

## FIRST DIVISION

[ G.R. No. 116847, March 16, 2001 ]

**MANUFACTURERS BUILDING, INC., PETITIONER, VS. COURT OF APPEALS, PHILIPPINE MERCHANT MARINE SCHOOL AND JUAN NOLASCO III, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

Petitioner appeals *via* certiorari from the decision<sup>[1]</sup> of the Court of Appeals affirming *in toto* that of the Regional Trial Court, Branch 46, Manila<sup>[2]</sup> denying the petition for injunction filed by petitioner and ordering the sheriff to proceed with the public auction sale of the property levied upon to satisfy what was due respondent in the sum of P1,520,065.75.

The facts of the case are as follows:

In 1979 and 1980, Philippine Merchant Marine School (PMMS) leased from petitioner Manufacturers Building, Inc. (Manufacturers) three (3) portions of Manufacturers Building, located at Plaza Sta. Cruz, Manila: (1) 5th floor, leased on January 1979, at a monthly rental of P20,000.00; (2) Room No. 406, leased on February 1979, at a monthly rental of P3,800.00; and (3) basement, leased on June 19, 1980, at a monthly rental of P4,000.00.<sup>[3]</sup>

Respondents later became delinquent in paying their monthly rentals. On April 12, 1984, petitioner filed with the Metropolitan Trial Court, Manila a complaint for ejectment<sup>[4]</sup> against respondents for non-payment of rentals.

On May 07, 1984, the parties executed a compromise agreement, which the trial court approved on May 21, 1984.<sup>[5]</sup> The compromise agreement specifically provided:

"1. That defendants admit all the allegations of the Complaint dated April 11, 1984, particularly their rental indebtedness and other miscellaneous charges (par. 3, p. 2), as well as their succeeding monthly rentals and other miscellaneous charges in the total sum of P510,200.03 as of June 1984;

"2. That defendants state that plaintiff is entitled to an Ejectment Decision and a Writ of Execution for their failure to pay their aforesaid rental indebtedness and other miscellaneous charges, but they have requested plaintiff to give them another chance to remain in the leased commercial premises;

"3. That pursuant to the above request, the defendants agree to pay to

plaintiff a reasonable monthly rental of P9,575.00, P40,320.00 and P13,630.00, beginning July, 1984 and every month thereafter;

"4. That likewise, as a consequence of the above request, the defendants agree and obligate themselves to pay to plaintiff the above mentioned rental indebtedness and other miscellaneous charges in the sum of P510,220.03 in the installment basis, itemized as follows:

(a) To be paid on or before May 18, 1984;

1st installment of arrears P66,957.07

1 ½ interest of remaining balance 6,648.64

TOTAL P73,605.71

(b) To be paid on or before June 15, 1984;

2nd installment of arrears P443,242.46

Electricity 3,129.00

P446,371.46

"5. That defendants agree and obligate themselves to pay to plaintiff the succeeding monthly rental and other miscellaneous charges beginning July, 1984 within the first five (5) days of the month and every month thereafter;

"6. That notwithstanding the above stipulations, should there be any increase of rental (per square meter) and other miscellaneous charges of the adjacent and similarly situated office premises within the Manufacturers Building, the defendants agree to pay such reasonable charges equal to monthly rental and other charges to be paid by the adjacent and similarly situated office premises within the said building;

"7. That defendants further agree that their failure to comply with any of the aforementioned stipulations shall entitle the plaintiff to the immediate Issuance of a Writ of Execution for the ejectment of the defendants and others claiming under them from the premises (Rm. 406, 5th Floor, and part of Basement Manufacturers Building, Plaza Sta. Cruz, Manila) involved in this case."<sup>[6]</sup>

However, respondents failed to comply with the terms and conditions of the compromise agreement.<sup>[7]</sup>

Beginning July 1984, petitioner increased the monthly rental to P40,320.00, for the fifth floor; P9,575.00, for Room 406; and P13,630.00, for the basement.<sup>[8]</sup>

On April 23, 1985, petitioner filed with the trial court a motion for writ of execution<sup>[9]</sup>, which the trial court granted on May 3, 1985. Due to repeated requests of respondents and the promise that they would settle the rental

arrearages, petitioner did not enforce the writ of execution.<sup>[10]</sup> On July 30, 1986, petitioner filed with the trial court an urgent motion for an *alias* writ of execution,<sup>[11]</sup> which the court granted on August 4, 1986.<sup>[12]</sup>

On January 23, 1986, respondents executed a deed of second real estate mortgage in favor of petitioner to guarantee the payment of their rental arrearages, the pertinent portion of which reads:

"NOW THEREFORE, for and in consideration of the foregoing premises and of the terms and conditions hereinafter set forth, the parties hereto have agreed and covenanted, as they agree and covenant, as follows:

(1) "That to secure payment of the amount of P823,494.50 within the period of time hereinafter stipulated, the MORTGAGOR hereby transfers and conveys, by way of second mortgage, in favor of the SECOND MORTGAGEE, the afore-mentioned parcels of land covered by Transfer Certificate of Titles Nos. S-100612 and S-100613, it being agreed and understood that the prior mortgage liens over the said two (2) parcels of land in favor of the Philippine Commercial International Bank shall be superior to this second lien and that this second mortgage shall be subject to the approval of said PCIB as first lien holder.

(2) The MORTGAGOR hereby agrees and undertakes to pay the amount of P823,494.50 to the herein SECOND MORTGAGEE within a period of six (6) months counted from date of execution hereof, with legal interest of 12% on outstanding balances.

(3) It shall be special condition of this instrument, that should the MORTGAGOR truly and faithfully comply with its herein undertaking and settle its account in full with the SECOND MORTGAGEE within the period of time herein stipulated, then this second mortgage shall be rendered automatically cancelled and be null and void; otherwise, the same shall remain in full force and effect and the SECOND MORTGAGEE shall have the right to foreclose the same either judicially or extra-judicially in accordance with the provisions of law.

(4) All expenses for registration of this second mortgage and the annotation thereof on TCTs Nos. S-100612 and S-100613 including documentary stamps, and other incidental expenses shall be for the account of the MORTGAGOR."<sup>[13]</sup>

Respondents offered to pay their obligation within six (6) months from execution of the second mortgage, with legal interest of 12%, per annum, on the outstanding balance.<sup>[14]</sup>

On July 30, 1986, petitioner filed with the trial court an urgent motion for an *alias* writ of execution,<sup>[15]</sup> which the court granted on August 4, 1986.

On August 22, 1986, the sheriff of Manila levied upon the property of respondents consisting of two (2) parcels of land with TCT Nos. 100612 and 100613 registered under the name of Philippine Merchant Marine School.<sup>[16]</sup>

On October 30, 1986, respondents vacated the leased premises. However, two (2) of these, the 5th floor and Room 406, suffered considerable damage requiring repair and rehabilitation in the amounts of P112,020.00 and P39,500.00, respectively. Petitioner included the cost of repairs in the summary of rental account of respondents.

On February 19, 1987, the trial court issued another *alias* writ of execution pursuant to the compromise judgment, which reads:

"Finding merit in the 'Urgent Motion For Issuance Of Alias Writ Of Execution' filed by plaintiff through counsel, this Court hereby resolves to GRANT the same.

"WHEREFORE, let an 'alias writ of execution be now issued in the above-entitled case'.

"SO ORDERED.

"Manila, Philippines, February 19, 1987.

(ORIGINAL SIGNED)

EMELITA HABACON-GARAYBLAS

Presiding Judge"<sup>[17]</sup>

On September 19, 1987, petitioner sent a letter to respondents demanding payment of the aggregate amount of P1,710,266.88.<sup>[18]</sup> On November 23, 1989, petitioner instructed the sheriff to proceed with the levy on execution.<sup>[19]</sup>

On December 5, 1989, the sheriff of Manila issued a notice of sale on execution of real property, setting the sale at public auction of the two (2) parcels of land on December 29, 1989.

On December 19, 1989, respondents filed with the Regional Trial Court, Branch 46, Manila a petition for injunction<sup>[20]</sup> to enjoin the auction sale.

Petitioner opposed the petition on the ground that the amount of P446,371.46 had been partially settled by the sale of the personal property of PMMS. Further, assuming that it still owed petitioner, the property levied upon could not be sold at public auction since the judgment by compromise did not stipulate for levy and sale of any property. It merely provided for the ejectment of respondents, and they vacated the premises on October 31, 1986.

On November 2, 1990, the Regional Trial Court rendered a decision dismissing the petition for injunction.<sup>[21]</sup> The trial court ruled that the deed of second mortgage provided for the imposition of 12% interest per annum on the outstanding balance. Hence, 1% interest is chargeable per month, contrary to petitioner's allegation of 2 ½% interest per month. In determining the monthly rentals commencing February