

## SECOND DIVISION

[ G.R. NO. 141849, February 13, 2007 ]

**ISABEL Jael Marquez, CELIA M. IDEA, LUISITA M. ECLAVEA, MELVIRA M. VILLASANTE, RUEL MARQUEZ, ZAIDA M. SARACENA, AND ELOISA M. PENAMORA, PETITIONERS, VS. THE PRESIDING JUDGE (HON. ISMAEL B. SANCHEZ), RTC BR. 58, LUCENA CITY; THE HON. EXECUTIVE JUDGE OF RTCS OF LUCENA CITY; THE DEVELOPMENT BANK OF THE PHILIPPINES (DBP); AND THE PROVINCIAL SHERIFF OF QUEZON PROVINCE, RESPONDENTS.**

### DECISION

**VELASCO, JR., J.:**

#### The Case

Before us is a Petition for Review on Certiorari<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the November 5, 1998 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 29904, which affirmed the October 29, 1992 and December 23, 1992 Orders of the Lucena City Regional Trial Court (RTC) Branch 58; and its January 31, 2000 Resolution<sup>[3]</sup> denying Marquez's Motion for Reconsideration. It raises the core issue of the propriety of the denial by respondent former Lucena City RTC Presiding Judge Ludivico C. Lopez of Marquez's prayer for a writ of preliminary injunction in Civil Case No. 92-150 entitled *Marcial M. Marquez v. The Development Bank of the Philippines and the Provincial Sheriff of Quezon Province* for Damages, Cancellation of Mortgage and Certiorari with Prayer for Issuance of a Writ of Preliminary Injunction and/or Restraining Order.

#### The Facts

Marcial M. Marquez was an incorporator and officer of Lucena Entrepreneur and Agri-Industrial Development Corporation (LEAD), which was incorporated on November 26, 1975 primarily to venture into and engage in commercial deep-sea or "purse seine" fishing. LEAD's principals were graduates of the Development Bank of the Philippines' (DBP's) Entrepreneurship Development Program.

To carry out its objectives, LEAD needed capital for the construction of a fishing vessel and the procurement of the required equipment and other accessories. It applied for a loan with respondent DBP, which, on November 9, 1977, granted LEAD an agricultural loan of PhP 2,105,000.00 that would cover the construction and procurement of the fishing vessel and the required equipment,<sup>[4]</sup> subject to the required level of capitalization or equity ratio by LEAD's principals.<sup>[5]</sup>

Moreover, DBP required that the principals, including Marquez, be held jointly and severally liable with borrower-corporation DEAL.<sup>[6]</sup> To secure the loan, some of the

principals of LEAD, namely, Mr. and Mrs. Venuso Bibit and Mr. and Mrs. Eduardo Murallon, entered into a Real Estate Mortgage (REM) of two (2) properties with DBP, particularly those covered by TCT Nos. T-136995 and T-140765 with areas of 6,859 square meters and 7,222 square meters, respectively.<sup>[7]</sup>

To protect itself from manipulated and/or overpriced contract, the construction of the fishing vessel and the procurement and installation of the equipment and other accessories were subjected to DBP's local competitive bidding in consonance with its standing policies.<sup>[8]</sup> Consequently, Trigon Engineering and Shipbuilding Corporation (Trigon), based in Cebu City, won the bid and was duly approved by DBP.<sup>[9]</sup> Thus, the corresponding Boat-building Contract<sup>[10]</sup> was executed by and between LEAD and Trigon on June 2, 1978, which stipulated, *inter alia*, that Trigon would complete the work within 150 calendar days from the perfection of the contract and, as consideration, LEAD would pay Trigon PhP 1,955,000.00.<sup>[11]</sup>

However, there were some problems encountered in the implementation of the loan. First, some scheduled releases of the loan were withheld by DBP as the capitalization or equity ratio of the principals of LEAD was not complied with. Second, there were defects in the construction of the fishing vessel which required compliance by Trigon before any subsequent releases of the loan could be made. These contretemps delayed the construction of the fishing vessel for over two (2) years, yet the fishing vessel was only 77.14% complete by then. Third, the delay aggravated the situation for the boat construction was overtaken by increases in costs of materials and machinery. Thus, the project could not be completed at the original cost stipulated in the boat construction contract.

After threshing out the problem through a tripartite conference between LEAD, Trigon, and DBP, it was agreed that LEAD would get the fishing vessel at its present state and LEAD would complete the construction and installation of the equipment and accessories, for which DBP would grant LEAD an additional loan of PhP 714,600.00.<sup>[12]</sup> The additional loan was granted on July 29, 1981 and was consolidated with the first loan. To secure the additional loan, an additional REM, a second mortgage, was undertaken by Marquez and his wife on their property covered by TCT No. T-24506 with an area of 3,315 square meters.<sup>[13]</sup> The loan was fully released on February 8, 1982. In short, the fishing vessel christened "F/B LEAD 1" was completed and launched; and because a chattel mortgage was constituted on the fishing vessel, together with the machineries and equipment on it, to secure the loan with DBP, it was insured with the GSIS Property Insurance Fund in favor of DBP and/or LEAD.

Meanwhile, shortly after the additional loan was fully released to LEAD, on September 3, 1982, DBP informed LEAD of the arrearage of PhP 906,887.58 of its outstanding loan and to remit PhP 363,022.01 for the loan's interest. When LEAD was not able to pay, DBP formed a collection committee; however, the conferences with LEAD principals yielded negative results.

Subsequently, on the nights of June 21-22, 1985, disaster struck F/B LEAD 1 as it sank off the coast of Unisan, Quezon at the height of a typhoon. Upon receiving notice of such event, DBP filed an insurance claim with the GSIS, which covered the fishing vessel for the period 1985-1986, and collected the proceeds of PhP

1,186,145.00 which DBP applied to the loan account of LEAD on December 9, 1986.

For having defaulted on its contractual obligations, on July 21, 1992, DBP demanded LEAD and its principals to settle their outstanding loan obligation, with warning that non-settlement would compel DBP to institute the necessary legal action to protect its interest, including appropriate actions to foreclose the mortgaged properties. With the inaction of LEAD and its principals, on August 25, 1992, DBP was compelled to file with the Clerk of Court of the Quezon RTC an application for foreclosure sale of the REMs constituted to secure its loan with DBP.

On September 3, 1992, the Ex-Officio Provincial Sheriff of Quezon issued a Notice of Extra-Judicial Sale on October 6, 1992 of the following properties covered by TCT Nos. T-136995, T-140765, and T-24506 to satisfy the mortgaged indebtedness of PhP 4,595,450.00.<sup>[14]</sup> The spouses Bibit and spouses Murallon did not contest the scheduled sale.

Marquez, however, on October 5, 1992, instituted the instant action for Damages, Cancellation of Mortgage and Certiorari with Prayer for Issuance of a Writ of Preliminary Injunction and/or Restraining Order before the Lucena City RTC, docketed as Civil Case No. 92-150, to forestall the extra-judicial foreclosure sale of the property covered by TCT No. T-24506.<sup>[15]</sup> In gist, Marquez alleged that LEAD's involvement in purse seine fishing was premised substantially on a "partnership" with DBP and not that of a simple debtor-creditor relationship; that the loan contracts and REM constituted for them were legally impaired, bereft of consideration, and did not reflect the true and proper relationship between LEAD and DBP; that DBP was liable for breach of agreement when it failed to deliver a seaworthy and well-equipped fishing vessel; that DBP reneged on its commitment to render technical expertise on purse seine fishing when needed most; that LEAD was prejudiced by DBP's bureaucracy and the controversy with its commissioned boat-builder, Trigon; that having collected the insurance proceeds from GSIS after the sinking of the fishing vessel, it had extinguished whatever obligations LEAD had with DBP; and that DBP refused in bad faith to render an updated accounting or allow Marquez to scrutinize the loan account.

On October 6, 1992, the scheduled day for the extra-judicial sale, respondent Presiding Judge issued an Order<sup>[16]</sup> granting a Temporary Restraining Order (TRO) to maintain the *status quo* pending resolution of the prayer for the issuance of a writ of preliminary injunction, and set the hearing on October 14, 1992 for said action.

On October 14, 1992, respondent judge heard Marquez and DBP on the propriety of issuing the injunctive writ. Parenthetically, on October 16, 1992, DBP filed its Answer<sup>[17]</sup> with counterclaims against Marquez. On October 29, 1992, respondent Judge issued the first assailed Order<sup>[18]</sup> denying Marquez's prayed for injunctive writ, to which he filed his Motion for Reconsideration.<sup>[19]</sup> On December 2, 1992, Marquez filed an Urgent Motion to Restrain<sup>[20]</sup> the extra-judicial foreclosure sale scheduled on December 28, 1992. Earlier, after the order of denial was issued on October 29, 1992, DBP applied for an extra-judicial foreclosure sale of the property covered by TCT No. T-24506, which was granted through the Notice of Extra-judicial Sale<sup>[21]</sup> issued on November 24, 1992 by respondent provincial sheriff.

Subsequently, on December 23, 1992, respondent Judge issued the second assailed Order<sup>[22]</sup> denying Marquez's Motion for Reconsideration and Urgent Motion to Restrain. Consequently, on December 28, 1992, as scheduled, Marquez's property covered by TCT No. T-24506 was sold to DBP as the highest bidder.<sup>[23]</sup>

### **The Ruling of the Court of Appeals**

However, the certificate of sale was not issued as Marquez was granted a TRO<sup>[24]</sup> by the CA through a Petition for Certiorari<sup>[25]</sup> under Rule 65 of the Rules of Court, where he assailed the Orders denying the issuance of a preliminary injunction. After DBP filed its Comment<sup>[26]</sup> on April 23, 1993, the CA rendered the assailed Decision<sup>[27]</sup> on November 5, 1998 affirming the RTC Orders. Marquez's Motion for Reconsideration<sup>[28]</sup> of said Decision was however denied on January 31, 2000.<sup>[29]</sup>

The appellate court held that P.D. 385 applied in the instant case and found neither manifest abuse committed by the trial court nor any grave abuse of discretion amounting to lack or excess of jurisdiction in denying the issuance of the injunctive writ.

Unfortunately, Marcial M. Marquez died on January 24, 1995.<sup>[30]</sup> He was then substituted by his heirs on January 20, 1999.<sup>[31]</sup>

### **The Issues**

In the instant petition for review filed by the heirs of Marcial M. Marquez, the crucial issue to be dealt with in this petition is whether the trial court's refusal to grant an injunction against the threatened extra-judicial foreclosure sale by DBP constitutes grave abuse of judicial discretion amounting to lack or excess of jurisdiction.

In support of the instant petition, petitioners raise the issues of applicability of P.D. 385, denial of due process, and the extent of the loan covered by the REM constituted on petitioners' realty under TCT No. T-24506.

However, the petition lacks merit.

### **Requisites for issuance of injunctive writ**

The writ of preliminary injunction is issued to

prevent threatened or continuous irreparable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully. Thus, it will be issued only upon a showing of a clear and unmistakable right that is violated. Moreover, an urgent necessity for its issuance must be shown by the applicant.<sup>[32]</sup>

Under Section 3, Rule 58 of the 1997 Revised Rules of Civil Procedure, the issuance of a writ of preliminary injunction may be granted if the following grounds are established, thus:

(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.

Prescinding from the provisions mentioned above, we have consistently held that the requisites of preliminary injunction whether mandatory or prohibitory are the following:

- (1) the applicant must have a clear and unmistakable right, that is a right *in esse*;
- (2) there is a material and substantial invasion of such right;
- (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and
- (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.<sup>[33]</sup>

### **Requisites for injunctive writ not present**

We have reviewed the records and the pleadings of the parties and found that, as contended by respondent DBP, Marquez and petitioners failed to establish the essential requisites for the issuance of a writ of preliminary injunction. Hence, the trial court did not commit any manifest abuse nor gravely abused its discretion amounting to excess or lack of jurisdiction in denying the writ of preliminary injunction as well as Marquez's Motion for Reconsideration.

### **Issuance of injunctive writ on sound discretion of the trial court**

It is basic that the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court, conditioned on the existence of a clear and positive right of the applicant which should be protected. It is an extraordinary, peremptory remedy available only on the grounds expressly provided by law, specifically Section 3, Rule 58 of the Rules of Court.<sup>[34]</sup> Moreover, extreme caution must be observed in the exercise of such discretion.<sup>[35]</sup> It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.<sup>[36]</sup> The very foundation of the jurisdiction to issue a writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of multiplicity of suits.

Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.<sup>[37]</sup>