

SPECIAL EIGHTH DIVISION

[CA-G.R. SP NO. 127409, October 03, 2014]

**BF HOMES, INCORPORATED PETITIONER, VS. THE HONORABLE
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF
PARAÑAQUE CITY OF BRANCH 257, BANGKO SENTRAL NG
PILIPINAS, BANCO FILIPINO SAVINGS AND MORTGAGE BANK,
AS REPRESENTED BY ITS RECEIVER, PHILIPPINE DEPOSIT AND
INSURANCE CORPORATION, ATTY. JERRY R. TOLEDO, IN HIS
OFFICIAL CAPACITY AS EX-OFFICIO SHERIFF OF THE REGIONAL
TRIAL COURT OF PARAÑAQUE CITY, RESPONDENTS.**

DECISION

GARCIA-FERNANDEZ, J.:

This is a petition for certiorari^[1] under Rule 65 of the Rules of Court, as amended, assailing the order^[2] dated November 14, 2012 issued by respondent Judge Rolando G. How of the Regional Trial Court of Parañaque City, Branch 257 in Civil Case No. 12-0332, denying the motion for the issuance of preliminary injunction prayed for by petitioner BF Homes, Incorporated.

The facts of the case are as follows:

Respondent Banco Filipino Savings and Mortgage Bank (BFSMB) applied for a Special Liquidity Facility Loan from Bangko Sentral ng Pilipinas (BSP) which was approved on December 4, 2002. On December 9, 2002, BFSMB delivered to BSP a Deed of Assignment of its Credit against Pro Managers Inc. (PMI)^[3] in order to secure the loan application. The said credit is evidenced by a promissory note and secured by a Mortgage Agreement of PMI with BFSMB over several properties registered in the name of petitioner.^[4]

On October 23, 2012, petitioner was informed of a foreclosure proceeding instituted by BSP, through a Notice of Extrajudicial Foreclosure Sale scheduled on November 12 and 26, 2012 at 10:00 in the morning.

On November 8, 2012, petitioner filed an action for declaratory relief and prohibition with application for the issuance of temporary restraining order (TRO)/ writ of preliminary injunction.^[5] The same was raffled to the Regional Trial Court (RTC) of Parañaque City, Branch 257 and that the application for TRO was scheduled for hearing on November 12, 2012 at 8:30 in the morning.^[6]

During the hearing conducted on November 12, 2012, Executive Judge Brigido Artemon M. Luna II presided as Pairing Judge due to the absence of respondent Judge Rolando G. How. Judge Luna voluntarily inhibited himself from taking action on the case; hence, the hearing was reset to November 14, 2012.^[7]

On November 12, 2012, respondent Atty. Jerry R. Toledo, in his official capacity as Ex-Officio Sheriff of the Regional Trial Court of Parañaque City conducted the sale by public auction resulting from extrajudicial foreclosure of mortgage under Act 3135, as amended by Act 4118 of the properties owned by petitioner. BF Town Corporation was declared as the highest bidder.^[8]

On November 14, 2012, respondent judge issued an order^[9], which reads:

"In connection with the hearing today which is about the application for preliminary injunction, since there was no temporary restraining order issued in the hearing last Monday, November 12, 2012, which was presided by the Pairing Judge, Brigido Artemon M. Luna III and the auction sale was already made and it was already completed in a sense that the highest bid was already announced and declared to be BF Town Corporation, the Motion for the Issuance of Preliminary Injunction is denied for being moot.

SO ORDERED."

In the instant petition for certiorari, petitioner raised the following issues for the determination of this Court:

"I

WHETHER RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE APPLICATION FOR TEMPORARY RESTRAINING ORDER (TRO)/PRELIMINARY INJUNCTION.

II

WHETHER A TEMPORARY RESTRAINING ORDER (TRO)/PRELIMINARY INJUNCTION IS PROPER."^[10]

After examining the allegations in the instant petition, this Court finds the same to be without merit. Record shows that petitioner failed to file a prior motion for reconsideration with the trial court before this action was instituted. The well-established rule, with some recognized exceptions, is that a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.^[11] In the case at bar, petitioner failed to show that this case falls under any of the exceptions. Except for its bare allegation, petitioner failed to present any plausible justification for dispensing with the requirement of a prior motion for reconsideration. It must be emphasized that the filing of a motion for reconsideration and filing it on time are not mere technicalities of procedure. These are jurisdictional and mandatory requirements which must be strictly complied with. Thus, failure of petitioner to move for the reconsideration of the court a quo's order before availing itself of the special civil action for certiorari is a fatal infirmity.^[12]