

FIRST DIVISION

[G.R. No. 122807, July 05, 1996]

**ROGELIO P. MENDIOLA, PETITIONER, VS. COURT OF APPEALS
AND PHILIPPINE NATIONAL BANK, RESPONDENTS.**

R E S O L U T I O N

HERMOSISIMA, JR., J.:

Sometime in December 1987, a certain Ms. Norma S. Nora convinced petitioner Rogelio Mendiola to enter into a joint venture with her for the export of prawns. As proposed by Ms. Nora, they were to secure financing from private respondent Philippine National Bank. The credit line, it was agreed on, was to be secured by collaterals consisting of real estate properties of the petitioner, particularly two (2) parcels of land, situated in Marikina, and covered by Transfer Certificate of Title No. 27307 issued by the Registry of Deeds of Marikina, Rizal.

On January 27, 1988, the petitioner signed a Special Power of Attorney authorizing Ms. Norma S. Nora to mortgage his aforementioned properties to PNB in order to secure the obligations of the joint venture with the said bank of up to Five (5) Million (5,000,000.00) Pesos. The planned joint venture became a failure even before it could take off the ground. But, in the meantime, Ms. Norma S. Nora, on the strength of the special power of attorney issued in her favor, obtained loans from PNB in the amount of P8,101,440.62 for the account of petitioner and secured by the parcels of land hereinabove described.

On November 11, 1988, petitioner rather belatedly revoked the special power of attorney in favor of Ms. Nora and requested PNB to release his properties from the mortgage executed by Ms. Nora in its favor. The request notwithstanding, petitioner was notified under a Notice of Sheriff Sale, dated April 20, 1989, that PNB had initiated foreclosure proceedings against the properties of the petitioner.

On May 16, 1989, petitioner filed a case for injunction against the PNB, docketed as Civil Case No. 58173, with Branch 162, of the Regional Trial Court of Pasig City, seeking to enjoin the foreclosure of the properties in question. PNB filed a motion to dismiss the case on the ground that the complaint did not state a sufficient cause of action. After hearing, the trial court, in its Order, dated August 17, 1989, granted PNB's motion to dismiss in this wise:

"Since the Court finds that the complaint does not state a sufficient cause of action, it follows therefore that the prayer, for issuance of the writ of preliminary injunction has no leg to stand on.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the complaint is hereby ordered dismissed, without pronouncement as to costs. The temporary

restraining order under the date of May 16, 1989 is hereby lifted and set aside."^[1]

Petitioner filed a Notice of Appeal from said Order, which was noted by the lower court in an Order, dated November 16, 1989.

While Civil Case No. 58173 was pending appeal with the court *a quo*, aforementioned properties were sold in an auction sale on October 3, 1990. The PNB, as the highest bidder, acquired petitioner's properties.

On October 10, 1990, petitioner filed an action to annul the auction sale of October 3, 1990, which was docketed as Civil Case No. 60012. The case was raffled to Branch 154 of the Regional Trial Court of Pasig City.

PNB likewise filed a motion to dismiss Civil Case No. 60012 alleging that "another action is pending between the same parties for the same cause of action." Apparently, PNB was referring to Civil Case No. 58173 then pending with respondent Court of Appeals. Attached to the motion to dismiss was a copy of the complaint in Civil Case No. 58173 which had the same allegations as the complaint in Civil Case No. 60012, except that the relief sought in the first case was to enjoin the foreclosure of the mortgaged properties of the petitioner.

Petitioner opposed said motion to dismiss.

After due hearing, Branch 154, RTC of Pasig, issued an Order, dated February 28, 1991, granting PNB's motion to dismiss Civil Case No. 60012 on the ground of *litis pendentia*. The dispositive portion of the Order reads:

"WHEREFORE, the Motion to Dismiss is hereby GRANTED, the injunction DENIED and the instant complaint DISMISSED with prejudice, without costs."^[2]

A motion for reconsideration was filed by the petitioner but the same was denied. Petitioner appealed before the court *a quo*, which rendered its Decision, dated November 15, 1995 in CA-GR. CV No. 37940, affirming the Orders issued by Branch 154 of the RTC-Pasig, to wit:

"WHEREFORE, the orders herein appealed from are hereby affirmed in toto, with costs against the plaintiff-appellant."^[3]

Hence, the instant petition submitting the following grounds.

THE ORDER DATED FEBRUARY 28, 1991 BASED ON THE ORDER DATED AUGUST 17, 1989 CONSIDERING THAT THE LATTER ORDER SIMPLY RESOLVED THAT THE MORTGAGE IN FAVOR OF THE PHILIPPINE NATIONAL BANK IS BINDING UPON PETITIONER, BUT HAS NOT RESOLVED IN THE DECRETAL PORTION OF SUCH LATTER ORDER WHETHER PHILIPPINE NATIONAL BANK HAS THE RIGHT TO FORECLOSE SUCH MORTGAGE BASED ON THE DEFAULTED OBLIGATIONS OF NORMA NORA, AND IT HAS NOT LIKEWISE RESOLVED IN THE DECRETAL PORTION THEREOF WHETHER SUCH DEFAULTED OBLIGATIONS OF NORMA NORA ARE SECURED BY THE MORTGAGE IN FAVOR OF PHILIPPINE NATIONAL BANK; AND

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ASSUMING FOR THE SAKE OF ARGUMENT THAT RES JUDICATA HAS SET IN, ITS APPLICATION WOULD INVOLVE THE SACRIFICE OF JUSTICE TO TECHNICALITY.^[4]

We deny the petition.

The instant petition has now become moot and academic, because the first case, docketed as Civil Case No. 58173, which is an application for injunction filed by herein petitioner before Branch 162 of the Regional Trial Court, Pasig City against private respondent PNB to prevent the latter from foreclosing his real properties, and which was then pending appeal before the court *a quo* at the time the second action (Civil Case No. 60012) was filed, has now been finally dismissed by the respondent Court of Appeals in CA-G.R. CV No. 29601, to wit:

"WHEREFORE, the appeal is hereby declared abandoned and is dismissed pursuant to Section 1(d), Rule 50 of the Rules of Court."^[5]

Consequently, the instant petition which prays for the declaration of nullity of the auction sale by PNB of private respondent's properties^[6] becomes dismissible under the principle of *res judicata*.

Section 49, Rule 39 of the Revised Rules of Court provides in part:

"SEC. 49. Effect of judgments. - The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

x x x

x x x

x x x

(b) In other cases the judgment or order is, with respect to the matter