

## FIRST DIVISION

[ G.R. No. 153571, September 18, 2003 ]

**BENGUET MANAGEMENT CORPORATION, PETITIONER, VS.  
COURT OF APPEALS, KEPPEL BANK PHILIPPINES, INC., AS  
TRUSTEE FOR METROPOLITAN BANK AND TRUST COMPANY,  
UNITED COCONUT PLANTERS BANK, RIZAL COMMERCIAL  
BANKING CORPORATION, FAR EAST BANK AND TRUST COMPANY  
AND BANK OF THE PHILIPPINE ISLANDS UNDER THE MORTGAGE  
TRUST INDENTURE, AND THE REGISTER OF DEEDS OF CALAMBA,  
RESPONDENTS.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

Assailed in this petition for certiorari under Rule 65 of the Revised Rules of Court is the Resolution of the Court of Appeals in CA-G.R. SP No. 69503 dated April 5, 2002, [1] which denied petitioner's application for the issuance of a temporary restraining order, as well as its May 28, 2002 [2] Resolution denying the motion for reconsideration.

The antecedent facts reveal that on November 29, 1994, petitioner Benguet Management Corporation (BMC) and Keppel Bank Philippines, Inc. (KBPI), [3] acting as trustee of the other respondent banks, entered into a Loan Agreement and Mortgage Trust Indenture (MTI) whereby BMC, in consideration of the syndicated loan of P190,000,000.00, constituted in favor of KBPI a mortgage on several lots located in Alaminos, Laguna and Iba, Zambales.

On September 28, 2001, for failure of BMC to pay in full the installments due on the Loan Agreement and Mortgage Trust Indenture, KBPI filed an application [4] for extra-judicial foreclosure of mortgage before the Office of the Clerk of Court of the Regional Trial Court of Iba, Zambales. On October 29, 2001, a similar application [5] for extra-judicial foreclosure of mortgage was filed by KBPI with the Office of the Clerk of Court of the Regional Trial Court of San Pablo City, docketed as EJP No. Sp-2546 (01). Accompanying the latter application was a certification [6] from the Clerk of Court of the Regional Trial Court of Iba, Zambales, stating that KBPI had paid the corresponding foreclosure fees covering BMC's properties situated in Zambales and Laguna.

On October 31, 2001, BMC filed with the Office of the Executive Judge of the Regional Trial Court of San Pablo City a "Request Not To Give Due Course To The Application for Extra-Judicial Foreclosure..." [7] in EJP No. Sp-2546 (01). BMC claimed that the application should be denied because it is insufficient in form and substance and there is no need to proceed with the foreclosure of its properties situated in Laguna because it was willing to execute a *dacion en pago* in place of the

mortgaged properties. Subsequently, BMC filed a "Compliance and Supplementary Grounds to Disapprove Application for Extra-judicial Foreclosure of Real Estate Mortgage"<sup>[8]</sup> and a Memorandum.<sup>[9]</sup> BMC contended that the application for foreclosure should be denied because KBPI included unauthorized penalties in the statement of accounts and it did not comply with its obligation to give BMC a 60-day grace period. BMC further claimed that the MTI securing the principal loan of P190 Million cannot be foreclosed because it was not registered with the Register of Deeds.

KBPI opposed the letter-request of BMC on the ground, *inter alia*, of wrong remedy and forum shopping.<sup>[10]</sup>

Meanwhile, on November 7, 2001, BMC filed with the Regional Trial Court of Iba, Zambales, Branch 70, a complaint for damages, accounting and nullification of foreclosure of its properties in Zambales, with prayer for the issuance of a temporary restraining order, docketed as Civil Case No. RTC-1852-I.<sup>[11]</sup> BMC averred that the foreclosure of its properties should be annulled because KBPI imposed unauthorized penalties, interest and charges. Assuming that the amount claimed is due and demandable, BMC maintained that the same cannot be enforced because KBPI did not comply with the 60-day grace period. BMC added that *dacion en pago* should be preferred over the foreclosure of the collaterals because the other respondent banks are agreeable to such proposal.

On the same date, the Regional Trial Court of Iba, Zambales issued a temporary restraining order enjoining the sale at public auction of BMC's properties in Zambales.<sup>[12]</sup>

On February 6, 2002, KBPI's application for extrajudicial foreclosure of mortgage was found to be sufficient in form and substance, and was granted.<sup>[13]</sup> BMC filed a motion for reconsideration, which was denied on March 4, 2002.<sup>[14]</sup>

Hence, BMC filed a petition for certiorari with the Court of Appeals,<sup>[15]</sup> reiterating its arguments in EJP No. Sp-2546 (01) and assailing the validity of the foreclosure of its properties in Laguna. It prayed for the issuance of a preliminary injunction and/or temporary restraining order to enjoin the scheduled sale of its properties in Laguna on March 19, 2002 at 10:00 pm. Since no injunction or restraining order was issued by the Court of Appeals, the auction sale proceeded as scheduled with KBPI as the highest bidder.

To restrain the registration of the certificate of sale,<sup>[16]</sup> BMC filed a Supplemental Petition<sup>[17]</sup> which was favorably acted upon by the Court of Appeals on March 22, 2002.<sup>[18]</sup> On the same day, a temporary restraining order enjoining the registration of the certificate of sale was issued by the appellate court, albeit, late as the certificate was already registered at 2:15 p.m. of March 22, 2002.

Subsequently, BMC filed with the appellate court an Amended Supplemental Petition,<sup>[19]</sup> followed by an Urgent Manifestation<sup>[20]</sup> praying for the issuance of a writ of preliminary injunction and/or temporary restraining order to enjoin the consolidation of titles over the foreclosed properties in the name of respondent banks. BMC contended that the foreclosure sale should be annulled because – (1) the bid price

was grossly inadequate; (2) the sale was conducted in violation of Sections 2 and 3 of Act No. 3135 on the requirements of place of sale and posting of notice; and (3) the other creditor banks are amenable to the proposed *dacion en pago* instead of the foreclosure.

In its Resolution dated April 5, 2002, the Court of Appeals denied BMC's prayer to restrain the consolidation of title in the name of KBPI, thus:

The petitioner's filing of an Amended Supplemental Petition dated March 25, 2002, and an Urgent Manifestation dated March 27, 2002 is hereby noted.

However, we see no justifiable reason to grant an injunctive relief at this point in time, since the acts sought to be restrained or enjoined are positive rights of a buyer in a foreclosure sale. Unless the petitioner could prove the nullity of such sale, there is no reason to stop the Register of Deeds concerned from performing its ministerial duty under the law.

WHEREFORE, the application for temporary restraining order in the Amended Supplemental Petition is hereby DENIED.

The respondents are directed to also file their comment thereto within ten (10) days from notice hereof. Should the parties prefer, the case shall be set for hearing to enable the parties to prove their respective positions as to issues in the petition as well as subsequent Supplemental Petition and Amended Supplemental Petition.

In the meantime, the Chief of the Mailing Section is directed to investigate and report to us within fifteen (15) days from notice, how and who made the unauthorized insertion of the "Register of Deeds of Laguna" to the Court's Notice of Resolution of March 22, 2002.

SO ORDERED.<sup>[21]</sup>

BMC filed a motion for reconsideration claiming, among others, that Section 47 of the General Banking Act (Republic Act No. 8791), which reduced the period of redemption for extra-judicially foreclosed properties of juridical persons from one year to – "until, but not after, the registration of the certificate of foreclosure sale...which in no case shall be more than three (3) months after foreclosure, whichever is earlier," is unduly discriminatory and therefore unconstitutional.

On May 28, 2002, the Court of Appeals denied BMC's motion for reconsideration.<sup>[22]</sup> Hence, BMC filed the instant petition, contending that -

# I

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING PETITIONER'S APPLICATION FOR TRO TO RESTRAIN THE CONSOLIDATION OF TITLES AFTER IT HAD EARLIER RESTRAINED, ALBEIT TOO LATE, THE REGISTRATION OF THE SHERIFF'S CERTIFICATE OF SALE, DEMONSTRATIVELY HAVING BEEN CONVINCED OF THE MERIT

OF THE LEGAL GROUNDS RAISED BY THE PETITIONER IN SUPPORT OF THE APPLICATION FOR TEMPORARY RESTRAINING ORDER.

## II

THE NEW LAW (GENRAL BANKING LAW OF 2000) ABROGATING THE RIGHT TO ONE YEAR REDEMPTION PERIOD OF CORPORATE MORTGAGORS IS UNCONSTITUTIONAL.

## III

ASSUMING THAT THE NEW LAW IS CONSTITUTIONAL, IT SHOULD BE GIVEN PROSPECTIVE APPLICATION.

## IV

THE BID PRICE OF ONLY P162,354,329.46 FOR THE FOUNDRY PROJECT WITH A FAIR MARKET VALUE OF P444,184,000.00, SOUND VALUE OF P493,732,000.00 COST OF REPRODUCTION OF P989,605,000.00 IS SO GROSSLY INADEQUATE AS TO RENDER THE SALE NULL AND VOID IN LAW AND IN EQUITY.

## V

THE AUCTION SALE CONDUCTED IN SAN PABLO CITY IS NULL AND VOID FOR BEING IN VIOLATION OF SECTION 2 OF ACT 3135, AS AMENDED AND THE EXPRESS PROVISION OF THE MORTGAGE TRUST INDENTURE THAT: IN ANY EXTRA-JUDICIAL FORECLOSURE UNDER ACT 3135, AS AMENDED...THE AUCTION SALE SHALL TAKE PLACE IN THE CITY OR CAPITAL OF THE PROVINCE WHERE THE COLLATERAL IS SITUATED.

## VI

THE REQUIREMENTS OF SECTION 3 OF ACT 3135, AS AMENDED, FOR POSTING OF NOTICES WERE NOT COMPLIED WITH IN THE FORECLOSURE PROCEEDINGS IN QUESTION.

## VII

THE INTEREST BASED ON THE FLOATING RATE STIPULATED IN THE PROMISSORY NOTES IS NULL AND VOID FOR BEING POTESTATIVE IN CHARACTER AND FOR BEING VIOLATIVE OF THE PRINCIPLE OF MUTUALITY OF CONTRACT, HENCE THE FORECLOSURE MAY PROCEED ONLY ONCE THE CORRECT LEGAL AMOUNT OF THE LOAN IS DETERMINED AND ONLY IF THE MORTGAGOR CANNOT PAY FOLLOWING THAT DETERMINATION.<sup>[23]</sup>

On June 26, 2002, a *status quo* order was issued enjoining the cancellation of titles over the mortgaged properties in the name of BMC as well as the issuance of new titles and the consolidation thereof in the name of private respondent banks<sup>[24]</sup>

We deem it proper to resolve the issue of forum shopping raised by private