

SECOND DIVISION

[G.R. No. 150888, September 24, 2004]

**TRAVERSE DEVELOPMENT CORPORATION, PETITIONER, VS.
DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENT.**

DECISION

CALLEJO, SR., J.:

Before us is a petition for review on certiorari assailing the Decision^[1] of the Court of Appeals dismissing the petitioner's appeal in CA-G.R. CV No. 43157 for lack of jurisdiction and the Resolution denying the motion for reconsideration thereof.

On July 21, 1980, the respondent, Development Bank of the Philippines (DBP), granted a loan of ₱910,000.00 to the petitioner, Traverse Development Corporation, for the construction of a three-storey commercial building on its property located in Tarlac (now Tarlac City), with an area of 698 square meters covered by TCT No. 154736. The loan was payable in fifteen (15) years, or until June 30, 1996. To secure the payment thereof, the petitioner executed a real estate mortgage over a portion of said property, consisting of 349 square meters. The contract of mortgage was annotated at the dorsal portion of TCT No. 154736 as Entry No. E-20-10483.^[2]

Under the real estate mortgage, the petitioner was required to secure an insurance policy covering the building against fire and earthquake from an acceptable insurance company and to endorse the corresponding policy/policies to the respondent. The respondent was authorized to foreclose the mortgage extrajudicially in case the petitioner defaulted on its obligation.

The petitioner secured a fire insurance policy from the FGU Insurance Corporation for ₱1,000,000, effective until May 7, 1982. However, before the said date, the respondent required the petitioner to secure another fire insurance policy, this time from the Central Surety and Insurance Company (CSIC) also for ₱1,000,000. The petitioner did as directed and secured Fire Insurance Policy No. TAR 1056 from CSIC covering the building for the period of May 7, 1982 to May 7, 1983.^[3] Under the policy, the CSIC obliged itself to pay, in case of loss or damage to the insured property, the amount of such loss or damage to the respondent or as its interests may appear.^[4]

On August 9, 1982, the building was gutted by fire. The petitioner notified the respondent, through a written notice, of the total loss of the building and, at the same time, filed its claim with CSIC in the amount of ₱1,000,000 under the insurance policy.

On November 6, 1982, the CSIC proposed a settlement of the petitioner's claim for ₱230,748.00. The petitioner rejected the offer and filed, on February 28, 1983, a complaint against the CSIC and the respondent in the Regional Trial Court (RTC) of

Quezon City. The case was docketed as Civil Case No. Q-37497.

The petitioner alleged that, despite its demands, the CSIC refused to pay the amount of ₱1,000,000 which was the amount of the insurance plus interests, and that because of such delay, it failed to pay its loan to the respondent and to collect rentals from its prospective lessees on the building. The respondent failed to convince the CSIC to pay the said amount.

The petitioner prayed that it be granted the following reliefs:

WHEREFORE, after hearing, it is most respectfully prayed that judgment be rendered by this Honorable Court in favor of the plaintiff and against the defendants as follows:

1. Sentencing the defendants, jointly and severally, to pay to the plaintiff the amount of ₱1,000,000.00, the amount for which Fire Insurance Company Policy No. TAR 1056 was issued plus interest thereon at the legal rate computed thirty (30) days after defendants received proof of loss;
2. Sentencing defendants, jointly and severally, to pay to plaintiff actual and compensatory damages in an amount of not less than ₱275,000.00, more or less;
3. Sentencing defendants, jointly and severally, to pay to the plaintiff, rentals which it failed to receive from the premises due to the unjustifiable delay of the defendants in the settlement of plaintiff's claim;
4. Sentencing defendants, jointly and severally, to pay to plaintiff the interest and penalty charged to plaintiff's loan account with the Development Bank of the Philippines due to the unjustifiable delay of defendants in the settlement of plaintiff's claim;
5. Sentencing defendant SURETY to pay to plaintiff nominal damages in an amount of not less than ₱100,000.00, more or less;
6. Sentencing defendant SURETY to pay to plaintiff exemplary damages in an amount of not less than ₱100,000.00, more or less;
7. Sentencing defendants, jointly and severally, to pay to plaintiff the amount of ₱50,000.00 by way of attorney's fees and expenses of litigation;
8. Sentencing defendants, jointly and severally, to pay the costs of suit.

Plaintiff prays for such other and further reliefs as may be just and equitable in the premises.^[5]

However, the RTC did not issue any temporary restraining order.

During the pendency of Civil Case No. Q-37497, the respondent foreclosed the real

estate mortgage upon the petitioner's default in the payment of its obligation under the said contract. The respondent was the highest bidder at the sale at public auction, with the bid price of ₱540,050.00. A certificate of sale was issued in its favor on May 30, 1990 and was annotated at the dorsal portion of TCT No. 154736.

[6] The respondent consolidated its title to the property in due course.

On May 28, 1991, the petitioner filed a complaint against the respondent in the RTC of Tarlac, for the annulment of the extrajudicial foreclosure sale and damages; and for the issuance of a writ of preliminary injunction and temporary restraining order, to enjoin the defendant from selling the property. The case was docketed as Civil Case No. 7432^[7] which was raffled to Branch 63, Tarlac, Tarlac.

As its first cause of action, the petitioner alleged, *inter alia*, that the foreclosure of the real estate mortgage of the entire property, as well as the sale thereof at public auction to the respondent, was null and void because only 349 square meters of the entire property, or one-half (1/2) of the eastern portion thereof, was mortgaged to the respondent. The petitioner alleged that its failure to pay its loan was due to the fire that gutted its building, a fortuitous event under Article 1174 of the New Civil Code; as such, it was excused from paying its loan. The petitioner also alleged that were it not for the delay of the payment of its insurance claim from the CSIC, an insurance company chosen by the respondent, it would have been able to pay its loan, as provided in the real estate mortgage.

On its second cause of action, the petitioner alleged that the respondent proceeded with the extrajudicial foreclosure of the mortgage and the sale of its property at public auction despite the pendency of Civil Case No. Q-37497.

The petitioner prayed that it be granted the following reliefs:

WHEREFORE, it is respectfully prayed that –

(1) immediately upon the filing of this Complaint, a temporary restraining order be issued *ex parte* and, after notice and hearing, a writ of preliminary injunction, enjoining defendants from consolidating ownership over the foreclosed properties or issuing new transfer certificate of title;

(2) after trial, judgment be rendered in favor of plaintiff and against defendants –

[a] on the First Cause of Action, annulling the foreclosure sale and enjoining defendants from consolidating ownership over the foreclosed properties or issuing new transfer certificate of title thereto;

[b] on the Second Cause of Action, ordering defendants to pay plaintiff, jointly and severally –

moral damages in the amount of ₱200,000.00;

attorney's fees and expenses of litigation in the sum of ₱100,000.00;

Exemplary or corrective damages of ₱100,000.00;
and

the costs of suit.

Plaintiff prays for such other reliefs as this Court may deem just and equitable in the premises.^[8]

Since the RTC did not issue a writ of preliminary injunction, the respondent consolidated its title on August 21, 1991 over the foreclosed property and was placed in possession thereof.

Almost two (2) years thereafter, or on July 7, 1993, the petitioner filed another complaint in the RTC of Tarlac against DBP for annulment of extrajudicial foreclosure proceedings, reconveyance of title, cancellation of writ of possession, damages and preliminary injunction with prayer for a restraining order. The verification in the complaint was signed by Angel Tadeo Q. Roxas. The case was docketed as Civil Case No. 7885^[9] and raffled to Branch 63 of the court.

The petitioner alleged, *inter alia*, that, despite the respondent's interference in the procurement of a fire insurance policy over the still-to-be constructed building, and the fact that the respondent was entitled to the proceeds of the insurance policy under the real estate mortgage and fire insurance policy in the amount of ₱1,000,000.00, the said respondent still proceeded with the extrajudicial foreclosure of the real estate mortgage; the respondent failed to give notice to the petitioner relative to its agreement with the respondent to await the outcome of Civil Case No. Q-37497 and Civil Case No. 7432 before the latter consolidated its title over the property and took possession thereof; the petitioner was no longer obliged to pay its loan to the respondent because of the total loss of the building; the petitioner's failure to pay its loan was due to the delay in the payment of the amount of ₱1,000,000 in insurance policy by the CSIC; since it was the respondent which impelled the petitioner to procure the said policy, the petitioner should not be faulted for failure to pay its loan. The petitioner prayed for judgment, thus:

WHEREFORE, it is respectfully prayed that a restraining order be immediately issued by this Honorable Court prohibiting or restraining the defendant or any other persons acting in its behalf from proceeding with the sale of plaintiffs' (*sic*) properties to third parties, either through public bidding or through negotiated sale.

And after due hearing, judgment be rendered:

- a) Making the restraining order and/or preliminary injunction permanent and declare the extra-judicial foreclosure as null and void;
- b) Ordering defendant to reconvey to plaintiff the title to the foreclosed properties;
- c) Declaring the Writ of Possession issued thereon as cancelled and ordering defendant to return and surrender possession of the premises it seized to the plaintiff;