

SECOND DIVISION

[G.R. No. 157553, September 08, 2004]

**AUTOCORP GROUP AND AUTOGRAPHICS, INC., PETITIONERS,
VS. HON. COURT OF APPEALS AND KEPPEL MONTE BANK
(FORMERLY PROMULGATED: MONTE DE PIEDAD AND SAVINGS
BANK), RESPONDENTS.**

DECISION

PUNO, J.:

Petitioners are before us on a Petition for Review on *Certiorari* assailing the decision^[1] and resolution^[2] of the Court of Appeals in CA-G.R. SP No. 59004, which set aside the order^[3] and resolution^[4] of the Regional Trial Court (RTC) of Cebu City, Branch 5, granting a writ of preliminary injunction against the respondent Keppel Monte Bank and the Register of Deeds of Cebu City.

The records show that respondent bank extended a loan of eighty-five million pesos (P85,000,000.00) in favor of petitioner Autocorp Group (Autocorp). The loan is embodied in an Agreement^[5] dated December 16, 1994 which was secured by pledge and real estate mortgage on several properties, among which, were lots in Cebu City, co-owned by petitioner Autographics, Inc., and covered by Transfer Certificates of Title (TCT) Nos. 72002, 72132, 85737, and 102042, and lots in Lapu-lapu City, registered under the name of Eurasia Heavy Industries, Inc., and covered by TCT Nos. 19135 and 19136. The Agreement provided that the "CREDITOR may, at its sole discretion, treat the whole obligation, its principal and accrued interest and other charges, as immediately due, payable and defaulted, without necessity of any demand, presentment or notice by the CREDITOR to the DEBTOR" in any event of default, such as, when "[t]he DEBTOR fails to pay the principal loan, interests, and other fees and charges, or any part thereof as they fall due."

Petitioner Autocorp failed to pay the loan. Despite its failure, it asked for an additional loan of P48,800,000.00 payable in one year at 20% interest per annum. Of this additional loan, P17,000,000.00 was applied partially against the original loan. Autocorp was again unable to pay both accounts totaling P116,800,000.00, despite repeated demands and various requests for extension.^[6]

Hence, in a notarized letter^[7] dated September 8, 1997, addressed to the Office of the Provincial Sheriff of Cebu City, respondent bank requested for the sale of the six (6) mortgaged lots at a public auction, for the satisfaction of petitioner Autocorp's obligations, which, as of July 15, 1997, allegedly amounted to P143,871,904.00, and a sum equivalent to 10% as attorney's fees. The letter was filed with the Office of the Clerk of Court *Ex Officio* Provincial Sheriff of Cebu City on September 12, 1997, and raffled to Deputy Sheriff Jessie Belarmino on September 15, 1997, for implementation.^[8]

Before Deputy Sheriff Belarmino could prepare the requisite publication and notice, the petitioners filed a complaint for "Annulment of Loan Agreement and Real Estate Mortgage/ Declaration of Unenforceability of Loan Agreement and Real Estate Mortgage with *ex parte* Restraining Order, Preliminary Injunction and Damages"^[9] against respondent bank, the Clerk of Court *Ex Officio* Provincial Sheriff of Cebu, and Deputy Sheriff Belarmino. Summons and notice of raffle were served on respondent bank and its co-defendants on September 24, 1997. The case was raffled to Branch 23 of the RTC of Cebu City. On October 1, 1997, the trial court issued a Temporary Restraining Order (TRO) effective for seventy-two (72) hours. After a summary hearing on October 3, 1997, the TRO was extended for twenty (20) days.^[10]

On October 16, 1997, the trial court issued a writ of preliminary injunction,^[11] conditioned on petitioners' filing of a bond of two million pesos (₱2,000,000.00). It also set the pre-trial hearing of the case. The respondent bank sought a reconsideration of the order but in vain.

Respondent bank filed a petition for *certiorari* under Rule 65 of the Rules of Court with the Court of Appeals, to annul the order and resolution of the trial court. It contended that the preliminary injunction was issued without the requisite prior notice and hearing, provided under Section 5, Rule 58 of the 1997 Rules of Court. The Court of Appeals granted the petition on November 12, 1998, after finding that the summary hearing conducted by the trial court was insufficient. The decision was held to be "without prejudice to his (the trial court judge's) conducting the required hearing to determine whether preliminary injunction should be issued."^[12]

The counsel for respondent bank immediately informed Deputy Sheriff Belarmino of the Court of Appeals' favorable decision. In a letter^[13] dated November 25, 1998, said counsel furnished Deputy Sheriff Belarmino with a copy of the November 12, 1998 Decision of the Court of Appeals and requested him to proceed with the foreclosure.

In response, Deputy Sheriff Belarmino prepared and served the Notice of Extrajudicial Sale.^[14] He scheduled the extrajudicial sale on January 7, 1999 at 10:00 a.m. Before the notice could be published, petitioners filed an "Urgent Motion to Hold in Abeyance the Extrajudicial Sale in Case No. EJP-2397-CEB"^[15] dated December 7, 1997 with Branch 5^[16] of the RTC of Cebu City. In addition, it filed a "Very Urgent Motion for Issuance of an Order of Status Quo"^[17] with the Court of Appeals on December 17, 1998.

In its Resolution^[18] dated December 22, 1998, the Court of Appeals denied the motion of the petitioners. It ruled that its November 12, 1998 Decision had become final and executory, hence, the motion of petitioners should be resolved by the trial court. On January 6, 1999, the RTC of Cebu City, Branch 5, also denied petitioners' motion to hold the extrajudicial sale in abeyance on the ground that petitioners violated the rule against forum-shopping.^[19] Petitioners filed a motion for the reconsideration of the trial court's decision but without any success.

The extrajudicial sale proceeded on January 7, 1999 at 10:00 a.m. and closed at 10:45 a.m. The six (6) properties were awarded to respondent bank as the lone

bidder. Deputy Sheriff Belarmino issued a Certificate of Sale dated January 7, 1999 with the approval of Executive Judge Priscila Agana.^[20]

On January 13, 1999, petitioners filed a motion to admit their Amended/Supplemental Complaint with a prayer for the issuance of an *ex parte* Temporary Restraining Order and an Order for Preliminary Injunction^[21] with the RTC of Cebu City, Branch 5. It aimed to stop the Register of Deeds of Cebu from registering the Certificate of Sale in the name of respondent bank and the latter from taking possession of the properties subject of the foreclosure. In addition, the amended complaint sought the annulment of the extrajudicial foreclosure due to several alleged irregularities in the conduct of the sale.

On January 21, 1999 at 4:30 p.m., respondent bank presented the sheriff's certificate of sale to the Register of Deeds of Cebu City, involving the four (4) properties located in Cebu City covered by TCT Nos. 72002, 72132, 85737, and 102042. On the same date, the certificate was entered in the primary entry book of the Register of Deeds of Cebu. However, the entry fee of ₱30.00 and the registration fee of ₱154,923.00 were paid only the following day or on January 22, 1999 as the cashier in charge of receiving payment had already left. Respondent bank also presented the sheriff's certificate of sale to the Register of Deeds of Lapu-lapu City with respect to the two (2) subject lots, covered by TCT Nos. 19135 and 19136, located therein.^[22] The certificate of sale was duly annotated at the back of the transfer certificates of title of the subject lots with a note that "this include[s] four (4) other lots situated in Cebu City."^[23]

On January 25, 1999, the RTC of Cebu City, Branch 5, admitted the amended/supplemental complaint of petitioners and granted their prayer for the issuance of a TRO, directing the Office of the Register of Deeds to refrain from registering the assailed sheriff's certificate of sale and also respondent bank from taking possession of the properties subject of the certificate of sale. It required the respondent bank to file its answer to the amended/supplemental complaint, within ten (10) days from receipt of the order, and set a hearing on the propriety of issuing a writ of preliminary injunction on February 15, 1999.^[24]

Respondent bank's counsel failed to appear on the scheduled February 15, 1999 hearing despite due notice. Petitioners presented their evidence *ex parte*. As the TRO it issued was to expire on the same day, the trial court issued the preliminary injunction on the basis of the evidence adduced by petitioners. The dispositive portion of the order states:

WHEREFORE, in view of the foregoing, the court hereby grants the preliminary injunction and let a writ issue after the plaintiffs shall have put up a bond of ONE HUNDRED THOUSAND (₱100,000.00) Pesos conditioned that the applicant will pay the adverse party of all damages which it may sustain by reason of the injunction if the court will finally decide that the applicant is not entitled thereto. Consequently, the Office of the Register of Deeds, Cebu City is enjoined not to register the Certificate of Sale, dated January 7, 1999, and likewise defendant Monte de Piedad is directed not to take possession or do any act related thereto on the properties subject of said Certificate of [S]ale until further orders from this court.^[25]

Respondent bank's motion for reconsideration was denied in an Order dated March 9, 1999.^[26]

On May 29, 2000, respondent bank filed a petition for *certiorari*^[27] under Rule 65 of the Rules of Court with the Court of Appeals, seeking to annul the orders of the trial court dated February 15, 1999 and March 9, 1999. Respondent bank contended that the entry of the certificate of sale in the primary entry book on January 21, 1999 was equivalent to registration. Hence, the TRO dated January 25, 1999 and the preliminary injunction dated February 15, 1999, were issued with grave abuse of discretion, the registration of the certificate of sale having already become *fait accompli* at the time. Respondent bank also faulted the part of the order prohibiting petitioner from taking possession of the properties as it has not even filed a petition for a writ of possession at the time as required by Section 7 of Act No. 3135.

On August 16, 2002, the Court of Appeals rendered its first assailed decision,^[28] annulling and setting aside the trial court's February 15, 1999 Order and April 28, 2000 Resolution. It held that the entry of the certificate of sale in the primary entry book was equivalent to registration, citing Section 56 of Presidential Decree (P.D.) No. 1529, also known as the "Property Registration Decree," and the case of **DBP vs. Acting Register of Deeds of Nueva Ecija**.^[29] The Court of Appeals held that the failure of respondent bank to pay the entry and registration fees, on the same day that the sheriff's certificate of sale was presented and entered in the primary entry book, was not respondent's fault but due to the absence of the cashier. In any case, it ruled that the payment by respondent bank the following day cured the defect. The Court of Appeals also found as premature the injunction to stop respondent bank from taking possession of the properties.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution dated March 17, 2003.^[30]

Hence, this petition where petitioners raise the following issues:

I

ARE THE QUESTIONED DECISION OF THE COURT OF APPEALS AND ITS RESOLUTION DATED AUGUST 16, 2002 AND MARCH 17, 2003 IN CA-G.R. SP. NO. 59004 IN ACCORD WITH THE LAW AND JURISPRUDENCE THEREON?

II

CAN THE COURT OF APPEALS IN A PETITION FOR CERTIORARI PASS UPON AND REVERSE THE FINDINGS OF FACT AND LAW OF THE TRIAL COURT MADE IN THE EXERCISE OF ITS JURISDICTION?^[31]

Petitioners contend that payment of the entry fee is a condition *sine qua non* before any valid entry can be made in the primary entry book. Allegedly, the Court of Appeals resorted to judicial legislation when it held that the subsequent payment of the entry fee was curative and a substantial compliance with the law. Petitioners claim that the ruling in **DBP vs. Acting Register of Deeds of Nueva Ecija** does not apply to this case. As there was no valid registration, petitioners conclude that

the order of the trial court issuing a writ of preliminary injunction was proper, considering the irregularities present in the conduct of the extrajudicial foreclosure such as: (a) the petition for extrajudicial foreclosure was not filed with the executive judge of the RTC of Cebu City but only with the Clerk of Court *Ex Officio* Sheriff, Atty. Jeffrey Joaquin; (b) the notice of extrajudicial foreclosure was made three (3) days ahead of the finality of the November 12, 1998 Decision of the Court of Appeals in CA-G.R. SP No. 48305, which dissolved the first writ of preliminary injunction issued by the court *a quo*; and (c) the extrajudicial foreclosure sale on January 7, 1999 was not supervised by the Clerk of Court *Ex Officio* Sheriff, as required under Administrative Order No. 3-98 of this Court.^[32]

We find the petition bereft of merit.

First. The objection as to the payment of the requisite fees is unavailing. There is no question that the fees were paid, *albeit* belatedly. Respondent bank presented the certificate of sale to the Office of the Register of Deeds of Cebu City for registration on January 21, 1999 at 4:30 p.m. As the cashier had already left, the Office could not receive the payment for entry and registration fees, but still, the certificate of sale was entered in the primary entry book. The following day, respondent bank paid the requisite entry and registration fees. Given the peculiar facts of the case, we agree with the Court of Appeals that the payment of respondent bank must be deemed to be substantial compliance with the law; and, the entry of the instrument the day before, should not be invalidated. In any case, even if we consider the entry to have been made on January 22, the important fact is that the entry in the primary entry book was done prior to the issuance of the writ of injunction by the trial court.

Section 56 of P.D. No. 1529 provides:

SEC. 56. *Primary Entry Book; fees; certified copies.* – Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. **They shall be regarded as registered from the time so noted**, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration. (*emphasis ours*)

Second. Petitioners contend that the aforecited case of DBP is not apropos to the case at bar. Allegedly, in DBP, the bank not only paid the registration fees but also presented the owner's duplicate certificate of title. We find no merit in petitioners' posture. They fail to consider the voluntary or involuntary nature of the instrument subject of registration. A voluntary instrument is a willful act of the registered owner of the land to be affected by registration,^[33] while an involuntary instrument is one pertaining to a transaction affecting lands in which the registered owner's cooperation is not needed and which transaction may even be done against his will.^[34] For the registration of a voluntary instrument, it is necessary not only to