

# FIRST DIVISION

[ G.R. No. 243999, March 18, 2021 ]

## SPS. LITO AND LYDIA TUMON, PETITIONERS, VS. RADIOWEALTH FINANCE COMPANY, INC., RESPONDENT.

### DECISION

#### CAGUIOA, J:

Before the Court is a Rule 45 Petition for Review on *Certiorari*<sup>[1]</sup> (Petition) assailing the Decision<sup>[2]</sup> dated March 16, 2018 and Resolution<sup>[3]</sup> dated December 14, 2018 of the Court of Appeals<sup>[4]</sup> (CA) in CA-G.R. SP No. 147138, which ruled that the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 76 did not commit grave abuse of discretion in denying petitioners' application for the issuance of a writ of preliminary injunction (WPI) in Civil Case No. 2844-16, entitled *Sps. Lito P. Tumon & Lydia G. Tumon v. Radiowealth Finance Company, Inc.* (Main Case).

#### *Facts*

##### Main Case

As summarized by the CA, the version of the facts according to petitioners Sps. Lito P. Tumon and Lydia G. Tumon (petitioners) are as follows:

x x x Sometime in or before September 2014, petitioners applied for a loan with Radiowealth [Finance Company, Inc. (Radiowealth)] to finance their *tokwa* business; Radiowealth granted them a loan in the total amount of P2,811,456.00, to be paid within four (4) years x x x [However,] petitioners received only P1,500,000.00 after a processing fee/documentation expense of P100,000.00 and interest of P1,311,456.00 were charged by Radiowealth; the loan was secured by a real estate mortgage constituted upon petitioners' real property covered by Transfer Certificate of Title (TCT) No. 009-2010000083; petitioners paid the monthly amortizations amounting to P58,572.00 starting November 30, 2014, P27,322.00 or 87% of which went to Radiowealth as interest payment; the 87% monthly interest rate is unconscionable, unreasonable, exorbitant and immoral; the imposition of the 87% monthly interest is against the law; prior to and after the transaction, Radiowealth did not furnish petitioners a copy of a finance statement, in violation of the "Truth in Lending Act"; as a result of the lack of a finance statement, petitioners did not immediately realize that they were going to pay 87% in monthly interest and they did not know that they were going to shoulder the P100,000.00 processing fee/documentation expense; petitioners were also not furnished with a copy of the Real Estate Mortgage and Promissory Note x x x during the fourth quarter of 2015, petitioners suffered losses due to intense market competition and,

starting October 2015, petitioners failed to pay their monthly amortizations; the eleven (11) monthly amortizations paid by petitioners from November 2014 to September 2015 totaled P644,292.00; sometime in late November to December 2015, representatives of Radiowealth came to petitioners' residence and threatened that if they failed to pay 2 consecutive amortizations, Radiowealth would have the right to take over their house, the property subject of the mortgage; at the time they applied for the loan, the agreement was that petitioners had four (4) years to pay off the loan; there was no agreement or explanation to petitioners that they could lose their family home before the lapse of the four-year period x x x Sometime in December 2015, petitioner asked Radiowealth to lower the monthly amortization and to extend the payment period, which they were promised; however, around December 15, 2015, representatives of Radiowealth asked petitioners to sign a Deed of Sale under Pacto de Retro instead of a restructuring agreement as promised x x x Radiowealth defrauded petitioners and took advantage of their ignorance of the law, low educational attainment and dire need of funding; for lack of consent and [the] presence of fraud, the loan documents and the promissory note signed by petitioners are [*void ab initio*] x x x.<sup>[5]</sup>

Based on the above allegations, petitioners filed on January 14, 2016 a Complaint for Nullification of Mortgage Documents, Promissory Note, and Damages<sup>[6]</sup> against Radiowealth Finance Company, Inc. (Radiowealth) asking the RTC to order the following: (1) the nullification of the real estate mortgage, promissory notes and other loan documents for being contrary to law, or in the alternative, to reduce the interest rate to moral or legal rate; (2) Radiowealth to return to petitioners the amount of P100,000.00 spent as processing fee/documentation expense by way of actual damages; and (3) Radiowealth to pay petitioners P50,000.00 as exemplary damages, P30,000.00 plus P2,500.00 per hearing as attorney's fees, and cost of suit.<sup>[7]</sup>

On March 11, 2016, Radiowealth filed before the Executive Judge of the RTC an Application for Extrajudicial<sup>[8]</sup> Foreclosure of Real Estate Mortgage<sup>[9]</sup> against petitioners' property, stating that, as of April 2015, the outstanding balance on the loan is P2,044,338.10, exclusive of penalty and other charges.<sup>[10]</sup>

On March 16, 2016, a Notice of Extrajudicial Foreclosure<sup>[11]</sup> was issued, setting the public auction for April 26, 2016.<sup>[12]</sup>

On April 11, 2016, petitioners filed with the RTC an Application for the Issuance of a Temporary Restraining Order (TRO) and/or WPI<sup>[13]</sup> to restrain Radiowealth and any person acting in its behalf from foreclosing and selling petitioners' real property.

On April 14, 2016, the RTC issued an Order<sup>[14]</sup> granting the TRO and scheduling the hearing on the Application for the Issuance of the WPI on April 26, 2016.

The RTC then issued an Order<sup>[15]</sup> dated May 3, 2016 denying the Application for the WPI. According to the RTC, Sps. Tumon did not deny their indebtedness to Radiowealth in the amount of P2,811,456.00, as evidenced by a Promissory Note

and they paid 11 monthly amortizations of P58,572.00 per month. The RTC noted that, initially petitioners did not question the terms and conditions of the loan and they only started questioning the amount of monthly amortization and the allegedly unconscionable interest when they suffered business losses and they no longer had the ability to pay the monthly amortizations. Moreover, the RTC stated that the unconscionable nature of the interest may only be determined after the Main Case has been decided. Finding that Radiowealth had a clear right to foreclose the mortgage and that the principal obligation of petitioners to pay Radiowealth remained, the RTC denied the application for the issuance of a WPI.

Petitioners filed a Partial Motion for Reconsideration<sup>[16]</sup> dated May 17, 2016, but this was denied by the RTC in an Order<sup>[17]</sup> dated June 10, 2016. In the Order, the RTC emphasized that it may not resolve the issue on the validity of interest imposed by Radiowealth in an application for WPI because it would result on a prejudgment of the Main Case.<sup>[18]</sup>

### Rule 65 proceedings

Aggrieved, petitioners filed a Rule 65 petition for *certiorari* with the CA, alleging that the RTC committed grave abuse of discretion in denying the WPI and their Partial Motion for Reconsideration.<sup>[19]</sup>

In the assailed Decision<sup>[20]</sup> dated March 16, 2018, the CA dismissed the petition for lack of merit. The CA ruled that the RTC's orders refusing to issue the WPI were not tainted with grave abuse of discretion based on the following reasons: (1) a court should avoid issuing a WPI which would in effect dispose of the main case without trial;<sup>[21]</sup> (2) unlike respondent whose right to foreclose the properties was clear,<sup>[22]</sup> petitioners failed to prove that they had a right to have their property shielded from foreclosure;<sup>[23]</sup> and (3) petitioners did not show that the injury to be suffered was irreparable.<sup>[24]</sup> Petitioners moved to reconsider the CA Decision, but this was denied by the CA in the assailed Resolution<sup>[25]</sup> dated December 14, 2018.

Thus, petitioners filed with the Court the instant Petition asking for the invalidation and annulment of the CA rulings for being violative of A.M. No. 99-10-05-0.<sup>[26]</sup> Petitioners argue that there are three requisites for the issuance of a WPI under Rule 2 of A.M. No. 99-10-05-0: (1) allegation of unconscionable interest; (2) evidence supporting the allegation; and (3) payment of at least 12% p.a. interest on the principal obligation.<sup>[27]</sup> However, according to petitioners, despite the RTC's acknowledgment that there was an allegation of unconscionable interest and there was documentary evidence in support of the allegation, the RTC did not proceed with the determination of the willingness and capacity of petitioners to pay Radiowealth 12% p.a. interest on the principal obligation, which violates petitioners' due process rights.<sup>[28]</sup>

On June 19, 2019, the Court required Radiowealth to file a Comment. However, despite its motion for extension,<sup>[29]</sup> Radiowealth did not file its comment. This prompted petitioners to file a Motion to Waive Comment of Respondent,<sup>[30]</sup> which the Court granted.

## ***Issue***

The primordial issue in the case at bar is whether the CA committed reversible error in ruling that the RTC did not commit grave abuse of discretion in denying petitioners' application for WPI.

## ***Ruling***

At the outset, it is important to underscore that the Court is reviewing in this Rule 45 Petition the decision of the CA in a Rule 65 petition. The Court is thus limited to reviewing the questions of law raised against the assailed CA decision. In other words, the Court has to examine the CA decision from the prism of whether it correctly determined the absence of grave abuse of discretion in the RTC's orders.

[31]

The Petition is denied for lack of merit. The CA correctly ruled that the RTC's denial of petitioners' application for the issuance of a WPI was not tainted with grave abuse of discretion.

## **I**

Section 3, Rule 58 of the Rules of Court provides the grounds for the issuance of a preliminary injunction, *viz.*:

SECTION 3. *Grounds for issuance of preliminary injunction.* - 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.

This provision was explained in *Borlongan v. Banco de Oro (formerly Equitable PCI Bank)* [32] (*Borlongan*) as follows:

From the foregoing provision, "[i]t is clear that a writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established right. Otherwise stated, for a court to decide on the propriety of issuing a TRO and/or a WPI, it must only inquire into the existence of two things: (1) a clear and unmistakable right that must be

protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage."<sup>[33]</sup>

In addition to these requirements, the issuance of a WPI in the context of a judicial or an extrajudicial foreclosure of real estate mortgage requires compliance with the additional rules in A.M. No. 99-10-05-0, as amended,<sup>[34]</sup> viz.:

(1) No [TRO or WPI] against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the loan secured by the mortgage has been paid or is not delinquent unless the application is verified and supported by evidence of payment.

**(2) No [TRO or WPI] against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the interest on the loan is unconscionable, unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly while the case is pending.**

(3) Where a [WPI] has been issued against a foreclosure of mortgage, the disposition of the case shall be speedily resolved. To this end, the court concerned shall submit to the Supreme Court, through the Office of the Court Administrator, quarterly reports on the progress of the cases involving ten million pesos and above.

(4) All requirements and restrictions prescribed for the issuance of a [TRO or WPI], such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply as well to a *status quo* order. (Emphasis supplied)

Here, petitioners argue that based on A.M. No. 99-10-05-0, as amended, the RTC should have issued the WPI to prevent the foreclosure sale. However, a perusal of the records would reveal that petitioners did not comply with the requirements for its issuance.

Jurisprudence emphasizes that the guidelines in A.M. No. 99-10-05-0, as amended, speak of strict exceptions and conditions.<sup>[35]</sup> Rule 2 clearly states that, as a rule, no TRO/WPI shall be issued against the extrajudicial foreclosure of real estate mortgage on the allegation that the interest on the loan is unconscionable. However, a TRO/WPI may be issued if the debtor pays the mortgagee the 12% required interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly. Digressing a bit, it should be noted that when these guidelines were issued in 2007, the legal rate of interest was still twelve percent *per annum* (12% p.a.). Pursuant to Circular No. 799, Series of 2013,<sup>[36]</sup> which became effective on July 1, 2013, the legal interest rate is now only six percent *per annum* (6% p.a.).<sup>[37]</sup>

In *Icon Development Corp. v. National Life Insurance Company of the Philippines*,<sup>[38]</sup> the Court ruled that the trial court committed grave abuse of discretion because, among other reasons, it issued the TRO/WPI despite nonpayment of the required interest stated in A.M. No. 99-10-05-0, as amended, viz.: