

## FIRST DIVISION

[ G.R. No. 181485, February 15, 2012 ]

### PHILIPPINE NATIONAL BANK, PETITIONER, VS. GATEWAY PROPERTY HOLDINGS, INC., RESPONDENT.

#### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

Submitted for our consideration is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, which seeks the reversal of the Decision<sup>[2]</sup> dated September 28, 2007 and the Resolution<sup>[3]</sup> dated January 24, 2008 of the Court of Appeals in CA-G.R. CV No. 75108. The appellate court's decision set aside the Order<sup>[4]</sup> dated December 20, 2001 of the Regional Trial Court (RTC) of Trece Martires City, Branch 23, in Civil Case No. TM-1108; while the appellate court's resolution denied the motion for reconsideration of said court's September 28, 2007 decision.

The antecedents of the case are as follows:

#### **Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage)**

On July 27, 2000, herein respondent Gateway Property Holdings, Inc. (GPHI) filed a Complaint with Application for the Issuance of a Writ of Preliminary Injunction<sup>[5]</sup> against herein petitioner Philippine National Bank (PNB). The case was docketed as **Civil Case No. TM-1022** in the RTC of Trece Martires City, Branch 23.

According to the complaint, GPHI was a subsidiary company of Gateway Electronics Company (GEC). In 1995 and 1996, GEC obtained long term loans from the Land Bank of the Philippines (LBP) in the amount of P600,000,000.00. The loans were secured by mortgages executed by GEC over its various properties. Subsequently, LBP offered to provide additional funds to GEC by inviting other banking institutions to lend money therefor. LBP allegedly agreed to submit the properties mortgaged to it by GEC as part of the latter's assets that will be covered by a Mortgage Trust Indenture (MTI), ensuring that "all participating banks in the loan syndicate will have equal security position."<sup>[6]</sup> Before the formal execution of an MTI, LBP and a consortium of banks entered into a Memorandum of Understanding (MOU), whereby LBP agreed to release the mortgaged properties to the consortium of banks on the basis of an MTI. Relying on the said undertaking, the participating banks released funds in favor of GEC. PNB later became part of this consortium of creditor banks.<sup>[7]</sup>

Thereafter, GEC allegedly encountered difficulties in paying its obligations to the banks, including those owed to PNB. GEC then requested PNB to convert its long-term loans into a Convertible Omnibus Credit Line. In a letter<sup>[8]</sup> dated August 13,

1997 addressed to Israel F. Maducdoc, the Senior Vice President of GEC, PNB approved such a conversion subject to certain conditions. As part of the requirements of PNB, GPHI was made a co-borrower in the agreement and was obligated to execute in favor of PNB a real estate mortgage over two parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-636816 and T-636817.<sup>[9]</sup> The letter likewise provided that PNB shall hold physical possession of the said titles until GPHI shall have made the assignment of the sales proceeds of the aforementioned real properties, up to a minimum of P112 million, to be applied towards the repayment of GEC's outstanding obligations with PNB. Furthermore, the letter stated that the real estate mortgage "shall be registered with the Registry of Deeds in an event of default."<sup>[10]</sup>

In March 1998, LBP allegedly refused to abide by its undertaking to share the mortgaged properties of GEC with the consortium of creditor banks. GEC, thus, filed a complaint for specific performance against LBP, which was docketed as Civil Case No. 98-782.

On or about June 19, 2000, PNB purportedly demanded from GEC the full payment of the latter's obligations. Thereafter, GPHI learned of PNB's supposedly underhanded registration of the real estate mortgage with intent to foreclose the same.

GPHI principally alleged in its complaint that "[t]he understanding between GEC and PNB is that the GPHI properties would stand merely as a 'temporary security' pending the outcome of Civil Case No. 98-782 which was filed by GEC against LBP. The GPHI Property was never contemplated at any time as a collateral for GEC's loan obligations to PNB."<sup>[11]</sup> Also, GPHI argued that "[t]he execution of a Real Estate Mortgage in favor of [PNB] over the GPHI Property did not reflect the true intention of the parties thereto, GEC and PNB. The documents attached as Annexes to [the complaint] clearly show the interim or temporary nature of the mortgage arrangement."<sup>[12]</sup> GPHI contended that PNB had no legal right to effect the foreclosure of the mortgaged properties.

GPHI, thus, prayed that upon receipt of the complaint by the trial court, a temporary restraining order (TRO) be issued to enjoin PNB from foreclosing on the properties of GPHI covered by TCT Nos. T-636816 and T-636817, as well as from registering the fact of foreclosure or performing any act that would deprive GPHI of its ownership of the said properties. GPHI likewise prayed that, after trial on the merits, judgment be issued declaring that: (1) the real estate mortgage involving the properties of GPHI and executed in favor of PNB is null and void; (2) PNB be enjoined from foreclosing on the aforementioned properties of GPHI and from registering the same; and (3) PNB be ordered to pay to GPHI the amount of P500,000.00 as attorney's fees and litigation expenses.<sup>[13]</sup>

It appears that the RTC did not issue a TRO in favor of GPHI in the above case such that, on May 3, 2001, PNB initiated extrajudicial foreclosure proceedings on the properties covered by TCT Nos. T-636816 and T-636817.<sup>[14]</sup> The properties were sold at a public auction on June 20, 2001. According to the Minutes of Public Auction Sale<sup>[15]</sup> executed by the RTC Deputy Sheriff of Cavite, PNB was the sole bidder and it thereby acquired the properties for a sale bid price of

P168,000,000.00.

**Civil Case No. TM-1108 (Annulment of the Foreclosure Sale)**

On August 14, 2001, GPHI filed a Petition for Annulment of Foreclosure of Mortgage with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.<sup>[16]</sup> Docketed as **Civil Case No. TM-1108**, the petition was also raffled in Branch 23 of the RTC of Trece Martires City.

GPHI argued that, in conducting the foreclosure proceedings, the sheriff failed to observe the requirement of Section 4 of Act No. 3135 that the "sale shall be made at public auction." The entries in the minutes of the foreclosure sale allegedly did not indicate that a valid public auction was carried out in keeping with the requirements of the law. More importantly, among its causes of action, GPHI contended that:

17. [PNB] should not have proceeded in registering as well as in foreclosing [GPHI's] mortgaged assets since the latter cannot yet be considered in default in accordance with the Amendment to Credit Agreement executed by [GEC], petitioner GPHI and respondent PNB on November 28, 1997. Moreover, [PNB] knows all along that the subject real properties was never intended to be used as permanent collateral for GEC, but one which was simply used as an unregistered security until [GPHI] incurs in default if sold and the proceeds of which should be used in payment for the obligation of GEC.

Section 5.(5.01) of said Amendment to Credit Agreement states that:

"5.01. Undertaking to Sell and Assignment. The borrowers hereby undertake to sell the Mortgaged Properties to third parties and apply the proceeds thereof to the payment of the Seven-Year Term Loan up to the extent of PESOS: ONE HUNDRED TWELVE MILLION (P112,000,000.00). Any shortfall in such amount shall be funded by GEC. For this purpose, the Borrowers hereby assign, transfer and convey unto and in favor of the Bank the said amount of P112,000,000.00 out of the proceeds of the sale of the Mortgaged Properties.

The Borrowers' failure to remit to the Bank the amount of P112,000,000.00 within three (3) banking days reckoned from the sale of the Mortgaged Properties shall be considered an Event of Default (as such term is hereinafter defined) and shall be subject to the consequences herein provided."

x x x x

19. Moreover, it was clearly provided in [PNB's] letter dated August 13, 1997 that the [real estate mortgage] shall be unregistered and will be registered with the Registry of Deeds only "in an event of default." It is

also clear in the said letter that [PNB] shall only hold physical possession of said TCT Nos. 636817 and 636816 x x x until the condition of assigning the sales proceeds of the mentioned real properties up to a minimum of US\$ equivalent of PhP112,000,000.00 to [PNB] is complied with.<sup>[17]</sup>

GPHI, thereafter, sought for a judgment: (1) perpetually prohibiting PNB from divesting GPHI of its possession and ownership of the mortgaged properties, as well as taking possession, administration and ownership thereof; (2) declaring the foreclosure sale conducted on June 20, 2001 as null and void; (3) ordering PNB to pay GPHI P2,000,000.00 as moral damages, P1,000,000.00 as exemplary damages, P500,000.00 as attorney's fees and costs of suit.

On September 11, 2001, PNB filed a Motion to Dismiss<sup>[18]</sup> the above petition, and contended that there was another action pending between the same parties for the same cause of action. Essentially, PNB argued that GPHI resorted to a splitting of a cause of action by first filing a complaint for the annulment of the contract of real estate mortgage and then filing a petition for the annulment of the subsequent foreclosure of the mortgage. PNB further alleged that the subsequent petition of GPHI failed to state a cause of action.

On December 20, 2001, the RTC ordered the dismissal of Civil Case No. TM-1108. The trial court elucidated thus:

Prior to the filing of the above-entitled case, [GPHI] filed against [PNB] an action for annulment of Mortgage with Application for Temporary Restraining Order and Writ of Preliminary Injunction docketed as Civil Case No. TM-1022. While the first action was filed on July 27, 2001, above-entitled case was filed on August 14, 2001 because there was no Temporary Restraining Order or Writ of Preliminary Injunction issued in the first case, the foreclosure sale of the [mortgage] sought to be enjoined by [GPHI] as against [PNB] from this Court, proceeded in the ordinary course of law and a certificate of sale was issued in favor of the bank. Not obtaining the relief desired, [GPHI] endeavored the remedy of filing this case; Annulment of Foreclosure of Mortgage with Application for the issuance of a Temporary Restraining Order [and/or] writ of Preliminary Injunction thinking it to be the right resources instead of pursuing to attack [PNB] in the first case thus filed.

**Both cases, Civil Case No. TM-1022 and TM-1108 practically involved the same parties, substantially identical causes of action and reliefs prayed for, the reliefs being founded on the same facts. Ironically, these cases are now both filed in this Court.**

Considering the foregoing circumstances where a single cause of action has been split and pursuant to Rule 16, Section 1(e) of the 1997 Rules on Civil Procedure, the Motion to Dismiss filed by [PNB] through counsel, on the ground that there is another action pending between the same parties for the same cause, or [*litis pendentia*], is proper.

Suffice to state that the Court deemed no longer necessary to discuss the second ground relied upon in [PNB's] pleading.

ACCORDINGLY, this case is DISMISSED. <sup>[19]</sup> (Emphasis ours.)

GPHI filed a Motion for Reconsideration<sup>[20]</sup> of the above ruling, but the trial court denied the motion in an Order<sup>[21]</sup> dated March 14, 2002. GPHI, thus, filed a Notice of Appeal,<sup>[22]</sup> which was given due course by the trial court.<sup>[23]</sup>

In the interregnum, after the parties presented their respective evidence in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage), GPHI filed a Motion for Leave to Amend Complaint to Conform to the Evidence<sup>[24]</sup> on November 24, 2006. In the Amended Complaint<sup>[25]</sup> attached therein, GPHI made mention of the foreclosure sale conducted on June 20, 2001 and the fact that the mortgaged properties were sold to PNB for P168 million. Since GPHI's liability was allegedly limited only to P112 million in accordance with the letter of PNB dated August 13, 1997 and the Amendment to the Credit Agreement between GEC, GPHI and PNB, GPHI claimed that it should be refunded the amount of P56 million. GPHI then prayed for a judgment declaring the real estate mortgage, the foreclosure and the sale of the mortgaged properties null and void; or, alternatively, for a judgment ordering PNB to return to GPHI the amount of P56 million, plus interest.<sup>[26]</sup>

### **The Judgment of the Court of Appeals**

GPHI's appeal in Civil Case No. TM-1108 (Annulment of the Foreclosure Sale) was docketed in the Court of Appeals as CA-G.R. CV No. 75108. GPHI primarily argued that the causes of action in the two cases filed before the RTC were separate and distinct such that a decision in one case would not necessarily be determinative of the issue in the other case.

On September 28, 2007, the Court of Appeals rendered the assailed decision granting the appeal of GPHI. The relevant portions of the appellate court's ruling stated:

For *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to res adjudicata to the other.

**While it is true that there is an identity of parties and subject matter, the third requisite of *litis pendentia* is not present. x x x x**

The former suit is for the annulment of the real estate mortgage while the present case is one for the annulment of the foreclosure of the mortgage. It may be conceded that if the final judgment in the former action is for the annulment of the mortgage, such an adjudication will deny the right of the bank to foreclose on the properties. Following the