

FIFTH DIVISION

[CA-G.R. SP NO. 67003, June 16, 2006]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. THE
REGIONAL TRIAL COURT OF PASIG CITY, BR. 71, SALDAÑA AND
COMPANY, INC. AND SALDAÑA DEVELOPMENT AND
MANAGEMENT CORPORATION, RESPONDENTS.**

D E C I S I O N

BARRIOS, J.:

The petitioner Bank of Philippine Islands (or BPI for brevity) through this petition for certiorari seeks to have the twin Orders dated June 28, 2001 and August 10, 2001 issued by Branch 71 of the Regional Trial Court of Pasig City, reversed and set aside.

The respondents Saldaña and Company, Inc. and Saldaña Development and Management Corporation (or Saldaña Corporations) filed before the court a quo a case for *Breach of Contract, Damages, Nullity of Foreclosure, Certificate of Sale, Consolidation of Ownership, Accounting with TRO and Injunction* against the Far East Bank and Trust Company which has since merged with and continued to exist as BPI.

On May 22, 2001 the court *a quo* issued a Temporary Restraining Order (p. 96, rollo) which enjoined BPI from consolidating the title to the property with an area of 5,646 square meters located in Brgy. Kapitolyo, Pasig City and covered by Transfer Certificate of Title No. PT-101473, which was used by Saldaña Corporations as a collateral to their loan with BPI.

The following facts, as correctly determined by the court a quo, are attendant:

Plaintiffs which engaged in import and export garments / fabrics were granted by defendant a P130,000,000.00 omnibus line and US\$6,000.00 long term loan per Amended and Restated Real Estate Agreement dated October 21, 1996. Due to financial crisis, the omnibus line reached P125,486,284.90 and the term loan to P6,869,660.23 totaling to P132,355,945.00. The amount stated in the Summary Statement of Account was P136,166,086.33 as of October 31, 2000 plus interest of P26,629,682.32 including penalties of P2,893,204.16 totaling to P165,688,972.81. Although the demand letter referred to a total sum of P132,355,945.10 and the Extra-Judicial Foreclosure of Real Estate Mortgage dated June 30, 2000 the amount of P132,676,725.66, including the Notice of Sheriff's Sale dated October 3, 2000, the Agreement of October 21, 1996 and Certificate of Sale of December 1, 2000 had P260,000.00 as the increased total annotations on the Existing Real Estate Mortgage Documents as the aggregate principal sum.

Negotiations followed to find ways and means to extrajudicially settle

plaintiffs' financial obligations with defendant.

Defendant told plaintiffs that it would foreclose the mortgage to comply with its standard operating procedure and assured them that plaintiffs could offer the collateral covered by TCT No. 101473, with an area of 5,646 square meters situated at Brgy. Kapitolyo, Pasig City, to third parties.

The mounting unconscionable rates of interest including penalties imposed on the loan even after the foreclosure have worried plaintiffs despite defendant's commitment to adjust the computation in the financial negotiation for amicable settlement.

Based on the Extrajudicial Foreclosure of Real Estate Mortgage dated June 30, 2000 and in relation to the Notice of Sheriff's Sale dated October 3, 2000 for the satisfaction of the mortgage debt of P132,676,725.66 as of April 30, 2000 "inclusive of interest plus all legal fees and expenses", a Certificate of Sale dated December 1, 2000 was issued with a bid price of P130,000,000.00 considered the "PARTIAL SATISFACTION" of the said "Amended and Restated Real Estate Mortgage (sic)"

Plaintiffs insist to sell the collateral to third persons at not less than P65,000.00 per square meter for 5,646 square meters or for P366,990,000.00 instead of the "bid price" of P130,000,000.00 or P23,025,150.60 per square meter which was way, way below the market value of P65,000.00 or more per square meter. Defendant does not want plaintiffs to exercise the right to sell the property to third parties.

Besides, the same collateral has been appraised at P329,233,000.00 or P58,312.61 per square meter with sound value of P285,508,000.00 at P50,568.18 per square meter against defendant own appraisal of P130,000,000.00 or P23,025.15 per square meter which is detrimental and prejudicial to the interest of plaintiffs.

The Appraisal of Property dated April 7, 1998 by the General Appraisal Company (Philippines), Inc., has obviously been disregarded or considered by defendant.

Plaintiffs have been exerting efforts to settle amicably their loan obligation including the restructuring of loan with additional collateral which defendant found it unacceptable. Although the initial payment of P5,000,000.00 by plaintiffs was considered out of plaintiffs' commitment of P15,000,000.00, the checks representing P10,000,000.00 has not been returned to plaintiffs. (pp. 18-19, rollo)

Consequently the assailed Order dated June 28, 2001 granting the preliminary injunction, was issued by the court *a quo*. BPI filed a motion for its reconsideration insisting that Saldaña Corporations have no more existing right over the property. In the other assailed Order dated August 10, 2001, the court *a quo* denied this for lack of merit (p. 22, rollo).