

THIRD DIVISION

[G.R. NO. 157535, February 11, 2005]

PHILIPPINE NATIONAL BANK, PETITIONER, VS. FELINO M. TIMBOL AND EMMANUELA R. LAGUARDIA, RESPONDENTS.

DECISION

CARPIO-MORALES, J.:

Being challenged in the present Petition for Review on Certiorari is the February 28, 2003 decision^[1] of the Court of Appeals dismissing the Petition for Certiorari of herein petitioner, Philippine National Bank (PNB), which sought to set aside the September 8, 2000 Order^[2] of Judge Zeus L. Abrogar of the Makati Regional Trial Court (RTC), Branch 150 granting herein private respondents' application for the issuance of a writ of preliminary injunction.

The following facts are not disputed:

Sometime in December 1996, the PNB International Finance Limited (PNB-IFL), a subsidiary of petitioner, granted Karrich Holdings Limited based in Hongkong and "owned" by respondent Felino Timbol, Jr., a Revolving Credit Line and/or for the Opening of Letters of Credit with Trust Receipt Financing in the total amount of US\$850,000.00. Karrich Auto Exchange (formerly Superkinis Auto Sales), a sole proprietorship based in the Philippines, also owned by Timbol, acted as co-borrower.

To secure the payment of the obligation, Timbol on his behalf and that of his wife Emmanuela R. Laguardia, executed three (3) separate Real Estate Mortgages (REMs). And respondent Timbol executed promissory notes for and on behalf of Karrich Holdings Ltd.

The first REM, which secured the amount of P13,056,600.00, covered the following first 7 titles; the second REM, which secured the amount of P7,593,850.00, covered the following 8th title; and the third REM, which secured the amount of P2,143,750.00, covered the following 9th title, to wit:

1. TCT No. 196111 with an area of 44 sq. m., more or less^[3]
2. TCT No. 196112 with an area of 43 sq. m., more or less^[4]
3. TCT No. 196113 with an area of 39.50 sq. m., more or less^[5]
4. TCT No. 196114 with an area of 39 sq. m., more or less^[6]
5. TCT No. 196115 with an area of 40 sq. m., more or less^[7]

6. TCT No. 196116 with area of 40 sq. m., more or less^[8]

7. TCT No. 196117 with an area of 40.50 sq. m., more or less^[9]

8. TCT No. 177564 with an area of 293 sq. m., more or less^[10]

9. TCT No. 207636 with an area of 87.50 sq. m., more or less^[11]

Thus, the aggregate amount of the obligation was P22,796,200.00 or its equivalent of US\$850,000.00.

The borrowers drew on the credit facilities.

The credit facilities were, by letter^[12] of April 1, 1998, renewed, revised and reduced to US\$848,300.00 by the PNB.

As the borrowers defaulted in the payment of their obligation, petitioner, by letter of September 2, 1999,^[13] informed Karrich Holdings Limited at its Hongkong address and the spouses Timbol at their 9626 Kamagong, Makati address that, as of July 15, 1999, their outstanding obligation stood at P36,088.173.69 inclusive of interest and penalties and demanded that they settle the same in full "or make acceptable arrangement for its settlement with our PNB-IFL immediately upon receipt hereof." By the same letter, petitioner warned the borrowers that if they failed to heed the demand, it would be constrained to proceed with the foreclosure of the mortgages which secured their account.

Responding to the September 2, 1999 letter of petitioner, borrowers Karrich Holdings Ltd. and Timbol, by an undated letter^[14] addressed to Atty. Reyes G. Geromo, Manager and Head, Foreclosure Group, Philippine National Bank, PNB Financial Center, Roxas Blvd., Metro Manila, bearing Timbol's signature, which letter was received by the PNB Legal Department on October 27, 1999, stated as follows:

This is in reference to your letter of September 2, 1999 which was received only today, October 19, 1999.

We are well aware of our total outstanding obligation with you which stood at **P33** (sic) **Million** as of July 15, 1999 including interest and penalties.

Given that our application for a new fully secured loan of **US\$ 16 Million** was recently turned down by PNB-IFL, we were constrained to apply with an alternative lender who can look sympathetically at our project and be considerate of our circumstances. The application is currently being processed against the issuance of a Guarantee Payment Bond being underwritten with the participation of PNB Insurance and GSIS, and we have reason to believe that it is only a matter of time before the facility is granted to us.

In view thereof, we would like to request for an additional time within which to secure our obligation with you. We would also like to request that our obligation be denominated in Philippine peso to avoid further

foreign exchange losses.

Thank you for your kind understanding and consideration. (Emphasis in the original; underscoring supplied)^[15]

It appears that the borrowers' request for an additional time within which "to secure [their] obligation" was denied by petitioner for soon after it moved to extrajudicially foreclose the mortgages before a notary public.

Acting on the application for extrajudicial foreclosure of mortgages, Makati City Notary Public Ricardo M. Espina issued a Notice of Extrajudicial Sale which was published in three (3) issues of the *Remate*, a newspaper of general circulation printed and published in Manila, Philippines, on October 19, 26, and November 2, 1999 following which *Remate* Vice President-Advertising executed an Affidavit of Publication dated November 3, 1999.^[16]

On November 15, 1999, the extrajudicial foreclosure sale was conducted by Atty. Espina who issued a Certificate of Sale on even date^[17] stating that the nine (9) properties subject of the REMs were sold for P35,669.000.00 at public auction to the highest bidder, petitioner which had submitted its Bid^[18] for said amount.

More than 3 months shy of the one year period to redeem the foreclosed mortgages or on August 4, 2000, respondent Timbol, on his behalf and that of his co-mortgagor-wife-herein co-respondent Laguardia, filed before the RTC of Makati a complaint against petitioner, Atty. Ricardo F. Espina in his capacity as Makati City Notary Public, and the Makati Register of Deeds, for Annulment of Real Estate Mortgage, Foreclosure of Mortgage, Auction Sale and for Accounting, Damages and Temporary Restraining Order and/or Injunction.^[19] The complaint was docketed as Civil Case No. 00-946.

In their complaint, respondents alleged that respondent Timbol signed blank REM forms and blank promissory note forms which were forwarded to him and, after signing them, he returned them to petitioner; that he was not furnished copies of the documents despite request therefor, hence, up to the time of the filing of the complaint he did not know what details were placed thereon by petitioner; that the foreclosure of the mortgages conducted by the notary public is "highly irregular, not valid and thus illegal" because (1) the extra judicial foreclosure was not filed in accordance with **Administrative Order No. 3 dated October 24, 1984** of the Supreme Court; (2) the Notice of Notary Public's Sale did not specify the newspaper of general circulation in which such notice was to be published; (3) the Notice of the Notary Public's Sale was not published in 3 public places in Makati where the encumbered properties are located; (4) there was no showing that said notice was in fact and actually published in a newspaper of general circulation and if it was, it was not in accordance with law, the publication not having been raffled among newspapers; and (5) the notary public did not conduct an actual public bidding, hence, it was a "sham bidding which was not made within the time prescribed by law."

Respondents further alleged that the Registry of Deeds of Makati City does not have a copy of any mortgage or other loan documents; and that the certificate of sale issued by the notary public was not registered or annotated on the original titles to

the mortgaged properties.

Respondents furthermore alleged, *inter alia*, as follows:

18. But simply looking at the mortgage liens on said titles, the following would appear, viz:

Time Number	Mortgage Loan
1. TCT No. 196111	P13,053,600.00
2. TCT No. 196112	P13,053,600.00
3. TCT No. 196113	P13,053,600.00
4. TCT No. 196114	P13,053,600.00
5. TCT No. 196115	P13,053,600.00
6. TCT No. 196116	P13,053,600.00
7. TCT No. 196117	P13,053,600.00
8. TCT No. 207636	P2,143,750.00
9. TCT No. 177564	P7,598,850.00
Total	P101,117,800.00

19. Easily, by adding the foregoing amounts, the total obligations secured by the mortgaged properties would amount to a staggering P101,117,800.00! This amount is obviously way above the granted credit facilities which amounted only to US\$848,300.00. No wonder defendant PNB refused to give plaintiff Timbol/Karrich Auto Exchange/Karrich Holdings Limited, copies of the REM and Promissory Notes. (Underscoring supplied; emphasis in the original);^[20]

and that petitioner “obviously, **deliberately bloated** the amount of the obligation . . . an act designed to prevent [the borrowers] from making (sic) getting back the properties mortgaged, which explains why PNB deliberately did not give copy of the REM to the borrowers.”

Respondents thus concluded that the REMs and promissory notes are null and void, the amounts placed thereon by defendant being “over and way above the obligation they incurred.”

In support of their prayer for the issuance of a writ of preliminary injunction, respondents alleged as follows:

22. Unless restrained, the defendant PNB will proceed to annotate and/or consolidate its title to the mortgaged properties covered by and described in Transfer Certificates of Title Nos. 196111, 196112, 196113, 196114, 196115, 196116, 196117, 207636 and 117564 of the Registry of Deeds of Makati City. And the defendant Register of Deeds of Makati City will cancel the said titles and issue new ones in lieu thereof in the name of the defendant PNB which will certainly cause injustice and irreparable damages and injury to the plaintiffs herein.

23. The plaintiffs are entitled to the reliefs demanded and the whole or part thereof consists in restraining the defendant PNB from consolidating its title to and ownership over the plaintiffs' real properties sold to the defendant PNB on 15 November 1999 and the defendant Registry of Deeds from canceling the plaintiffs' titles and from issuing new ones in lieu thereof.
24. The said defendants are threatening to do some act in violation of the plaintiffs' right respecting the subject matter of the action and the commission of the said act complained of by the said defendants during the pendency of this action will not only cause injustice and prejudice and injury to the plaintiffs but also complicate and multiply the issues in this case, and **render the judgment that may be rendered herein ineffectual.**
25. Plaintiff is willing, ready and able to post a bond in an amount to be fixed by this Honorable Court executed in favor of the defendants to the effect that plaintiffs will pay to the defendants all damages which they may sustain by reason of the injunction if this Honorable Court shall decide finally that plaintiffs are not entitled thereto.
26. As a consequence of the illegal acts of the defendants, **bloating the amount of the obligations of plaintiff** Timbol/Karrich Auto Exchange/Karrich Holdings Limited in the REM, in **effecting the illegal foreclosure of the mortgaged properties**, herein plaintiffs suffered and will suffer actual and compensatory damages for which the defendant PNB should be held liable in the sum of P500,000.00.
27. Furthermore, plaintiffs, as a consequence thereof, were constrained to retain the services of counsel, to protect their interest, whom they had agreed to pay the sum of P100,000.00 as and for attorney's fees. (Emphasis and underscoring supplied)^[21]

In its Answer with Compulsory Counterclaim^[22] to the complaint, petitioner denied the allegation that respondent Timbol was made to sign blank REM forms and promissory note forms, it claiming that it is not a procedure of PNB-IFL to have borrowers/mortgagors sign the said documents in blank, and that at the time of the signing of the documents, they were already in printed form; and that the interest rate under the promissory notes was fixed at USD prime rate plus 2.5% in accordance with the agreement of the parties under "the Facility Letters dated November 15, 1996 and April 1, 1998" which Facility Letters and the General Agreement by Customer(s)^[23] were duly executed and signed by Timbol.

Petitioner likewise denied respondents' allegation in the complaint 1) that the Notice of Notary Public's Sale was not duly posted, and that the REMs were not registered the truth being that they were annotated on the original copies of the titles on file with the Register of Deeds of Makati; and 2) that it bloated the amount of the obligation of respondents, the latter having erroneously added the amount of P13,053,600.00 annotated on each of the seven (7) titles which **collectively** secured said amount, as reflected in the REM encumbering those 7 titles, to wit: