

THIRD DIVISION

[G.R. No. 169846, March 28, 2008]

**SPS. NESTOR AND MA. NONA BORROMELO, Petitioners, vs.
HONORABLE COURT OF APPEALS and EQUITABLE SAVINGS
BANK , Respondents.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision,^[1] dated 29 April 2005, thereafter, upheld in a Resolution^[2] dated 16 September 2005, both rendered by the Court of Appeals in CA-G.R. SP No. 85114. The Court of Appeals, in its assailed Decision, reversed the Order dated 3 March 2004 of Branch 215 of the Regional Trial Court (RTC) of Quezon City in Civil Case No. Q-03-51184, and denied the issuance of a Writ of Preliminary Injunction enjoining respondent Equitable Savings Bank (ESB) from executing the extra-judicial foreclosure of the mortgaged property owned by petitioners, Spouses Nestor and Nona Borrromeo.

Respondent is a domestic savings bank corporation with principal office and place of business at EPCIB Tower 2, Makati Avenue, Salcedo Village, Makati City.^[3] At the time the dispute began, it was a subsidiary of Equitable PCI Bank (EPCIB), a domestic universal banking corporation with principal office at Makati Avenue, Salcedo Village, Makati City. After the merger of EPCIB and Banco De Oro (BDO), they have adopted the corporate name "Banco De Oro."^[4]

Petitioners were client-depositors of EPCIB for more than 12 years. Petitioners alleged that sometime in mid-1999, the branch manager of EPCIB, J.P. Rizal Branch, offered a loan to the petitioners under its "Own-a-Home Loan Program." Petitioners applied for a loan of P4,000,000.00 and were informed of the approval of their loan application sometime in October 1999. It was in the early part of 2000 that petitioners signed blank loan documents consisting of the Loan Agreement, Promissory Notes, a Real Estate Mortgage (REM) and Disclosure Statements.^[5]

To secure the payment of the loan, petitioners executed an REM over their land, registered under Transfer Certificate of Title (TCT) No. N-203923, located at Loyola Grand Villas, Quezon City, consisting of 303 square meters; and the proposed house that was to be built thereon.^[6] Petitioners asserted that even if the loan documents were signed in blank, it was understood that they executed the REM in favor of EPCIB.^[7]

From April 2001 to September 2002, respondent released a total amount of P3,600,000.00 in four installments, while the balance of P400,000.00 was not drawn by petitioners.^[8] On the other hand, petitioners started to pay their monthly

amortizations on 21 April 2001.^[9]

Petitioners made repeated verbal requests to EPCIB to furnish them their copies of the loan documents.^[10] On 6 August 2003, they sent the president of EPCIB a letter^[11] which reiterated their request for copies of the loan documents. In addition, petitioners stated that the interest rate of 14% to 17% that was charged against them was more than the interest rate of 11% or 11.5% that the parties agreed upon. They further claimed that they purposely did not draw the remaining balance of the loan in the amount of P400,000.00 and stopped paying their loan amortizations to protest EPCIB's continued failure to provide them copies of the loan documents and its imposition of an interest rate higher than that agreed upon. From the time petitioners began paying their monthly amortizations on 21 April 2001 until the time they stopped, petitioners made total payments of approximately P500,000.00.^[12]

In reply to the petitioners' letter dated 6 August 2003, the Vice President of EPCIB, Gary Vargas, sent to the petitioners a letter^[13] dated 27 August 2003 explaining that as a matter of practice, their clients were given original copies of the loan documents only upon full release of the amount loaned. EPCIB clarified that since petitioners' loan had not been fully released, the original documents were not yet sent to them. Petitioners were also informed that the applicable interest rate was set at the time the loan was released, not at the time the loan was approved, and that the prevailing interest when the first four installments of the loan were released ranged from 9.5% to 16%.

In the meantime, on 13 August 2003, respondent, through counsel, also sent a letter^[14] to the petitioners demanding payment for their obligation, which, as of 15 August 2003, amounted to P4,097,261.04, inclusive of interest and other charges. Respondent informed petitioners that failure to pay their obligation would result in its pursuing legal action against petitioners, including foreclosure proceedings on their REM.

In a letter dated 18 September 2003,^[15] respondent, through counsel, reiterated to petitioners its demand for the full settlement of their obligation on or before 30 September 2003.

Finally, on 3 October 2003, petitioners received copies of the loan documents which they had earlier signed in blank.^[16] According to petitioners, they were surprised to find out that the Loan Agreement and REM designated respondent ESB as lender and mortgagor, instead of EPCIB with whom they allegedly entered into the agreement. However, in contrast to the Loan Agreement and the REM, the four Promissory Notes designated EPCIB as the lender. Petitioners also alleged that instead of the prevailing interest rates of 8% to 10% annually, which the parties agreed upon,^[17] the four Promissory Notes were set at the following interest rates:^[18]

DATE	AMOUNT	INTEREST RATE
25 April 2001	P1,200,000.00	16%
18 January 2002	P 800,000.00	14.0%
29 June 2001	P 800,000.00	15%
19 September 2002	P 800,000.00	9.0%

When the petitioners failed to pay for the loan in full by 30 September 2003, respondent sought to extra-judicially foreclose the REM. Upon the respondent's petition for foreclosure, the Office of the *Ex-Officio* Sheriff of Quezon City issued a Notice of Extrajudicial Sale dated 16 October 2003, wherein the mortgage debt was set at P5,114,601.00.^[19] The Extrajudicial Sale was set to take place on 26 November 2003. On 14 November 2003, petitioners received Notice of Extrajudicial Sale of their property.^[20]

On 20 November 2003, petitioners filed with the RTC a Complaint for Injunction, Annulment of Mortgage with Damages and with Prayer for Temporary Restraining Order and Preliminary and Mandatory Injunction against EPCIB and respondent, docketed as Civil Case No. Q-03-51184. In their Complaint, petitioners alleged that the loan documents failed to reflect the true agreement between the parties. Firstly, the agreement was between the petitioners and EPCIB and, consequently, respondent had no interest in the REM. Secondly, the interest rates reflected in the Promissory Notes were not the interest rates on which the parties had settled. They also averred in their Complaint that EPCIB committed a breach of contract when it failed to release the fifth and last installment of the loan to petitioners.^[21]

Petitioners sought to prevent the Extrajudicial Sale from taking place on 26 November 2003. Petitioners maintained that EPCIB acted in bad faith when it foreclosed the subject property simply because petitioners complained that the interest rates unilaterally imposed by EPCIB were excessive. It further averred that their deposit accounts with EPCIB were more than sufficient to pay for the amortizations due on the housing loan.^[22]

The scheduled date for the Extrajudicial Foreclosure, namely, 26 November 2003, fell on the holiday *Eid-el-Fitr*, and as a result, it did not push through. In an Order dated 5 December 2003, the RTC determined that there was no longer any need to issue a temporary restraining order (TRO) and/or preliminary injunction.^[23]

On 14 December 2003, respondent re-filed its petition for extrajudicial foreclosure of the REM. The Ex-Officio Sheriff of Quezon City set the auction sale on 14 January 2004.

Petitioners reacted by filing with the RTC a Motion for Reconsideration of its Order dated 5 December 2003, again praying for the issuance of a TRO and/or preliminary injunction to forestall the extrajudicial sale of their property scheduled for 14 January 2004.^[24]

On 3 March 2004, the RTC granted petitioners' motion for reconsideration and ordered the issuance of a preliminary injunction after declaring that the validity of the REM was yet to be determined. It found that petitioners were bound to suffer grave injustice if they were deprived of their property before the RTC could rule on the validity of the REM constituted on the same. On the other hand, it held that respondent's interest was amply protected, since petitioners' mortgaged property was valued at P12,000,000.00, which was more than sufficient to answer for petitioner's obligation pegged at P4,097,261.00, and respondent's REM over said property remained in effect. Moreover, petitioners posted a bond in the amount of

P3,500,000.00 to cover their unpaid liabilities.^[25] In its Order dated 3 March 2004, the RTC ordered that^[26]:

With all the foregoing disquisitions and finding merit in plaintiffs' application, the same [is] hereby GRANTED. Let a writ of preliminary injunction issue upon plaintiffs' posting of a bond in the amount of three million five hundred thousand (P3,500,000.00) pesos.

Respondent filed a Motion for Reconsideration of the afore-quoted Order, which was denied for lack of merit by the RTC in an Order dated 29 April 2004.

Thereafter, respondent filed on 14 July 2004 a Special Civil Action for Certiorari before the Court of Appeals, docketed as CA-G.R. SP No. 85114.

During the proceedings before the Court of Appeals, petitioner presented a letter dated 19 December 2002, with supporting documents, written and compiled by EPCIB for Home Guaranty Corporation, wherein EPCIB included petitioners' loan among its housing loans for which it sought insurance coverage.^[27]

In reversing the RTC Order dated 3 March 2004, the Court of Appeals decreed that pending the RTC's determination of the validity of the REM, its validity should be presumed. It further ruled that the intended foreclosure of the mortgage by respondent was a proper exercise of its right after petitioners admittedly stopped paying their loan amortizations. Moreover, it held that the foreclosure of the REM would not result in any grave and irreparable damage to the petitioners since petitioners, as mortgagors, may redeem the subject property or avail themselves of the remedy of claiming damages or nullifying the sale.^[28] The dispositive portion of the Court of Appeals Decision, dated 29 April 2005, reads:^[29]

WHEREFORE, in view of the foregoing, the assailed Orders dated March 3, 2004 and April 29, 2004 issued by the Regional Trial Court of Quezon City, Branch 215 in Civil Case No. Q-03-51184 are hereby ANNULLED and SET ASIDE.

Petitioners filed a Motion for Reconsideration of the foregoing Decision, which the Court of Appeals denied in a Resolution dated 16 September 2005.^[30]

Hence, the present Petition, in which the following issues are raised^[31]:

I

WHETHER OR NOT THE PRIVATE RESPONDENT SAVINGS BANK IS THE REAL PARTY-IN-INTEREST.

II

WHETHER OR NOT PETITIONERS ARE ENTITLED TO THE RELIEF DEMANDED, THAT THE FORECLOSURE AND PUBLIC AUCTION OF THE PROPERTY BELONGING TO PETITIONERS DURING THE LITIGATION PROCEEDINGS IN THE LOWER COURT WOULD PROBABLY WORK INJUSTICE TO THEM SUCH THAT THE JUDGMENT WHICH MAY BE ISSUED BY THE SAID COURT WILL BE RENDERED INEFFECTUAL BY SUCH

FORECLOSURE AND PUBLIC AUCTION OF SAID PROPERTY.

III

WHETHER OR NOT THE LOWER COURT WAS CORRECT IN GRANTING THE WRIT OF PRELIMINARY INJUNCTION, ALL REQUISITES BEING PRESENT

The petition is meritorious.

The only issue that needs to be determined in this case is whether or not a writ of preliminary injunction should be issued to enjoin the foreclosure and public auction of petitioner's property during the proceedings and pending determination of the main cause of action for annulment of the REM on said property. By no means is this a final determination of the merits of the main case still before the RTC.^[32]

Section 3, Rule 58 of the Rules of Court provides that:

SEC. 3. Grounds for issuance of preliminary injunctions.--A preliminary injunction may be granted when it is established:

- (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.

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.^[33]

In this case, petitioners' rights to their property is restricted by the REM they executed over it. Upon their default on the mortgage debt, the right to foreclose the property would be vested upon the creditor-mortgagee.^[34] Nevertheless, the right of foreclosure cannot be exercised against the petitioners by any person other than the creditor-mortgagee or its assigns. According to the pertinent provisions of the Civil Code:

Art. 1311. Contracts take effect only **between the parties, their assigns and heirs**, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.