

FIRST DIVISION

[G.R. No. 159370, October 03, 2012]

PALM TREE ESTATES, INC. AND BELLE AIR GOLF AND COUNTRY CLUB, INC., PETITIONERS, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari*^[1] of the Decision^[2] and Resolution^[3] dated March 21, 2003 and August 4, 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 67547, which granted the Petition for *Certiorari* filed by respondent Philippine National Bank (PNB) and reversed and set aside the Orders dated May 17, 2001 and September 3, 2001 of the Regional Trial Court (RTC) of Lapu-Lapu City, Branch 27, in Civil Case No. 5513-L. The Order^[4] dated May 17, 2001 of the trial court granted the application for issuance of writ of preliminary injunction of petitioners Palm Tree Estates, Inc. (PTEI) and Belle Air Golf and Country Club, Inc. (BAGCCI), while the Order^[5] dated September 3, 2001 denied PNB's motion for reconsideration.

On January 29, 1997, PTEI entered into a seven-year term loan agreement^[6] with PNB for the amount of P320 million, or its US dollar equivalent, in view of urgent need for additional funding for the completion of its ongoing projects in Lapu-Lapu City.^[7] As security for the payment of the loan, a Real Estate Mortgage^[8] over 48 parcels of land covering an aggregate area of 353,916 sq.m. together with the buildings and improvements thereon, was executed by PTEI in favor of PNB on February 21, 1997.

On June 15, 1998, upon the request of PTEI, an Amendment to Loan Agreement^[9] was signed by PNB and PTEI -

[T]o (i) extend the grace period for the principal repayment of the Loan, (ii) amend the interest payment date of the Loan, and (iii) grant in favor of the Borrower an additional Loan (the "Additional Loan") in the amount not exceeding P80,000,000.00, x x x.^[10]

On the same day, June 15, 1998, as a result of PTEI's transfer to BAGCCI of the ownership, title and interest over 199,134 sq.m. of the real properties mortgaged to PNB, PTEI executed an Amendment to Real Estate Mortgage^[11] in favor of PNB with BAGCCI as accommodation mortgagor with respect to the real properties transferred to it by PTEI. The relevant portion of the agreement provides:

SECTION 1. AMENDMENTS

1.01 The Mortgaged Properties including that portion transferred to BAGCCI shall continue to secure PTEI's obligations to the Mortgagee of whatever kind and nature, and whether such obligations have been contracted, before, during or after the date of this instrument.

1.02 The existing mortgage lien in favor of the Mortgagee annotated on the titles covering the portion of the Mortgaged Properties which is transferred in favor of BAGCCI shall be carried over to the new titles to be issued as a result of the transfer.^[12]

On August 10, 1999, PTEI and PNB executed four documents. First, on account of PTEI's failure to avail of the P80 million additional loan granted under the amendment to Loan Agreement and upon its request, PTEI and PNB entered into a Loan Agreement^[13] revalidating the said additional loan. Under this agreement, full payment of the additional loan shall be secured by a pledge on 204,000 shares of PTEI stock in the names of the accommodation pledgors, Matthew O. Tan and Rodolfo M. Bausa.^[14]

Second, a Contract of Pledge^[15] was executed by Matthew O. Tan and Rodolfo M. Bausa as accommodation pledgors in favor of PNB to secure the loan agreement covering the P80 million additional loan. Under this contract, Tan and Bausa pledged their 204,000 shares of PTEI stock in favor of PNB as security for the full payment of the P80 million additional loan.

Third, upon the request of PTEI, a Restructuring Agreement^[16] was executed by PTEI and PNB. Under this agreement, the full payment of the restructured loan shall be secured not only by the 48 parcels of land previously mortgaged to PNB but also by an additional mortgage on three parcels of land registered in the name of the accommodation mortgagor, Aprodicio D. Intong.^[17]

Fourth, a Supplement to Real Estate Mortgage^[18] was executed by Aprodicio D. Intong as accommodation mortgagor in favor of the PNB. Under this instrument, in addition to the 48 parcels of land previously mortgaged to PNB, three parcels of land and their improvements have been included in the existing mortgage as additional security for the loans or credit facilities granted by PNB to PTEI.

In a letter^[19] dated September 20, 2000, PNB demanded payment of PTEI's outstanding obligations which amounted to P599,251,583.18 as of August 31, 2010. Thereafter, in a letter^[20] dated February 19, 2001, PNB denied PTEI's request for another restructuring of its past due indebtedness which amounted to P621,977,483.61 as of December 6, 2000. In the said letter, the stated reason for the denial of PTEI's request was its failure to perform its contractual obligations:

It would be difficult for us to justify to our Board of Directors your request because of your failure to fulfill the basic terms and conditions agreed upon in our previous meetings. If you will recall, we mentioned that in order for us to evaluate PTEI's restructuring request, you should

settle in full the company's unpaid insurance premium of P350,374.13, and your past due credit card advances of P1,848,292.78, and update the company's realty tax arrearages on the mortgaged properties. However, to this date, you have not remitted any payments nor submitted any payment plans therefor.^[21]

As PTEI defaulted in its payment of past due loan with PNB, the bank filed a Petition^[22] for extrajudicial foreclosure of the mortgaged properties on March 27, 2001.^[23] The following day, March 28, 2001, PTEI's President, Kenichi Akimoto, wrote a letter^[24] to PNB's President, Feliciano L. Miranda, Jr., requesting for "another 30 days to settle" PTEI's "accrued obligations."

On April 23, 2001, to enjoin PNB from foreclosing on the mortgage, PTEI and BAGCCI filed a Complaint^[25] in the RTC of Lapu-Lapu City for breach of contracts, nullity of promissory notes, annulment of mortgages, fixing of principal, accounting, nullity of interests and penalties, annulment of petition for extrajudicial foreclosure, injunction, damages, with prayer for temporary restraining order, and writ of preliminary injunction.^[26] This was docketed as Civil Case No. 5513-L and raffled to Branch 27.

In their complaint, PTEI and BAGCCI claimed that, out of the P320 million term loan committed by PNB under the loan agreement, PNB released only a total amount of P248,045,679.36,^[27] or a deficiency of P71,954,320.64 which PNB failed to release despite demands.^[28] PTEI and BAGCCI also averred that PNB took advantage of their financial difficulty by unilaterally (1) converting the US dollar denominated loan to a peso loan at an unreasonable conversion rate of P38.50:US\$1, when the prevailing conversion rate at the time of the release of the loan was only P26.25:US\$1, and (2) re-pricing the interests to exorbitant and unconscionable rates.^[29]

PTEI and BAGCCI further alleged that, under threat of foreclosure, they were forced to execute an amendment to the loan agreement acknowledging the principal obligation as of April 20, 1998 to be P345,035,719.07 even if they received only P248,045,679.36.^[30] Moreover, PTEI and BAGCCI signed the amendment to the loan agreement because of PNB's offer to extend an additional P80 million loan which the latter failed to release despite the fact that all conditions for its release had been complied with in April 1999.^[31] PTEI and BAGCCI further claimed that the amendment to the loan agreement, amendment to the real estate mortgage, certain promissory notes and their respective disclosure statements and the restructuring agreement should be declared void as they were executed pursuant to a void amendment to the loan agreement, and with vitiated consent and without full consideration.^[32]

Finally, PTEI and BAGCCI stated that the extrajudicial foreclosure initiated by respondent on their properties was patently null and void since it included promissory notes which were supposed to have already been paid, as well as properties which have already been transferred to BAGCCI and were being made to answer under the restructuring agreement of which BAGCCI was not a party.^[33]

Furthermore, PTEI averred that the amendment to the real estate mortgage had been novated by a subsequent loan agreement covering the new P80 million loan which was secured by a pledge on 204,000 shares of stock of PTEI. PTEI also alleged that the machinery and equipments being chattels should not be included in the foreclosure of the real estate mortgage.^[34]

On the other hand, PNB refuted PTEI and BAGCCI's allegations and claimed that it had already issued to PTEI the total amount of P356,722,152.46 which exceeded the P320 million covered by the loan agreement by P36 million.^[35] Whatever delay in the release of the loan proceeds, if any, was attributable only to PTEI.^[36]

According to PNB, the conversion of dollar loans to peso loans was not unilateral but made upon the request of PTEI and that the use of dollar to peso rate of US\$1:P39.975 was only proper as it was the prevailing exchange rate at the time of the conversion.^[37] There was also no unilateral increase of the interest rate as PTEI never raised any objection to such an increase although it was duly notified of the loan repricing through various letter-advice.^[38]

PNB likewise denied that the loan agreement and the amendment to it, the amendment to real estate mortgage, certain promissory notes and their disclosure statements, as well as the restructuring agreement, were all executed without PTEI's consent.^[39] Under the law, Kenichi Akimoto, PTEI's president, and other executive officers could be presumed to be responsible and intelligent enough to carefully read, understand and evaluate each loan document for Akimoto's signature.^[40]

PNB further claimed that PTEI was granted an additional P80 million loan which was secured by a pledge of PTEI's shares of stock. There was no novation because neither was the object and principal conditions changed, nor PTEI substituted as debtor, nor any third person subrogated in PNB's rights.^[41]

After hearing the PTEI and BAGCCI's application for issuance of writ of preliminary injunction, the RTC of Lapu-Lapu City required the parties to submit their respective memoranda.

Subsequently, the RTC of Lapu-Lapu City issued the Order dated May 17, 2001 ordering the issuance of a writ of preliminary injunction:

O R D E R

For resolution is plaintiffs' application for issuance of writ of preliminary injunction to prevent the acts complained of.

It is to be noted that the resolution of the application is only preliminary in character and may change depending upon the nature, character and weight of evidence that will be presented during trial on the merits.

After carefully going through with the parties' arguments contained in their respective memorand[a] together with their respective documentary

evidences appended thereto, it is very clear that the positions of the parties are completely opposed to each other which indicates (sic) that real controversies exist. The Court believes that all these legal controversies can only be resolved in a trial on the merits where the parties are given complete opportunity to present their case and adduce evidence.

The Court further believes that while all the legal controversies are being heard and tried, the *status quo ante litem* must be maintained which means that the acts being complained of must be enjoined *pendente lite*.

Noted by this Court is the issue of[,], among others, the propriety of the foreclosure proceedings in line with plaintiffs' contention "x x x that properties of the plaintiffs are being made to answer by the defendants for obligations which are not secured by these properties, or that properties of plaintiffs which are already free from the mortgage are included in the Petition (Annex "W" of the Complaint) for extra-judicial foreclosure. Continuing, the plaintiffs elaborated that "While plaintiffs are not disputing the right of a creditor-mortgagee to proceed against the properties of a debtor-mortgagor to pay for any unpaid secured obligations, it must be clearly understood, however, that any foreclosure proceedings that may be effected relative thereto must only affect the properties subject of the mortgage contract and should only be made to answer for the correct and undisputed obligations which are secured by the properties sought to be foreclosed. Any foreclosure proceedings which will include properties which are not subject of the mortgage contract or which will make the said properties answer for obligations which are not secured by the said properties will be tantamount to taking of properties without due process of law in violation of the Constitution x x x."

In other words, there are serious controversies whose resolution must not be rendered moot and academic by the performance of the assailed acts. In this regard, the Court is adopting the ruling of the Supreme Court in the case of Rava Development Corporation vs. Court of Appeals, 211 SCRA 144[,], that says:

" x x x it is a well settled rule that the sole object of a preliminary injunction whether prohibitory or mandatory is to preserve the status quo until the merits of the case can be heard (Avila vs. Tapucan, 200 SCRA 148 [1991]). It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case."

The Court is convinced that[,], at the very least[,], plaintiffs have the right to be fully heard before it is finally deprived of its rights over the