

THIRD DIVISION

[G.R. No. 176008, August 10, 2011]

**METROPOLITAN BANK AND TRUST COMPANY, SUBSTITUTED BY
MERIDIAN (SPV-AMCI) CORPORATION, PETITIONER, VS.
INTERNATIONAL EXCHANGE BANK, RESPONDENT.**

[G.R. NO. 176131]

**CHUAYUCO STEEL MANUFACTURING, PETITIONER, VS.
INTERNATIONAL EXCHANGE BANK (NOW UNION BANK OF THE
PHILIPPINES), RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Before the Court are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court, both of which are seeking the reversal and setting aside of the Decision^[1] and Resolution^[2] of the Court of Appeals (CA) dated May 5, 2006 and December 22, 2006, respectively, in CA-G.R. SP No. 00549-MIN which annulled and set aside the Orders dated September 6, 2004 and February 14, 2005, the Resolution dated March 15, 2005 and the Joint Resolution dated June 8, 2005 of the Regional Trial Court (RTC) of Misamis Oriental, Branch 17 in Civil Case Nos. 2004-197 and 2004-200.

The pertinent factual and procedural antecedents of the case are as follows:

Sacramento Steel Corporation (SSC) is a business entity engaged in manufacturing and producing steel and steel products, such as cold rolled coils and galvanized sheets, in its own steel manufacturing plant located at Tagoloan, Misamis Oriental.

For the purpose of increasing its capital, SSC entered into a Credit Agreement with herein respondent International Exchange Bank (IEB) on September 10, 2001 wherein the latter granted the former an omnibus credit line in the amount of P60,000,000.00, a loan of P20,000,000.00 and a subsequent credit line with a limit of P100,000,000.00.

As security for its loan obligations, SSC executed five separate deeds of chattel mortgage constituted over various equipment found in its steel manufacturing plant. The deeds of mortgage were dated September 17, 2001, February 26, 2003, April 16, 2003, May 25, 2004 and June 7, 2004.

Subsequently, SSC defaulted in the payment of its obligations. IEB's demand for payment went unheeded. On July 7, 2004, the IEB filed with the RTC of Misamis Oriental an action for injunction for the purpose of enjoining SSC from taking out the mortgaged equipment from its premises. The case was docketed as Civil Case

No. 2004-197. Thereafter, IEB filed a Supplemental Complaint praying for the issuance of a writ of replevin or, in the alternative, for the payment of SSC's outstanding obligations and attorney's fees.^[3]

On the other hand, on July 18, 2004, SSC filed with the same RTC of Misamis Oriental a Complaint for annulment of mortgage and specific performance for the purpose of compelling the IEB to restructure SSC's outstanding obligations. SSC also prayed for the issuance of a Temporary Restraining Order (TRO) and writ of preliminary injunction to prevent IEB from taking any steps to dispossess SSC of any equipment in its steel manufacturing plant as well as to restrain it from foreclosing the mortgage on the said equipment.^[4] The RTC issued a TRO. The case was docketed as Civil Case No. 2004-200 and was subsequently consolidated with Civil Case No. 2004-197.

On July 23, 2004, the RTC issued an Order^[5] granting IEB's application for the issuance of a writ of replevin. However, upon agreement of the parties, the implementation of the said writ was held in abeyance pending the trial court's resolution of the other incidents in the said case.^[6] The RTC also directed that there shall be "no commercial operation without court approval."^[7]

On August 26, 2004, the IEB filed a petition for extrajudicial foreclosure of chattel mortgage.

SSC opposed IEB's petition and prayed for the issuance of a writ of preliminary injunction.

On September 6, 2004, the RTC issued an Order disposing as follows:

WHEREFORE, let a Writ of preliminary injunction be issued restraining defendant iBank [IEB], the Sheriff, his agents and other person/s acting in their behalf as agents - privies or representative[s] in whatever capacity, from conducting foreclosure, whether judicial or extrajudicial, of any properties subject of the controversy and are further directed not to take any steps that will, in effect, dispossess plaintiff [SSC] of any of its machineries and equipment in its steel manufacturing plant pending determination of the case. Let a bond (cash or surety) of Five Hundred Thousand (P500,000.00) Pesos be posted by the plaintiff Sacramento Steel Corporation as required by law.

SO ORDERED.^[8]

Meanwhile, on August 30, 2004, SSC entered into a Capacity Lease Agreement with herein petitioner Chuayuco Steel Manufacturing Corporation (CSMC) which allowed the latter to lease and operate the former's cold rolling mill and galvanizing plant for a period of five years.

On October 21, 2004, herein petitioner Metropolitan Bank and Trust Company (Metrobank) filed a motion for intervention contending that it has legal interest in the properties subject of the litigation between IEB and SSC because it is a creditor

of SSC and that the mortgage contracts between IEB and SSC were entered into to defraud the latter's creditors.^[9] Metrobank prayed for the rescission of the chattel mortgages executed by SSC in favor of IEB.

On January 21, 2005, CSMC filed an Omnibus Motion for intervention and for allowance to immediately operate the cold rolling mill and galvanizing plant of SSC contending that its purpose in intervening is to seek the approval of the court to operate the said plant pursuant to the Capacity Lease Agreement it entered into with SSC.^[10] IEB filed its Opposition to the said Motion.^[11]

On February 14, 2005, the RTC issued an Order^[12] admitting the motions for intervention filed by CSMC and Metrobank.

On March 15, 2005, the RTC issued a Resolution, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, the motion to operate the machineries *pendente lite* is hereby GRANTED based on law and equity as soon as practicable. This is without prejudice on the part of the I-bank [IEB] to assert the enforcement of the proposed schedule of payment submitted by SSC to the Court (Exh. "A" - Motion for Early Resolution, 2/16/2005 hearing) and to continually post their security guards unless withdrawn.

SO ORDERED.^[13]

On June 8, 2005, the RTC issued a Joint Resolution^[14] reiterating its admission of CSMC's motion for intervention and directing the latter to file its complaint-in-intervention.

On August 25, 2005, IEB filed a petition for *certiorari*, prohibition and mandamus with the CA assailing the RTC Orders dated September 6, 2004 and February 14, 2005, Resolution dated March 15, 2005 and Joint Resolution dated June 8, 2005.^[15]

On May 5, 2006, the CA rendered its presently assailed Decision which disposed of the case as follows:

WHEREFORE, the petition is hereby GRANTED. The questioned Orders dated September 6, 2004, February 14, 2005, March 15, 2005 and June 8, 2005 issued by public respondent RTC, Branch 17, Misamis Oriental, presided by Hon. Florencia D. Sealana-Abbu in Civil Case Nos. 2004-197 and 2004-200 are hereby ANNULLED and SET ASIDE. Public respondent is hereby DIRECTED to turn-over the mortgaged properties covered by the writ of replevin to petitioner I-Bank for the eventual foreclosure thereof.

SO ORDERED.^[16]

Metrobank, CSMC and SSC filed their respective motions for reconsideration, but these were all denied by the CA in its Resolution dated December 22, 2006.

Hence, the instant petitions for review on *certiorari*.

In G.R. No. 176008, petitioner Metrobank submits the following issues:

(A) WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT PETITIONER'S COMPLAINT-IN-INTERVENTION IS AN *ACCION PAULIANA*, A SUBSIDIARY ACTION, WHICH PRESUPPOSES AN UNSATISFIED JUDGMENT, WHICH UNSATISFIED JUDGMENT IS ABSENT IN THE CASE AT BAR.

(B) WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ALLOWING PETITIONER'S COMPLAINT-IN-INTERVENTION.^[17]

In G.R. No. 176131, petitioner CSMC raises the following grounds:

I. THE HONORABLE COURT ERRED IN NOT PASSING UPON THE ISSUE THAT HEREIN RESPONDENT IBANK IS GUILTY OF FORUM-SHOPPING.

II. THE HONORABLE COURT ERRED IN NOT RULING THAT HEREIN RESPONDENT IBANK'S FAILURE TO FILE A MOTION FOR RECONSIDERATION TO THE ORDER DATED 08 JUNE 2005 IS FATAL TO ITS PETITION.

III. THE HONORABLE COURT ERRED IN RULING THAT THE ORDER OF JUDGE SEALANA-ABBU ADMITTING THE INTERVENTION OF HEREIN PETITIONER CSMC IS WITHOUT LEGAL BASIS.^[18]

In a Manifestation and Motion dated September 26, 2007, petitioner Metrobank manifested that it no longer has any interest in pursuing the instant case as the loan obligation owed by SSC to it has been sold by the latter to a corporation known as Meridian (SPV-AMC) Corporation (Meridian). Accordingly, Metrobank prayed that it be substituted by Meridian as petitioner in the instant case.^[19]

In a Resolution^[20] dated November 12, 2007, this Court granted Metrobank's Motion.

At the outset, the Court takes note that no arguments or questions were raised by petitioners with respect to the September 6, 2004 Order and March 15, 2005 Resolution of the RTC which were annulled by the CA. Hence, the only issues left for resolution in the instant petition are whether or not petitioners Metrobank and CSMC may be allowed to intervene in Civil Case Nos. 2004-197 and 2004-200.

The Court will dwell first on the issues raised by Metrobank in G.R. No. 176008.

In its first assigned error, Metrobank contends that the CA erred in ruling that its Complaint-in-Intervention is in the nature of an *accion pauliana*.

The Court does not agree.

A perusal of Metrobank's Complaint-in-Intervention would show that its main objective is to have the chattel mortgages executed by SSC in favor of IEB rescinded. This is clearly evident in its prayer, which reads as follows:

WHEREFORE, premises considered, it is respectfully prayed unto the Honorable Court that judgment be rendered:

(1) RESCINDING the chattel mortgages executed by Defendants Sacramento and Delmo in favor of Defendant Ibank dated May 25, 2004 and June 7, 2004, respectively;

(2) Ordering defendants Sacramento, Delmo and Ibank to pay, jointly and severally, Plaintiff-Intervenor the amounts of:

- (A) P500,000.00, as and by way of exemplary damages;
- (B) P500,000.00, as and by way of attorney's fees; and
- (C) Costs of suit.

Other reliefs as may be just and equitable under the premises are likewise prayed for.

x x x x^[21]

Under Article 1381 of the Civil Code, an *accion pauliana* is an action to rescind contracts in fraud of creditors.^[22]

However, jurisprudence is clear that the following successive measures must be taken by a creditor before he may bring an action for rescission of an allegedly fraudulent contract: (1) exhaust the properties of the debtor through levying by attachment and execution upon all the property of the debtor, except such as are exempt by law from execution; (2) exercise all the rights and actions of the debtor, save those personal to him (*accion subrogatoria*); and (3) seek rescission of the contracts executed by the debtor in fraud of their rights (*accion pauliana*).^[23] It is thus apparent that an action to rescind, or an *accion pauliana*, must be of last resort, availed of only after the creditor has exhausted all the properties of the debtor not exempt from execution or after all other legal remedies have been exhausted and have been proven futile.^[24]