

THIRD DIVISION

[G.R. No. 183211, June 05, 2009]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. GOTESCO TYAN
MING DEVELOPMENT, INC., RESPONDENT.**

DECISION

NACHURA, J.:

This petition for review filed by Philippine National Bank (PNB) seeks to nullify and set aside the March 12, 2008 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 99194, which affirmed the Orders dated August 24, 2006^[2] and March 2, 2007^[3] of the Regional Trial Court (RTC) of Pasig City, and the June 6, 2008 Resolution,^[4] denying PNB's motion for reconsideration.

The antecedents.

On April 7, 1995, PNB, along with Metropolitan Bank and Trust Company (MBTC), United Coconut Planters Bank (UCB), and Citytrust Banking Corporation (CBC), extended credit facilities worth P800,000,000.00 to respondent Gotesco Tyan Ming Development, Inc. (GOTESCO). To secure the credit facility, GOTESCO executed a Mortgage Trust Indenture over a parcel of land in Pasig City, covered by Transfer Certificate of Title (TCT) No. PT-97306.^[5] GOTESCO availed itself of P800,000,000.00 from its credit line, but failed to pay it in full. Accordingly, PNB, MBTC, UCB, and CBC instituted foreclosure proceedings on the GOTESCO property.

On July 30, 1999, the property was auctioned and was awarded to PNB as the highest bidder for P1,240,000,496.82. A Certificate of Sale^[6] was issued on August 4, 1999 and was registered with the Register of Deeds on November 9, 1999.

The one-year redemption period expired without GOTESCO exercising its right of redemption. Accordingly, PNB consolidated the title in its name and, on July 18, 2005, TCT No. PT-127557^[7] in the name of PNB was issued. Consequently, PNB filed an *Ex-Parte* Petition for Issuance of Writ of Possession with the RTC of Pasig City. The case was docketed as LRC Case No. R-6695-PSG and was raffled to Branch 155.

GOTESCO then filed a motion to consolidate LRC Case No. R-6695-PSG with its case for annulment of foreclosure proceedings, specific

performance and damages against PNB, docketed as Civil Case No. 68139, and pending with RTC Branch 161.

On August 24, 2006, Hon. Judge Luis R. Tongco of Branch 155 issued an Order granting the motion for consolidation:

Finding merit in the Motion For Consolidation filed by [respondent] Gotesco Tyan Ming Development, Inc., through counsel, on August 7, 2006, and as prayed for and over the opposition of x x x petitioner Philippine National Bank (PNB), the same is hereby **GRANTED**.

Let, therefore, the entire records of the instant case be forwarded to the Office of the Clerk of Court, RTC, Pasig City for **CONSOLIDATION** with Civil Case No. 68139, entitled "Gotesco Tyan Ming Development, Inc. v. Philippine National Bank, et al." filed on October 30, 2000 pending before Branch 161, Regional Trial Court, Pasig City.

SO ORDERED.^[8]

PNB filed a motion for reconsideration, but RTC Branch 161 denied the same, viz.:

After a careful and judicious consideration of the arguments raised by the parties in their respective pleadings, this Court resolves to DENY the Urgent Motion for Reconsideration.

A perusal of the arguments/issues raised by the petitioner in its pleadings would clearly show that they were mere reiteration of its previous arguments/issues which have been duly considered and passed upon by Honorable Judge Luis R. Tongco who ordered the consolidation of this case, in his discretion, to the civil case pending before this Court and no new matter was raised to warrant the reconsideration of the assailed Order dated August 24, 2006.

As a rule, the consolidation of several cases involving the same parties and subject matter is discretionary with the trial court. However, consolidation of these cases becomes a matter of duty if two or more cases are tried before the same judge, or, if filed with different branches of the same Court of First Instance, one of such cases has not been partially tried. (*Raymundo, et al. v. Felipe*, L-30887, Dec. 24, 1971). Noteworthy is the fact that the civil case pending before this Court is in the stage of presentation of [GOTESCO's] initial evidence.

As stressed by the Honorable Supreme Court in the case of *Philippine Savings Bank v. Spouses Rodolfo C. Mañalac, Jr.*, G.R. No. 145441, April 26, 2005, to wit:

"In Active Wood Products Co., Inc. v. Court of Appeals, x x x The Court held that while a petition for a writ of possession is an ex-parte proceeding, being made on a presumed right of ownership, when such presumed right of ownership is contested and is made the basis of another action, then the proceedings for writ of possession would also become groundless. The entire case must be litigated and if need be must be consolidated with a related case so as to thresh out thoroughly all related issues.

In the same case, the Court likewise rejected the contention that under the Rules of Court only actions can be consolidated. The Court held that the technical difference between an action and a proceeding, which involve the same parties and subject matter, becomes insignificant and consolidation becomes a logical conclusion in order to avoid confusion and unnecessary expenses with the multiplicity of suits."

WHEREFORE, in view of the foregoing, finding no cogent reason to reverse and set aside the assailed Order dated August 24, 2006, the Urgent Motion for Reconsideration is hereby DENIED and the two (2) cases being consolidated, this Court deems it proper to treat Civil Case No. 68139 for Annulment of Foreclosure Sale, etc. as an opposition to this case (LR Case No. R-6695-PSG). Thus, petitioner should first present evidence.

Accordingly, the March 30, 2007 setting in Civil Case No. 68139 is cancelled and reset to April 13, 2007 at 1:30 o'clock (sic) in the afternoon for the presentation of x x x PNB's evidence.

SO ORDERED.^[9]

PNB then filed a petition for *certiorari* with the CA. On March 12, 2008, the CA rendered the assailed Decision dismissing the petition. Citing *Philippine Savings Bank v. Mañalac, Jr.*,^[10] the CA rejected PNB's argument that a petition for issuance of a writ of possession cannot be consolidated with an ordinary civil action. The CA further held that the RTC merely complied with the express mandate of Section 1, Rule 31 of the 1997 Rules of Civil Procedure in granting the motion for consolidation. Thus, it cannot be charged with grave abuse of discretion.

PNB moved for reconsideration of the decision, but the CA denied it on June 6, 2008.

PNB is now before us faulting the CA for dismissing its petition.

On March 27, 2009, PNB moved for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin the proceedings in LRC Case No. R-6695-PSG and in Civil Case No. 68139. PNB claimed that its petition for issuance of a writ of possession, which is supposed to be summary in nature, is in grave and imminent danger of being wrongfully subjected to litigation. It alleged that its witness is set to be cross-examined on April 23, 2009 at 1:30 p.m. despite PNB's continuing objection as to the flow of trial. It argued that, in the event that the RTC further proceeds with the hearing of the consolidated cases, the present petition will become moot and academic. Thus, unless the RTC is restrained or enjoined from further hearing the two improperly consolidated cases, PNB's right to due process, particularly to an expeditious and summary hearing of its *ex-parte* petition, will be utterly violated. PNB added that it would also suffer grave and irreparable injury as its right to take immediate possession of the mortgaged

property, with the title thereto now consolidated in its name, would be rendered nugatory. In its April 20, 2009 Resolution, this Court granted PNB's prayer and issued a TRO enjoining the proceedings *a quo*.

In the main, PNB contends that the consolidation of its petition for issuance of a writ of possession with GOTESCO's case for annulment of foreclosure proceedings has seriously prejudiced its right to a writ of possession. It points that after the consolidation of title in its name, when GOTESCO failed to redeem the property, entitlement to a writ of possession becomes a matter of right. Moreover, a petition for issuance of a writ of possession is a non-litigious proceeding; hence, it must not be consolidated with a civil action for the annulment of foreclosure proceedings, specific performance, and damages, which is litigious in nature. It faults the CA for affirming the RTC's action.

GOTESCO, on the other hand, submits that the RTC and the CA did not err, much less abuse their discretion, in granting the motion for consolidation. It cites judicial economy and convenience of both parties as justification for granting the motion for consolidation.

The petition is meritorious.

The legal basis of an order of consolidation of two (2) cases is Section 1, Rule 31 of the Rules of Civil Procedure, which states:

SECTION 1. Consolidation. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In *Teston v. Development Bank of the Philippines*,^[11] we laid down the requisites for the consolidation of cases, *viz.*:

A court may order several actions pending before it to be tried together where they arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties.^[12]

The rule allowing consolidation is designed to avoid multiplicity of suits, to guard against oppression or abuse, to prevent delays, to clear congested dockets, and to simplify the work of the trial court; in short, the attainment of justice with the least expense and vexation to the parties- litigants.^[13]

Thus, in *Philippine Savings Bank v. Mañalac, Jr.*,^[14] we disregarded the technical difference between an action and a proceeding, and upheld the consolidation of a