

## THIRD DIVISION

[ G.R. No. 194104, March 13, 2013 ]

**NOVATEKNIKA LAND CORPORATION, PETITIONER, VS.  
PHILIPPINE NATIONAL BANK AND THE REGISTER OF DEEDS OF  
MANILA CITY, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the July 19, 2010 Resolution<sup>[1]</sup> and the October 6, 2010 Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 114674, entitled *Novateknika Land Corporation v. Hon. Thelma Bunyi-Medina, in her capacity as Presiding Judge of the Regional Trial Court (Branch 32) of Manila, et al.*

#### The Facts

On December 13, 1993, petitioner Novateknika Land Corporation (NLC), together with Kenstar Industrial Corporation (KIC), Plastic City Corporation (PCC), Recovery Real Estate Corporation, Rexlon Realty Group, Inc., Pacific Plastic Corporation, Inland Container Corporation, Kennex Container Corporation, Rexlon Industrial Corporation and MPC Plastic Corporation, entered into a Credit Agreement<sup>[3]</sup> with respondent Philippine National Bank (PNB) for the availment of an omnibus line in the principal amount of P500,000,000.00. The borrowers bound themselves to be jointly and severally liable to PNB for the full payment of their obligations, such that the bank can demand payment and performance from any one of the borrowers.<sup>[4]</sup> As one of the securities for the credit accommodation to be extended by PNB pursuant to the Credit Agreement, the borrowers, on the same date, executed the Real Estate and Chattel Mortgage<sup>[5]</sup> covering 21 properties which included four (4) parcels of land under the name of NLC.

On January 2, 1996, the parties executed the Renewal and Conversion Agreement<sup>[6]</sup> extending the term of the omnibus line, which expired on December 22, 1994, and converting it into a peso/foreign currency convertible omnibus line. The Second Renewal Agreement,<sup>[7]</sup> dated March 17, 1997, prolonged the term of the omnibus line to December 18, 1997.

Several drawdowns, evidenced by promissory notes and trust receipts, were made by KIC and PCC during the effectivity of the abovementioned loan documents, bringing their total outstanding principal obligation to P593,449,464.79.<sup>[8]</sup> Despite repeated demands made by PNB, the loan remained unpaid. PNB was then constrained to file petitions for extrajudicial foreclosure over the properties covered by the Real Estate and Chattel Mortgage, which included the four (4) parcels of land of NLC.<sup>[9]</sup>

On March 8, 2010, the Regional Trial Court of Manila issued the Notice of Extrajudicial Sale,<sup>[10]</sup> announcing the sale of NLC properties on May 5, 2010. The properties were awarded to PNB, as the sole bidder, and the bid amount was applied in partial satisfaction of the outstanding obligation of the borrowers.<sup>[11]</sup>

NLC filed an action for injunction with a prayer for the issuance of a temporary restraining order (*TRO*) and/or a writ of preliminary injunction (*WPI*) in the Complaint,<sup>[12]</sup> dated May 5, 2010, arguing that: (1) PNB's right to bring a mortgage action had already prescribed because the demand letter was sent to NLC more than 10 years after the expiration of the omnibus line and more than 14 years after the execution of the Real Estate and Chattel Mortgage; (2) NLC did not benefit from the loans and acted merely as a third-party mortgagor; and (3) the stockholders of NLC did not properly authorize the execution of a mortgage over its properties.

In its May 20, 2010 Order,<sup>[13]</sup> the Regional Trial Court, Branch 32, Manila (*RTC*), granted NLC's application for the issuance of a *TRO*, preventing PNB from consummating the public sale and from doing any act that would tend to impede, hamper, limit or adversely affect its full enjoyment of its ownership of the subject properties.

Later, on June 22, 2010, the *RTC* issued the Order<sup>[14]</sup> denying NLC's prayer for injunctive relief, pronouncing that the evidence so far presented by NLC did not warrant the issuance of a *WPI* because it failed to show that the right alleged in its complaint was clear and unmistakable. The *RTC* found that, contrary to the assertions of NLC, the mortgage action had not prescribed. The receipt of the demand letters from PNB by KIC and PCC served to halt the running of the prescriptive period. That NLC did not receive a demand letter from PNB within the 10-year period was of no moment because the obligation it contracted, together with the other borrowers, was solidary in nature and was necessarily indivisible insofar as prescription was concerned. NLC could not evade liability either, by reasoning that it only acted as a third-party mortgagor. The terms of the Credit Agreement, as well as the succeeding loan documents, explicitly stated that PNB could demand payment from any of the borrowers, including NLC, regardless of whether it availed of the credit line or not. Finally, the *RTC* discounted NLC's claim that the execution of the mortgage contract was not authorized by its stockholders and was, therefore, *ultra vires* and not binding upon it.

Aggrieved, NLC elevated the case to the CA via a petition for *certiorari* under Rule 65 of the Rules of Court. In its Resolution, dated July 19, 2010, the CA dismissed the petition outright for failure of NLC to file a motion for reconsideration before the *RTC*. The CA noted that NLC simply averred that the filing of the said motion was unnecessary because of the alleged extreme urgency for the CA to annul the questioned order of the trial court. The CA then reiterated the rule that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for *certiorari*.<sup>[15]</sup>

Hence, this petition.

### **The Issues**

Petitioner NLC raises the following:

**1. Whether the Court of Appeals erred in refusing to give due course to NLC's Petition for Certiorari under Rule 65 of the Rules of Court in CA-G.R. SP No. 114674.**

and

**A. Whether there is extreme urgency for petitioner to resort directly to the Court of Appeals to annul and set aside the Trial Court's Order dated 22 June 2010.<sup>[16]</sup>**

In other words, the only question to be resolved by the Court in the case at bench is whether the petitioner was justified in elevating the case to the CA without filing the requisite motion for reconsideration before the RTC.

**The Court's Ruling**

Petitioner NLC argues that although the filing of a motion for reconsideration is necessary before instituting a special civil action for *certiorari*, the rule admits of certain exceptions; such as, when there is an urgent necessity for the resolution of the question and any further delay would prejudice the interest of the petitioner or if the subject matter of the action is perishable.<sup>[17]</sup> NLC asserts that its situation falls under this exception because once the properties subject of the mortgage are sold and the corresponding certificates of sale are issued and registered, it loses the right to redeem its properties under Section 47 of the General Banking Law.<sup>[18]</sup> Consequently, it posits that a motion for reconsideration is not a plain, speedy and adequate remedy to address the extreme urgency of the case, considering that any judgment on the merits of the civil case would be ineffectual after the issuance and registration of the certificates of sale as the properties may be freely sold by PNB to another buyer.<sup>[19]</sup>

The Court disagrees.

*Motion for reconsideration is a condition sine qua non to certiorari*

Section 1, Rule 65 of the Rules of Court states that:

Section 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may

require. (Emphasis supplied)

x x x x

Unmistakably, before a petition for *certiorari* can prosper, the petitioner must be able to show, among others, that he does not have any other “plain, speedy and adequate remedy in the ordinary course of law.” This remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the questioned order.<sup>[20]</sup>

Well established is the rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for *certiorari*, subject to certain exceptions,<sup>[21]</sup> to wit:

(a) where the order is a patent nullity, as where the court a quo has no jurisdiction;

(b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceedings was ex parte or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or where public interest is involved.<sup>[22]</sup>

None of the exceptions, however, is present in this case.

The supposed urgency of the case was not of such a nature as to necessitate the direct resort to the CA. The petitioner failed to show that a petition for certiorari would be a more speedy and adequate remedy than a motion for reconsideration from the order of the RTC.

Jurisprudence is replete with decisions which reiterate that before filing a petition for

certiorari in a higher court, the attention of the lower court should be first called to its supposed error and its correction should be sought. Failing this, the petition for certiorari should be denied.<sup>[23]</sup> The reason for this is to afford the lower court the opportunity to correct any actual or fancied error attributed to it through a re-examination of the legal and factual aspects of the case. The petitioner's disregard of this rule deprived the trial court the right and the opportunity to rectify an error unwittingly committed or to vindicate itself of an act unfairly imputed.<sup>[24]</sup>

As aptly declared by this Court in the case of *Cervantes v. Court of Appeals*:<sup>[25]</sup>

It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. **Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do.** Thus, the Court of Appeals correctly dismissed the petition.<sup>[26]</sup> (Emphasis supplied)

In the case at bench, the proper recourse of NLC was to have filed a motion for reconsideration of the June 22, 2010 Order of the RTC denying its application for injunctive relief. Only after the denial of such motion can it be deemed to have exhausted all available remedies and be justified in elevating the case to the CA through a petition for *certiorari* under Rule 65.

The petitioner is reminded that procedural rules are instituted to facilitate the adjudication of cases and, as such, the courts and the litigants are enjoined to abide strictly by the rules. While it is true that litigation is not a game of technicalities, it is equally important that every case must be prosecuted in accordance with the prescribed rules of procedure to ensure an orderly and speedy administration of justice.<sup>[27]</sup> Only for the most persuasive of reasons can such rules be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.<sup>[28]</sup>

#### *No grave abuse of discretion*

At any rate, even if the Court allows the premature recourse to *certiorari* without the petitioner having filed a motion for reconsideration in the trial court, the petition would still fail. Nothing is more settled than the principle that a special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," as contemplated by the Rules of Court, is "the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power" that is so patent and gross that it "amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."<sup>[29]</sup> Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order.<sup>[30]</sup>