

THIRD DIVISION

[G.R. No. 165950, August 08, 2010]

**EQUITABLE PCI BANK, INC., PETITIONER, VS. OJ-MARK
TRADING, INC. AND SPOUSES OSCAR AND EVANGELINE
MARTINEZ, RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari filed by petitioner under Rule 45 of the 1997 Rules of Civil Procedure, as amended, praying for the reversal of the Decision^[1] dated October 29, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 77703, which denied its petition for certiorari assailing the trial court's orders granting respondents' application for a writ of preliminary injunction.

The factual antecedents:

Respondent-spouses Oscar and Evangeline Martinez obtained loans from petitioner Equitable PCI Bank, Inc. in the aggregate amount of Four Million Forty-Eight Thousand Eight Hundred Pesos (P4,048,800.00). As security for the said amount, a Real Estate Mortgage (REM) was executed over a condominium unit in San Miguel Court, Valle Verde 5, Pasig City, Metro Manila where the spouses are residing. Respondent Oscar Martinez signed the REM both as principal debtor and as President of the registered owner and third-party mortgagor, respondent OJ-Mark Trading, Inc. The REM was annotated on Condominium Certificate of Title No. PT-21363 of the Registry of Deeds of Pasig City.^[2]

Respondent-spouses defaulted in the payment of their outstanding loan obligation, which as of October 31, 2002 stood at P4,918,160.03.^[3] In a letter dated May 15, 2002, they offered to settle their indebtedness "with the assignment to the Bank of a commercial lot of corresponding value" and also requested for recomputation at a lower interest rate and condonation of penalties.^[4] While petitioner's officers held a meeting with respondent Oscar Martinez, the latter however failed to submit the required documents such as certificates of title and tax declarations so that the bank can evaluate his proposal to pay the mortgage debt via *dacion en pago*.^[5] Consequently, petitioner initiated the extrajudicial foreclosure of the real estate mortgage by filing an *ex parte* petition before the Office of the Executive Judge, Regional Trial Court (RTC) of Pasig City.^[6]

On January 23, 2003, respondents filed Civil Case No. 69294 for "Temporary Restraining Order (`TRO'), Injunction and Annulment of Extrajudicial Foreclosure Sale" in the RTC of Pasig City. On January 27, 2003, the trial court granted a TRO effective for twenty (20) days.

In their Complaint With Application for Temporary Restraining Order,^[7] respondents sought to enjoin the impending foreclosure sale alleging that the same was hasty, premature, unreasonable and unwarranted, and also claiming defects in the execution of the REM. Respondents imputed bad faith on the part of petitioner who did not officially inform them of the denial or disapproval of their proposal to settle the loan obligation by "*dacion* via assignment of a commercial property." Respondents maintained that aside from the REM being illegally notarized, incomplete and unenforceable, the obligation subject thereof had been extinguished by the *dacion* proposal considering that the value of the property offered was more than sufficient to pay for the mortgage debt. It was further averred that the subject property is being used and occupied by respondent-spouses as a family home.

In his Order dated February 17, 2003, Judge Mariano M. Singzon, Jr. granted the application for a writ of preliminary injunction.^[8] Petitioner filed a motion for reconsideration which was denied under the Order dated April 21, 2003.^[9]

Petitioner questioned the issuance of preliminary injunction before the CA arguing that the respondents are not entitled to injunctive relief after having admitted that they were unable to settle their loan obligations. By Decision dated October 29, 2004, the appellate court sustained the assailed orders, holding that:

...respondent spouses have sufficiently shown that they have a right over the condominium unit which is subject of the mortgage. This proprietary right over the condominium is what they are trying to protect when they applied for preliminary injunction. As respondent spouses have alleged in their complaint, the issuance of notice of foreclosure sale is at most premature as there are still several factual issues that need to be resolved before a foreclosure can be effected. Such already constitute the ostensible right which respondent spouses possess in order for the foreclosure sale to be temporarily enjoined.^[10]

Hence, this petition raising the following grounds:

I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT THE TRIAL COURT DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE ASSAILED WRIT OF PRELIMINARY INJUNCTION

II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT INDIVIDUAL RESPONDENTS SPS. MARTINEZ HAVE PROPRIETARY RIGHT OVER THE MORTGAGED CONDOMINIUM UNIT

III

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE

ERROR IN HOLDING THAT SUCH PURPORTED PROPRIETARY RIGHT OF RESPONDENTS SPS. MARTINEZ DESERVES THE PROTECTIVE MANTLE OF A WRIT OF PRELIMINARY INJUNCTION DESPITE THEIR CLEAR AND UNEQUIVOCAL ADMISSION OF THE OUTSTANDING LOANS AND THEIR DELINQUENCY

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE ARE STILL SEVERAL FACTUAL ISSUES TO BE RESOLVED IN A FULL-BLOWN TRIAL BEFORE PETITIONER EPCIB COULD EXERCISE ITS STATUTORY AND EQUITABLE RIGHT TO FORECLOSE^[11]

The sole issue to be resolved is whether or not the respondents have shown a clear legal right to enjoin the foreclosure and public auction of the third-party mortgagor's property while the case for annulment of REM on said property is being tried.

Petitioner argued that the appellate court's conclusion that respondents possess proprietary right over the mortgaged property subject of foreclosure is utterly baseless, for the following reasons: *first*, while the condominium unit is supposedly a family home, it is admittedly owned by respondent corporation and not by the conjugal partnership or absolute community of respondent-spouses; and *second*, even assuming that OJ-Mark Trading, Inc. is a family corporation, respondents' stance contravenes the established rule that properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members or stockholders.^[12]

As to the alleged proposal of respondent Oscar Martinez to assign commercial lots by *dacion en pago* to settle their loan obligations, petitioner pointed out that the properties offered for *dacion* are not owned, and much less to be owned by him, but purportedly owned by another corporation (developer), the president of which supposedly owes him a sum of money. Respondent Oscar Martinez likewise admitted during the hearings before the trial court his unpaid loan with petitioner. Moreover, with the filing of a petition for extrajudicial foreclosure of the real estate mortgage by petitioner, it serves more than a formal rejection of respondents' *dacion en pago* offer.^[13]

On their part, the respondents contended that the petition raises factual issues not proper in an appeal by certiorari under Rule 45. They asserted that the trial court correctly found sufficient legal basis to grant the writ of preliminary injunction after conducting a summary hearing in which both parties actively participated and submitted oral and documentary evidence. Such evidence adduced by respondents, as well as the Affidavit dated January 24, 2003 of Atty. Oscar Martinez (adopted in the February 7, 2003 hearing) fully supported their application and hence the trial court did not act precipitately or arbitrarily in granting injunctive relief.^[14]

Respondents argued that they appear to be entitled to the relief demanded by their Complaint "because petitioner was in bad faith when it proceeded to foreclose while there was still a pending written proposal to pay." They stand to lose a prime property, and thus made a serious and sincere offer by way of *dacion en pago*. To

show good faith and as required by petitioner to continue the negotiations for *dacion*, respondent Atty. Oscar Martinez even paid P100,000.00 in October 2002, which petitioner accepted. But petitioner maliciously, fraudulently and hastily proceeded to foreclose the renovated mortgaged property, apparently motivated by its discovery after re-appraisal that the floor area of the townhouse and number of its rooms had doubled (from 180.750 sq. m. with three [3] bedrooms, it is now 350 sq. m. with six [6] bedrooms). Respondents contended that as creditor, it was petitioner's duty not to sit on respondents' *dacion* offer and should have informed them in writing that said offer is rejected. By hanging on the *dacion* talks, petitioner thus prevented the respondents' repayment of the loan, in malicious haste to acquire the condominium unit as asset. [15]

Respondents further claimed that the extrajudicial foreclosure will cause grave injustice and irreparable injury to respondent-spouses and their four (4) young children because their family home, in which they were residing since 1997, at least insofar as the unencumbered area in excess of 180.750 sq. m., is exempt from forced sale or execution under Article 155 of the Family Code. Petitioner, on the other hand, will not suffer any loss if the foreclosure will not proceed. [16]

With respect to the commercial lots offered in *dacion*, respondents fault the petitioner in deliberately ignoring the fact that the Blue Mountains Subdivision located at Antipolo City was already approved by the Land Registration Authority; although the subdivided lots have already been applied, the individual titles had not yet been issued. It was therefore impossible for respondents to deliver these titles to petitioner by October 21, 2002 considering the normal time it takes to secure land titles. Respondents deplored the sudden filing of the petition for extrajudicial foreclosure, which was unfair as the negotiations had already reached the stage when petitioner scheduled an ocular inspection for the appraisal of the lots. However, for unknown reasons, petitioner did not push through with the inspection. [17]

We grant the petition.

Section 3, Rule 58 of the Rules of Court provides that:

SEC. 3. *Grounds for issuance of preliminary injunction.*--A preliminary injunction may be granted when it is established:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the

subject of the action or proceeding, and tending to render the judgment ineffectual.

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.^[18] A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action.^[19]

The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse.^[20] For the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of a writ of injunction constitutes grave abuse of discretion.^[21]

The possibility of irreparable damage without proof of actual existing right is no ground for an injunction.^[22] Hence, it is not sufficient for the respondents to simply harp on the serious damage they stand to suffer if the foreclosure sale is not stayed. They must establish such clear and unmistakable right to the injunction. In *Duvaz Corporation v. Export and Industry Bank*,^[23] we emphasized that it is necessary for the petitioner to establish in the main case its rights on an alleged *dacion en pago* agreement before those rights can be deemed actual and existing, which would justify the injunctive writ. Thus:

In *Almeida v. Court of Appeals*, the Court stressed how important it is for the applicant for an injunctive writ to establish his right thereto by competent evidence:

Thus, the petitioner, as plaintiff, was burdened to adduce testimonial and/or documentary evidence to establish her right to the injunctive writs. It must be stressed that injunction is not designed to protect contingent or future rights, and, as such, **the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. A clear and positive right especially calling for judicial protection must be established.** Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an action which did not give rise to a cause of action. **There must be an existence of an actual right. Hence, where the plaintiff's right or title is doubtful or disputed, injunction is not proper.**