

## **FIFTH DIVISION**

**[ SP No. 107270, August 03, 2010 ]**

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.  
HON. JUDGE ELEANOR R. KWONG, IN HER CAPACITY AS THE  
PRESIDING JUDGE OF BRANCH 128 OF THE REGIONAL TRIAL  
COURT OF CALOOCAN CITY, AND JJJS LOYD'S REALTY AND  
DEVELOPER CORPORATION, REPRESENTED BY LOIDA T.  
LAGRIMOSA, RESPONDENTS.**

### **D E C I S I O N**

## **Court of Appeals**

Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, the petition for certiorari at bench seeks to nullify the Orders dated February 11, 2008 and November 25, 2008 of public respondent judge, the Hon. Eleanor R. Kwong of the Regional Trial Court of Caloocan City, Branch 128, in Civil Case No. C-21833. In the questioned orders, respondent judge issued a writ of preliminary injunction enjoining petitioner from taking possession of the property subject of the case.

### **The Facts**

Petitioner Rizal Commercial Banking Corporation ("Petitioner"/ "TRCBC"), a commercial bank, entered into a loan agreement with LL Trucking and Trading Services ("LL Trucking").<sup>[1]</sup> The loan was evidenced by three non-negotiable promissory notes.<sup>[2]</sup> To secure the loan, LL Trucking executed a real estate mortgage, dated November 24, 1999, over its real property located in Caloocan City and covered by Transfer Certificate of Title (TCT) No. 286770.<sup>[3]</sup>

When the three promissory notes matured, LL Trucking and petitioner RCBC agreed to restructure the loan agreement. As a result, another non-negotiable promissory note was executed.<sup>[4]</sup> Despite the restructuring, however, LL Trucking again failed to pay on time. Hence, demand letters were sent to LL Trucking,<sup>[5]</sup> but the loan remained outstanding just the same.

On October 13, 2006, petitioner filed a petition for extra-judicial foreclosure of the mortgage real property.<sup>[6]</sup> Subsequently, a notice of extra-judicial sale was issued, setting the sale on November 22, 2006. The notice was also posted in three public places and published in a newspaper of general circulation.<sup>[7]</sup>

The foreclosure sale was held on November 22, 2006<sup>[8]</sup> during which petitioner acquired the property as the highest bidder.<sup>[9]</sup>

On December 21, 2006, a Certificate of Sale was issued in favor of petitioner.<sup>[10]</sup> The certificate was registered with the Register of Deeds on February 14, 2007, the

date when the legal redemption period expired.<sup>[11]</sup>

However, private respondent JJJS Loyd's Realty and Developer Corporation (Respondent"/"JJJS") claimed to have earlier bought the property from LL Trucking, under what it claims to be a Deed of Absolute Sale executed on March 21, 2006.<sup>[12]</sup> In that transaction, JJJS states that it was represented by its officer, respondent Loida Lagrimosa, while LL Trucking was represented by its president, Arthur Lacerna.<sup>[13]</sup>

Respondent JJJS, however, admits that it did not bother to check the original of the property's TCT before and during its purchase of the property, as its representative Lagrimosa purely relied on a photocopy of the title shown to her by Lacerna of LL Trucking.<sup>[14]</sup> Thus, JJJS did not know of property's mortgage to RCBC at the time of the sale.<sup>[15]</sup>

On May 30, 2007, Lagrimosa claimed to have received a notice to vacate the property, in which it was stated that RCBG is the new owner of the property<sup>[16]</sup>

Having been thus informed, on June 15, 2007, JJJS filed a complaint for nullification of foreclosure sale/certificate of the sale and redemption with damages and prayer for preliminary injunction and/or temporary restraining order.<sup>[17]</sup>

On June 22, 2007, LL Trucking's TCT No. 286770 was canceled and a new one, TCT No. C-389862, was issued in the name of RCBC.<sup>[18]</sup>

On November 22, 2007, JJJS filed an amended complaint, which now prays for injunction, accounting, nullification of foreclosure proceedings, cancellation of title, and redemption with damages and prayer for preliminary injunction and/or temporary restraining order.<sup>[19]</sup>

On February 1, 2008, public respondent judge issued the assailed Order granting private respondent's prayer for a writ of preliminary injunction, the dispositive portion of which states:

"WHEREFORE, premises considered, the prayer for the issuance of a preliminary injunction is granted. Let a writ of preliminary injunction be issued to enjoin defendant RCBC from committing acts or threaten to commit acts which will result in the dispossession of the plaintiff of the subject property until the resolution of the case or until the writ is dissolved.

The bond posted by the plaintiffs for the issuance of the temporary restraining order shall be maintained as its injunction bond to answer for whatever damage the defendant bank may suffer if it will eventually be determined that the plaintiff is not entitled thereto, provided the bonding company interposes no objection as to the extension of its liability under the bond.

SO ORDERED".<sup>[20]</sup>

Petitioner filed motion for reconsideration. By the Order dated November 25, 2008, public respondent judge denied the said motion.<sup>[21]</sup>

Hence, the instant Petition for Certiorari alleging that the above orders of public respondent judge were issue in grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner presents the following as grounds in support of its Petition:

I.

Respondent Judge should not have issued the assailed writ of preliminary injunction because the court had not acquired jurisdiction over the Amended Complaint for JJJS's failure to pay the filing fees.

II.

The writ of preliminary injunction in favor of JJJS was issued with grave abuse of discretion since: (a) the default of JJJS had been clearly established, (b) JJJS failed to demonstrate a clear right to be entitled to a preliminary injunction, and (c) RCBC merely exercised its lawful proprietary rights as the registered owner of the subject property.

III.

RCBC, as the registered owner of the subject property, will suffer grave and irreparable damages if it is enjoined from taking possession of and/or administering the subject property, by reason of the preliminary injunction issued in favor of a buyer in bad faith like JJJS.

IV.

The P1 million preliminary injunction bond is grossly inadequate to answer for all damages caused and will continue to be caused to RCBC for the wrongful issuance of the writ of preliminary injunction.

### **The issue**

The issue for the court's resolution is: *whether or not public respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in her issuance of a writ of preliminary injunction in the instant case.*

### **The Court's Ruling**

We grant the petition.

For an application for a writ of preliminary injunction to be granted, certain requisites must be met. In the case of *Marquez v. Sanchez*,<sup>[22]</sup> they were laid down as follows:

"Under Section 3, Rule 58 of the 1997 Revised Rules of Civil Procedure, the issuance of a writ of preliminary injunction may be granted if the following grounds are established, thus:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Prescinding from the provisions mentioned above, we have consistently held that the requisites of preliminary injunction whether mandatory or prohibitory are the following:

(1) the applicant must have *a clear and unmistakable right, that is a right in esse;*

(2) there is a material and substantial invasion of such right;

(3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and

(4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury." (Emphasis supplied.)

The *onus probandi* is on the applicant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined; further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage.<sup>[23]</sup>

In the instant case, the trial court granted private respondent's prayer for a writ of preliminary injunction on a finding that plaintiff had an "ostensible" right to the final relief prayed for. The trial court's justification for its ruling granting the writ of preliminary injunction reads:

"At this state, plaintiff(s) need not conclusively establish its (sic) right over the subject matter of the complaint, what is required is that plaintiff(s) has (sic) an ostensible right to the final relief prayed (for) in their complaint.

The plaintiffs pray that the extra-judicial foreclosure proceedings be annulled because of the lack of authority of the persons who filed the

same and because the promissory note is not yet due when the foreclosure proceedings was filed. Indeed, the promissory note subject of the mortgage is yet to mature when the foreclosure proceeding was initiated. The defendant bank justified that it was so because the mortgagor was in default. But the defendant bank did not present the schedule of payments which was supposed to show when the mortgagor started to be in default which would authorize the bank to foreclose the collateral. This seriously put in issue the right of the defendant bank to foreclose the property, and so as not to render the outcome of this case moot and academic, the Court finds that an injunctive relief must issue.

Moreover, as testified to by the defendant's witness, they will again send another notice to vacate and in the event that the notice is not acceded, the bank will institute a writ of possession case. This is enough threat as to the right of the plaintiff's right to remain in possession of the property pending determination of the outcome of this case. In the event that this Court will finally resolve in favor of the plaintiff, then right to issuance of a writ of possession will necessarily fail."<sup>[24]</sup>

We find that the trial court committed grave abuse of discretion in making the above findings' and in granting private respondent's prayer for a writ of preliminary injunction enjoining petitioner RCBC from obtaining physical possession of the subject property.

Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all contemplation of law.<sup>[25]</sup>

In the instant case, the trial court's deliberate disregard of petitioner RCBC's existing title to the property, as well as the regular process which petitioner followed in its extra-judicial foreclosure of the same, is nothing short of capricious and whimsical, especially in the face of respondent's own failure to discharge its burden of proving a clear, unmistakable and existing right.

It has been held that where there is no right that is existing and which is to be protected and respected, the issuance of a writ of preliminary injunction is unwarranted, and is in grave of discretion.<sup>[26]</sup>

A perusal of the available evidence should justify a finding that respondent was not entitled to the writ. Petitioner presented its transfer certification of title<sup>[27]</sup> to the property, which enjoys the presumption of having been issued regularly and is a conclusive proof of its ownership. Petitioner likewise presented proof of the regular process it undertook to consolidate its title, such as the promissory notes signed by LL Trucking,<sup>[28]</sup> the real estate mortgage<sup>[29]</sup> the demand letters sent to LL Trucking when its obligations became due,<sup>[30]</sup> the petition for extra-judicial foreclosure,<sup>[31]</sup> the certificate of posting of the said petition and the notice of publication,<sup>[32]</sup> petitioner's bid letter,<sup>[33]</sup> the sheriff's certificate of sale,<sup>[34]</sup> and the annotation of