for preliminary injunction, the same is hereby granted upon posting of a preliminary injunction bond in the amount of P3,500,000.00 duly approved by the court, let a writ of preliminary injunction be issued."^[27]

The corresponding Writ of Preliminary Injunction^[28] was issued on November 29, 1999.

Respondent moved for reconsideration. On the other hand, petitioners filed a Motion to Clarify Order of November 26, 1999. Conceding that the November 26 Order had granted an injunction during the pendency of the case, respondent contended that the injunctive writ merely restrained it for a period of 20 (twenty) days.

On December 29, 2000, Judge Pimentel issued an Order^[29] granting respondent's Motion for Reconsideration and clarifying his November 26, 1999 Order in this manner:

"There may have been an error in the Writ of Preliminary Injunction issued dated November 29, 1999 as the same [appeared to be actually] an extension of the TRO issued by this Court dated 27 October 1999 for another 20 days period. Plaintiff's seeks to enjoin defendants for an

indefinite period pending trial of the case.

"Be that as it may, the Court actually did not have any intention of restraining the defendants from foreclosing plaintiff[s'] property for an indefinite period and during the entire proceeding of the case x x x.

"x x x x x x x x x

"What the [c]ourt wanted the defendants to do was to merely modify the notice of [the] auction sale in order that the amount of P131,854,773.98 x x x would not appear to be the value of each property being sold on auction. x x x.^[30]

"WHEREFORE, premises considered and after finding merit on the arguments raised by herein defendants to be impressed with merit, and having stated in the Order dated 26 November 1999 that no other alternative recourse is available than to allow the defendants to proceed with their intended action, the Court hereby rules:

"1.] To give due course to defendant[']s motion for reconsideration, as the same is hereby **GRANTED**, however, with reservation that this Order shall take effect upon after its[] finality[.]"^[31]

Consequently, respondent proceeded with the foreclosure sale of some of the mortgaged properties. On the other hand, petitioners filed an "[O]mnibus [M]otion [for Reconsideration] and to [S]pecify the [A]pplication of the P92 [M]illion [R]ealized from the [F]oreclosure [S]ale x x x."^[32] Before this Omnibus Motion could be resolved, Judge Pimentel inhibited himself from hearing the case.^[33]

The case was then re-raffled to Branch 58 of the RTC of Makati City, presided by Judge Escolastico U. Cruz.^[34] The proceedings before him were, however, all nullified by the Supreme Court in its En Banc Resolution dated September 18, 2001.^[35] He was eventually dismissed from service.^[36]

The case was re-raffled to the pairing judge of Branch 58, Winlove M. Dumayas. On March 15, 2002, Judge Dumayas granted petitioners' Omnibus Motion for Reconsideration and Specification of the Foreclosure Proceeds, as follows:

"WHEREFORE, premises considered, the Motion to Reconsider the Order dated December 29, 2000 is hereby granted and the Order of November 26, 1999 granting the preliminary injunction is reinstated subject however to the condition that all properties of plaintiffs which were extrajudicially foreclosed though public bidding are subject to an accounting. [A]nd for this purpose defendant bank is hereby given fifteen (15) days from notice hereof to render an accounting on the proceeds realized from the foreclosure of plaintiffs' mortgaged properties located in Antipolo, Makati, Muntinlupa and Las Piñas."^[37]

The aggrieved respondent filed before the Court of Appeals a Petition for Certiorari, seeking the nullification of the RTC Order dated March 15, 2002, on the ground that it was issued with grave abuse of discretion.^[38]