

SECOND DIVISION

[G.R. No. 184434, February 08, 2010]

G.G. SPORTSWEAR MANUFACTURING CORP. AND NARESH K. GIDWANI, PETITIONERS, VS. BANCO DE ORO UNIBANK, INC., PHILIPPINE INVESTMENT ONE (SPV-AMC), INC. AND THE OFFICE OF THE CLERK OF COURT AND EX OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 133, AS REPRESENTED BY ATTY. ENGRACIO M. ESCASINAS, JR., RESPONDENTS.

D E C I S I O N

ABAD, J.:

This case is concerned with the need to issue a temporary restraining order (TRO) or writ of preliminary injunction, enjoining a bank's foreclosure of the mortgages that secure the plaintiffs' loans upon a claim that the bank had already sold the loan receivables to a Special Purpose Vehicle entity.

The Facts and the Case

On April 22, 1994 petitioners G.G. Sportswear Manufacturing Corp. (G.G. Sportswear) and Naresh Gidwani mortgaged a lot in Aranda, Makati, and a house and lot in Bel-Air Village, also in Makati, to Equitable-PCI Bank, now the respondent Banco de Oro Unibank, Inc. (BDO), to secure a P20,357,000.00 loan to G.G. Sportswear. On April 25, 1996, to secure an additional P11,643,000.00 loan that BDO gave G.G. Sportswear, the parties amended the real estate mortgages to include such loan. Petitioner G.G. Sportswear was unable to pay its loans.

On March 15, 2005 respondent BDO told G.G. Sportswear in a letter^[1] that the bank transferred on that date its "past due loan obligation with the bank," totaling US\$12,257,581.31 as of December 31, 2004, to Philippine Investment One (SPV-AMC), Inc. (PIO), "including all interest, fees, charges, penalties, and securities/collaterals, if any." This was followed by BDO Certification^[2] dated April 21, 2005 that it "has assigned, conveyed, transferred and sold" to PIO, "on a without recourse basis, **all** its rights, title, benefits and interest to the Loan Receivables" of G.G. Sportswear.

Subsequently, however, respondent BDO applied with the *Ex Officio* Sheriff of Makati for the foreclosure of the properties that petitioners G.G. Sportswear and Gidwani mortgaged with the bank. The notice of sheriff's sale scheduled the auction of the properties on May 31, 2007 but this was subsequently rescheduled to July 18, 2007. At any rate, the sheriff auctioned off the Aranda property to BDO on June 21, 2007.

^[3]

On July 16, 2007, two days before the rescheduled auction of the Bel-Air property,

petitioners G.G. Sportswear and Gidwani filed an action with the Regional Trial Court (RTC) of Makati, in Civil Case 07-631,^[4] to annul the foreclosure, hold respondent BDO in indirect contempt, award damages, and enjoin further foreclosure by TRO and preliminary injunction. They alleged that, as a result of BDO's transfer of G.G. Sportswear's loan receivables to PIO in 2005, BDO lost the right to foreclose.

In its answer,^[5] respondent BDO denied transferring petitioner G.G. Sportswear's loan receivables to PIO, stating that the April 21, 2005 Certification it issued was a mere "general certification" that did not specify which of several loan receivables were sold to PIO. BDO in fact transferred to Philippine Asset Investment, which entity was subsequently taken over by respondent PIO, only P290,820.00 out of G.G. Sportswear's total loan.^[6] BDO attached Certifications^[7] from itself and from PIO to the effect that the credits secured by the Aranda and Bel-Air properties had not been transferred to PIO. The latter filed an answer of the same tenor.^[8]

On August 7, 2007 the RTC issued an order,^[9] denying petitioners G.G. Sportswear and Gidwani's applications for TRO and preliminary injunction. They filed a motion for reconsideration and a motion to inhibit the presiding judge,^[10] but on October 11, 2007 the RTC denied both motions.^[11] This prompted G.G. Sportswear and Gidwani to file a special civil action of *certiorari* with the Court of Appeals (CA) in CA-G.R. SP 101799, assailing the RTC orders mainly based on the proposition that respondent BDO had lost its right to foreclose the mortgages when it assigned its rights to PIO.

On June 26, 2008 the CA rendered judgment,^[12] dismissing the petition for lack of merit. It denied on August 29, 2008 petitioners G.G. Sportswear and Gidwani's subsequent motion for reconsideration,^[13] prompting them to file the present petition for review.

Issue Presented

The only issue presented in this case is whether or not the CA erred in finding that the RTC did not gravely abuse its discretion when it denied petitioners G.G. Sportswear and Gidwani's application for TRO and preliminary injunction despite the bank's apparent assignment of its credit to another entity.

The Court's Ruling

Petitioners G.G. Sportswear and Gidwani point out that BDO's March 15, 2005 letter and its April 21, 2005 certification show that the bank already transferred to PIO all its rights to the loan receivables of G.G. Sportswear. Thus, BDO lost its right to foreclose the mortgages on the properties that secured the unpaid loans, thus, entitling petitioners to an order enjoining the foreclosures. Further, petitioners claim that BDO bloated G.G. Sportswear's outstanding obligation such that it was being made to pay more through the foreclosure than was actually due.

The test for issuing a TRO or an injunction is whether the facts show a need for equity to intervene in order to protect perceived rights in equity.^[14] In general, a higher court will not set aside the trial court's grant or denial of an application for preliminary injunction unless it gravely abused its discretion as when it lacks