

## SECOND DIVISION

[ G.R. No. 188768, January 07, 2013 ]

**TML GASKET INDUSTRIES, INC., PETITIONER, VS. BPI FAMILY SAVINGS BANK, INC., RESPONDENT.**

### RESOLUTION

**PEREZ, J.:**

We are urged in this petition for review on *certiorari* to reverse ami set aside the Decision<sup>[1]</sup> of the Court of Appeals in CA-G. R. SP No. 81932 which, in turn, reversed the Orders,<sup>[2]</sup> respectively dated 22 August 2003 and 27 November 2003, of the Regional Trial Court (RTC), Branch 194, Parañaque City in Civil Case No. 02-0504. The assailed Orders issued a writ or prdiminary injunction in favor of petitioner TML Ciasket Industries, Inc. (TML ), enjoining respondent BPI Family Savings Bank, Inc.'s (BPI's) extra-judicial foreclosure of TML's mortgaged properties, and denied TML's motion for reconsideration thereof.

The facts are not in dispute.

Sometime in September 1996, TML obtained a loan from the Bank of Southeast Asia, Inc. (BSA), which TML can avail *via* a credit facility of P85,000,000.00. As security for the loan, TML executed a real estate mortgage over commercial and industrial lots located at Dr. A. Santos Avenue, Parañaque City covered by Transfer Certificate of Title (TCT) Nos. 81278 and 81303 of the Registry of Deeds of Parañaque City. For additional security, BSA required TML to execute a promissory note for each availment from the credit facility.

On different dates from September 1996 to 31 July 1997, TML executed several promissory notes (PN), which provided in pertinent part:

Since time is of the essence hereof, [TML] is in default under this Note, without need for notice, demand, presentment or any other act or deed in any of the following events: a) [TML] fails to pay when due, totally or partially, the principal, interest and other charges under this Note x x x.

[3]

During the period of the loan, BSA changed its corporate name to DBS Bank Phils. (DBS), which eventually merged with BPI under the latter's corporate name.

TML defaulted in the payment of its loan leading BPI to extra- judicially foreclose the mortgaged properties. As of 25 June 2002, TML's indebtedness to BPI amounted to P71,877,930.56, excluding penalties, charges, attorney's fees and other expenses of foreclosure.

On 24 October 2002, the Ex-Officio Sheriff of RTC, Parañaque City issued a Notice of Extra-judicial Foreclosure Sale of the mortgaged properties.

Because of the imminent foreclosure sale of its mortgaged properties, TML, on 21 November 2002, filed a "Complaint for Declaratory Relief, Accounting, Declaration of Nullity of Notice of Extra-Judicial Sale, Increased (*sic*) in Interest Rates, Penalty Charges Plus, (*sic*) Damages, with Prayer for the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction" against BPI and DBS before the RTC, Branch 194, Parañaque City.

The complaint highlighted the following clause in the PNs signed by TML, to wit:

If changes in the conditions and/or circumstances occur which, directly or indirectly, increase the overall costs of money to the Lender, such as but not limited to the following: (i) any change in the laws or regulations, including any amendments, modifications, interpretations, administrative implementation or repeal thereof affecting the Lender or its business such as reserve or similar requirement, tax on income, gross receipts, or the imposition of any levy, fees or other taxes; or (ii) changes in the interest rate of forbearance of money whether in the prevailing market rates or such other guiding or reference rates as may be adopted, determined and/or authorized by the CB; (iii) extraordinary inflation or there is an increase of fifteen percent (15%) in the consumer price index as announced by the CB or the National Economic Development Authority reckoned from the date of the granting of the loan or the credit line; or (iv) devaluation, revaluation, or depreciation in real value or purchasing power of the Philippine Peso, that is, when there has been an adverse change of at least fifteen percent (15%), in the CB Reference Exchange Rate for the Philippine Peso to the US Dollar and/or such other foreign currencies adopted by the Philippine Government or its instrumentalities or agencies, as forming part of its international reserves, reckoned from the date of granting of the loan or credit line; (v) any change in the reserve or similar requirements as a necessary consequence of obtaining a unibanking license on the part of the Lender, then the Lender may, at its sole option, correspondingly adjust the interest rate in all outstanding loans(s) and other obligations under this Note/s and such other documents that may be thereafter be executed. The adjustment in interest rate shall take effect three (3) days after receipt by [TML] of the notice of adjustment.<sup>[4]</sup>

TML asseverated that BSA made it understand that the stipulation meant that TML's loan would be subject to only a 16% interest rate *per annum*. TML alleged that "despite [the] odds and difficulties [it] encountered, aggravated by the global economic crisis, [it] tried hard to religiously pay its x x x obligation to [BPI] x x x." However, contrary to their actual understanding, BSA "unreasonably, unconscionably and unilaterally" imposed a 33% interest rate *per annum*, and ultimately, a penalty of 36% interest on past due principal and corresponding interest thereon.

TML likewise pointed out that it had demanded an independent accounting and

liquidation of its loan account, which went unheeded. Ultimately, for TML, it cannot be considered in default of an obligation with an undetermined and unascertained amount. In that regard, TML argued that the intended foreclosure of TML's mortgaged properties is unwarranted for being illegal; thus, the foreclosure ought to be enjoined to prevent TML from suffering grave and irreparable damage, especially since TML's office and factory are located at the mortgaged properties.

Refuting TML's allegations, BPI maintained that the interest rates on TML's loan obligation were mutually and voluntarily agreed upon. On TML's application for the issuance of a writ of preliminary injunction, BPI countered that it has the absolute right to foreclose the mortgage constituted over TML's properties given that TML defaulted on its loan obligation, which had already become due and demandable.

In an Order dated 20 June 2003, the trial court denied TML's application for the issuance of a preliminary injunction, ratiocinating thus:

In resolving whether or not to grant the injunctive writ, this Court is guided by the requisites thereof, as repeatedly (sic) enunciated by the Supreme Court, to wit: (1) the invasion of a right is material and substantial; (2) the right of complainant is clear and unmistakable; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. x x x.

From the testimony of [TML's] witness[,], Lyman Lozada[,], it was established that [TML] is indeed indebted to [BPI] and has become delinquent in the payment of the loan obligation; that [TML] is willing to let go off (sic) the collaterals, the properties subject matter hereof, by way of *dacion en pago*. Apparently, the only concern of [TML] is the fact that it will be ousted from the properties after the period of redemption shall have lapsed.

The foregoing testimony of [TML] casts [doubt] on its right over the property. The aforementioned requisites are not obtaining in favor of [TML]. Moreover[,], as held by the Supreme Court[,], "where the complainant's right or title is doubtful or disputed, injunction is not proper. x x x.

Furthermore, [TML] has in its favor the right of redemption.<sup>[5]</sup>

On motion for reconsideration, the trial court made a complete turn-around. It ordered the issuance of the writ in favor of TML, subject to the posting of a bond in the amount of P300,000.00, to wit:

While it is admitted that [TML] has defaulted in the payment of its loan obligation, which thus conferred upon [BPI] the right of foreclosure, the Court, after a contemplation of the logical consequence of the denial of the injunctive writ, is convinced that great and irreparable damages may be caused [TML]. As pointed out by [TML], it might lead to an absurd scenario of [TML] winning the case but losing its property in [BPI's] favor

or in an even worse scenario, in favor of third parties. This is because of the short period within which [TML] could exercise its redemption right under the General Banking Act.<sup>[6]</sup>

BPI moved for reconsideration of the order. However, the trial court maintained its ruling:

Admittedly, [TML] has incurred in default in the payment of its obligation but the amount has yet to be determined, the determination thereof being one of the provinces of the instant complaint, and considering the brief redemption period under the General Banking Act[,] the redemption is next to impossible. Thus, the injury to [TML] would be very grave if not irreparable.<sup>[7]</sup>

Posthaste, BPI filed a petition for *certiorari* under Rule 65 of the Rules of Court before the Court of Appeals, seeking to annul and set aside the twin Orders of the trial court respectively dated 22 August 2003 and 27 November 2003 which granted the writ of preliminary injunction in favor of TML and enjoined the foreclosure sale of the mortgaged properties.

The appellate court found grave abuse of discretion in the trial court's issuance of the orders as demonstrated by the following:

1. TML signed the PNs which stipulated that TML, as the Borrower, is considered **in default** when it "fails to pay, when due, totally or partially, the principal, interest and other charges [thereunder]."
2. Consistent therewith, the Real Estate Mortgage signed by TML provides that one of the effects of default of the mortgagor (TML) includes the right of the mortgagee (BPI) to **immediately foreclose** the mortgage, which foreclosure may be undertaken judicially or extra-judicially, at the discretion of the mortgagee (BPI).
3. TML itself admitted in its complaint that it has failed to pay its outstanding loan to BPI.
4. From all three points, BPI has the right to extra-judicially foreclose the mortgaged properties.
5. TML did not demonstrate an actual existing right to be protected.
6. Corollary thereto, there is no threatened or actual violation of

TML's doubtful right to the mortgaged properties.

The dispositive portion of the appellate court's decision reads, thus:

**WHEREFORE**, the *Petition* is **GRANTED**. The twin Order(s), dated August 22, 2003 and November 27, 2003, of the Regional Trial Court of Parañaque City, Branch 164 (sic) in Civil Case No. 02-0504, are hereby