

SECOND DIVISION

[G.R. No. 178407, March 18, 2015]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.
S.F. NAGUIAT ENTERPRISES, INC., RESPONDENT.**

DECISION

LEONEN, J.:

This case calls for the determination of whether the approval and consent of the insolvency court is required under Act No. 1956, otherwise known as the Insolvency Law, before a secured creditor like petitioner Metropolitan Bank and Trust Company can proceed with the extrajudicial foreclosure of the mortgaged property.

This is a Petition for Review^[1] under Rule 45, seeking to reverse and set aside the November 15, 2006 Decision^[2] and June 14, 2007 Resolution^[3] of the Court of Appeals (Sixth Division) in CA-G.R. SP No. 94968. The questioned Decision and Resolution dismissed Metropolitan Bank and Trust Company's Petition for Certiorari and Mandamus^[4] and denied its subsequent Motion for Reconsideration and Clarification.^[5]

Sometime in April 1997, Spouses Rommel Naguiat and Celestina Naguiat and S.F. Naguiat Enterprises, Inc. (S.F. Naguiat) executed a real estate mortgage^[6] in favor of Metropolitan Bank and Trust Company (Metrobank) to secure certain credit accommodations obtained from the latter amounting to P17 million. The mortgage was constituted over the following properties:

(1) TCT No. 58676^[7] - a parcel of land in the Barrio of Pulung Bulu, Angeles, Pampanga, with an area of 489 square meters; and

(2) TCT No. 310523 - a parcel of land in Marikina, Rizal, with an area of 1,200.10 square meters.^[8]

On March 3, 2005, S.F. Naguiat represented by Celestina T. Naguiat, Eugene T. Naguiat, and Anna N. Africa obtained a loan^[9] from Metrobank in the amount of P1,575,000.00. The loan was likewise secured by the 1997 real estate mortgage by virtue of the Agreement on Existing Mortgage(s)^[10] executed between the parties on March 15, 2004.

On July 7, 2005, S.F. Naguiat filed a Petition for Voluntary Insolvency with Application for the Appointment of a Receiver^[11] pursuant to Act No. 1956, as amended,^[12] before the Regional Trial Court of Angeles City and which was raffled

to Branch 56.^[13] Among the assets declared in the Petition was the property covered by TCT No. 58676 (one of the properties mortgaged to Metrobank).^[14]

Presiding Judge Irin Zenaida S. Buan (Judge Buan) issued the Order^[15] dated July 12, 2005, declaring S.F. Naguiat insolvent; directing the Deputy Sheriff to take possession of all the properties of S.F. Naguiat until the appointment of a receiver/assignee; and forbidding payment of any debts due, delivery of properties, and transfer of any of its properties.

Pending the appointment of a receiver, Judge Buan directed the creditors, including Metrobank, to file their respective Comments on the Petition.^[16] In lieu of a Comment, Metrobank filed a Manifestation and Motion^[17] informing the court of Metrobank's decision to withdraw from the insolvency proceedings because it intended to extrajudicially foreclose the mortgaged property to satisfy its claim against S.F. Naguiat.^[18]

Subsequently, S.F. Naguiat defaulted in paying its loan.^[19] On November 8, 2005, Metrobank instituted an extrajudicial foreclosure proceeding against the mortgaged property covered by TCT No. 58676^[20] and sold the property at a public auction held on December 9, 2005 to Phoenix Global Energy, Inc., the highest bidder.^[21] Afterwards, Sheriff Claude B. Balasbas prepared the Certificate of Sale^[22] and submitted it for approval to Clerk of Court Vicente S. Fernandez, Jr. and Executive Judge Bernardita Gabitan-Erum (Executive Judge Gabitan-Erum). However, Executive Judge Gabitan-Erum issued the **Order^[23] dated December 15, 2005** denying her approval of the Certificate of Sale in view of the July 12, 2005 Order issued by the insolvency court. Metrobank's subsequent Motion for Reconsideration was also denied in the **Order^[24] dated April 24, 2006**.

Aggrieved by both Orders of Executive Judge Gabitan-Erum, Metrobank filed a Petition^[25] for certiorari and mandamus before the Court of Appeals on June 22, 2006. S.F. Naguiat filed its Manifestation^[26] stating that it was not interposing any objection to the Petition and requested that the issues raised in the Petition be resolved without objection and argument on its part.^[27]

On November 15, 2006, the Court of Appeals rendered its Decision dismissing the Petition on the basis of Metrobank's failure to "obtain the permission of the insolvency court to extrajudicially foreclose the mortgaged property."^[28] The Court of Appeals declared that "a suspension of the foreclosure proceedings is in order, until an assignee [or receiver,] is elected or appointed [by the insolvency court] so as to afford the insolvent debtor proper representation in the foreclosure [proceedings]."^[29]

Metrobank filed a Motion for Reconsideration and Clarification, which was denied by the Court of Appeals in its Resolution dated June 14, 2007.^[30] The Court of Appeals held that leave of court must be obtained from the insolvency court whether the foreclosure suit was instituted judicially or extrajudicially so as to afford the insolvent estate's proper representation (through the assignee) in such action^[31] and "to avoid the dissipation of the insolvent debtor's assets in possession of the

insolvency court without the latter's knowledge."^[32]

Hence, the present Petition for Review was filed. Petitioner contends that the Court of Appeals decided questions of substance in a way not in accord with law and with the applicable decisions of this court:

A.

By ruling that there must be a *motion for leave of court* to be filed and granted by the insolvency court, before the petitioner, as a secured creditor of an insolvent, can extrajudicially foreclose the mortgaged property, which is tantamount to a judicial legislation.

B.

By ruling that the Honorable Executive Judge Bernardita Gabitan-Erum did not abuse her discretion in refusing to perform her ministerial duty of approving the subject certificate of sale, despite the fact that the petitioner and the designated sheriff complied with all the requirements mandated by Act No. 3135, as amended, circulars, administrative matters and memorandums issued by the Honorable Supreme Court.

C.

By ruling that the action of the Honorable Executive Judge Bernardita Gabitan-Erum is proper in denying the approval of the Certificate of Sale on the grounds that the issuance of the Order dated 12 July 2005 declaring respondent insolvent and the pendency of the insolvency proceeding forbid the petitioner, as a secured creditor, to foreclose the subject mortgaged property.^[33] (Emphasis supplied)

On October 20, 2007, S.F. Naguiat filed a Manifestation^[34] stating that it interposed no objection to the Petition and submitted the issues raised therein without any argument.

On November 28, 2007, the court resolved "to give due course to the petition [and] to decide the case according to the pleadings already filed[.]"^[35]

The issues for resolution are:

First, whether the Court of Appeals erred in ruling that prior *leave of the insolvency court* is necessary before a secured creditor, like petitioner Metropolitan Bank and Trust Company, can extrajudicially foreclose the mortgaged property.

Second, whether the Court of Appeals erred in ruling that Executive Judge Gabitan-Erum did not abuse her discretion in refusing to approve the Certificate of Sale.

Petitioner argues that nowhere in Act No. 1956 does it require that a secured creditor must first obtain leave or permission from the insolvency court before said

creditor can foreclose on the mortgaged property.^[36] It adds that this procedural requirement applies only to civil suits, and not when the secured creditor opts to exercise the right to foreclose extrajudicially the mortgaged property under Act No. 3135, as amended, because extrajudicial foreclosure is not a civil suit.^[37] Thus, the Court of Appeals allegedly imposed a new condition that was tantamount to unauthorized judicial legislation when it required petitioner to file a Motion for Leave of the insolvency court.^[38] Said condition, petitioner argues, defeated and rendered inutile its right or prerogative under Act No. 1956 to independently initiate extrajudicial foreclosure of the mortgaged property.^[39]

Nonetheless, petitioner contends that the filing of its Manifestation before the insolvency court served as sufficient notice of its intention and, in effect, asked the court's permission to foreclose the mortgaged property.^[40]

Petitioner further contends that "the powers and responsibilities of an Executive Judge in extrajudicial foreclosure proceedings, in line with Administrative Order No. 6, is merely to supervise the conduct of the extra-judicial foreclosure of the property"^[41] and to oversee that the procedural requirements are faithfully complied with;^[42] and when "the Clerk of Court and Sheriff concerned complied with their designated duties and responsibilities under the [administrative] directives and under Act No. 3135, as amended, and the corresponding filing and legal fees were duly paid, it becomes a ministerial duty on the part of the executive judge to approve the certificate of sale."^[43] Thus, Executive Judge Gabitan-Erum allegedly exceeded her authority by "exercising judicial discretion in issuing her Orders dated December 15, 2006 and April 24, 2006 . . . despite the fact that Sheriff Balasbas complied with all the notices requirements under Act No. 3135, [as] amended, . . . and the petitioner and the highest bidder paid all the requisite filing and legal fees[.]"^[44]

Furthermore, citing *Chartered Bank v. C.A. Imperial and National Bank*,^[45] petitioner submits that the order of insolvency affected only unsecured creditors and not secured creditors, like petitioner, which did not surrender its right over the mortgaged property.^[46] Hence, it contends that the Court of Appeals seriously erred in holding as proper Executive Judge Gabitan-Erum's disapproval of the Certificate of Sale on account of the Order of insolvency issued by the insolvency court.^[47]

Finally, petitioner points out that contrary to the Court of Appeals' ruling, "there is nothing more to suspend because the extrajudicial foreclosure of the mortgaged property was already a *fait accompli* as the public auction sale was conducted on December 9, 2005 and all the requisite legal fees were paid and a Certificate of Sale was already prepared."^[48] "The only remaining thing to do [was] for the . . . Executive Judge to sign the Certificate of Sale, which she . . . refused to do."^[49]

The Petition has no merit.

I

A look at the historical background of the laws governing insolvency in this country

will be helpful in resolving the questions presented before us.

The first insolvency law, Act No. 1956, was enacted on May 20, 1909. It was derived from the Insolvency Act of California (1895), with a few provisions taken from the United States Bankruptcy Act of 1898.^[50] Act No. 1956 was entitled "An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors, and the Punishment of Fraudulent Debtors." The remedies under the law were through a suspension of payment^[51] (for a debtor who was solvent but illiquid) or a discharge from debts and liabilities through the voluntary^[52] or involuntary^[53] insolvency proceedings (for a debtor who was insolvent).

The objective of suspension of payments is the deferment of the payment of debts until such time as the debtor, which possesses sufficient property to cover all its debts, is able to convert such assets into cash or otherwise acquires the cash necessary to pay its debts. On the other hand, the objective in insolvency proceedings is "to effect an equitable distribution of the bankrupt's properties among his creditors and to benefit the debtor by discharging^[54] him from his liabilities and enabling him to start afresh with the property set apart for him as exempt."^[55]

Act No. 1956 was meant to be a complete law on insolvency,^[56] and debts were to be liquidated in accordance with the order of priority set forth under Chapter VI, Sections 48 to 50 on "Classification and Preference of Creditors"; and Sections 29 and 59 with respect to mortgage or pledge of real or personal property, or lien thereon. Jurisdiction over suspension of payments and insolvency was vested in the Courts of First Instance (now the Regional Trial Courts).^[57]

The Civil Code^[58] (effective August 30, 1950) established a system of concurrence and preference of credits, which finds particular application in insolvency proceedings.^[59] *Philippine Savings Bank v. Hon. Lantin*^[60] explains this scheme:

Concurrence of credits occurs when the same specific property of the debtor or all of his property is subjected to the claims of several creditors. The concurrence of credits raises no questions of consequence where the value of the property or the value of all assets of the debtor is sufficient to pay in full all the creditors. However, it becomes material when said assets are insufficient for then some creditors of necessity will not be paid or some creditors will not obtain the full satisfaction of their claims. In this situation, the question of preference will then arise, that is to say who of the creditors will be paid ahead of the others. (Caguioa, Comments and Cases on Civil Law, 1970 ed., Vol. VI, p. 472.)^[61]

The credits are classified into three general categories, namely, "(a) special preferred credits listed in Articles 2241^[62] and 2242,^[63] (b) ordinary preferred credits listed in Article 2244[,]^[64] and (c) common credits under Article 2245."^[65]

The special preferred credits enumerated in Articles 2241 (with respect to movable