

FIFTH DIVISION

[CA-G.R. SP No. 129814, February 27, 2014]

NICANOR L. ESCALANTE. PETITIONER, VS. HON. ANJANETTE N. DE LEON ORTILE, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MARIKINA CITY, BRANCH 156, AND LNC (SPV-AMC) CORPORATION, REPRESENTED BY ITS PRESIDENT, EUSEBIO V. TAN, RESPONDENTS.

DECISION

CARANDANG, J.:

Before Us is the Petition for Certiorari under Rule 65 of the Rules of Court filed by petitioner Nicanor L. Escalante, assailing, on the ground of grave abuse of discretion amounting to lack or in excess of jurisdiction, the Orders dated August 29, 2012 and February 21, 2013 issued by public respondent which denied petitioner's application for issuance of a Writ of Preliminarily Injunction in Civil Case No. 2011-1474-MK entitled: "Nicanor L. Escalante vs. LNC (SPV-AMC) Corporation."

As borne by the record of the case, the facts are as follows:

Petitioner Nicanor Escalante was the former owner of a parcel of land located at 88 Starlite Street, Rancho Estate 3, Concepcion Dos, Marikina City. He obtained a loan from Export Industry Bank (EIB) and as a security thereof, petitioner mortgaged the said property to EIB. He failed to pay his loan; hence, the mortgaged property was foreclosed by EIB. Unable to redeem the property, petitioner negotiated with EIB to buy back the property but EIB already sold the subject property to private respondent LNC (SPV-AMC) Corporation (LNC). Petitioner thus negotiated with LNC for the purchase of the property. From 2007 to 2008, series of negotiations were held between petitioner and LNC. They, however, failed to reach an agreement since they could not agree on the term of payment. LNC insisted that the purchase price be paid within six (6) months while petitioner wanted to pay within one (1) year.

From the time the negotiations bogged down in 2008 nothing was heard from petitioner until three years thereafter when he received on May 6, 2011 a Notice to Vacate^[1] from LNC urging him to transfer peacefully the possession of the property to LNC. This event prompted petitioner to negotiate anew with LNC. Eventually, on August 23, 2011, petitioner and LNC reached an agreement and executed a document denominated as Term Sheet^[2] wherein they agreed, among others, that the purchase price of the property shall be P4,500,000.00, to be paid on or before September 30, 2011; that upon execution of the Term Sheet, the petitioner will give the amount of P900,000.00 to LNC as earnest money which shall form part of the purchase price; that in the event petitioner fails to pay the balance in full on September 30, 2011 or fails to proceed with the transaction, LNC may, by mere notice, rescind the Term Sheet without need of court action and upon issuance of the notice, the Term Sheet shall be automatically rescinded and all the payments

made by petitioner shall be forfeited in favor of LNC as reasonable compensation and liquidated damages.

On August 23, 2011, upon the execution of the Term Sheet, petitioner gave the amount of P900,000.00 to LNC as earnest money.^[3] On September 27, 2011, or three days before the deadline for the full payment of the purchase price, petitioner wrote a letter^[4] to LNC requesting that he be given reasonable time within which to pay in full the purchase price and, as a sign of good faith, he gave the additional amount of P600,000.00^[5] to LNC on October 25, 2011. Instead of favorably acting on the request, LNC sent a Final Demand for Payment^[6] to petitioner demanding the full payment of the outstanding balance on or before November 15, 2011, otherwise, LNC would rescind the Term Sheet and forfeit all payments made by petitioner and refer the matter to their legal department for appropriate action.

A day before the deadline set by LNC for payment, petitioner filed before the Regional Trial Court of Marikina City, Branch 156, a Complaint^[7] for Reformation of Instrument with application for the issuance of Writ of Preliminary Injunction. In support of his application for the issuance of a Writ of Preliminary Injunction, petitioner submitted his Judicial Affidavit^[8] wherein he alleged, among others, that, although he was not certain that he would be able to meet the designated closing date for him to pay in full the amount of the purchase price, he, nevertheless, signed the Term Sheet because he and his family were threatened of being evicted from the property. Petitioner lamented that his family is in danger of losing their home and also the payment he made if LNC decides to forfeit his payment and to rescind the Term Sheet. He thus prayed that his application for the issuance of a Writ of Preliminary Injunction be granted to prevent LNC from forfeiting the payments he made and of rescinding the Term Sheet.

On August 29, 2012, public respondent issued an Order denying petitioner's application for the issuance of Writ of Preliminary Injunction. The subsequent Motion for Reconsideration of petitioner was also denied by public respondent, hence, petitioner is now before Us seeking redress, assigning as issues the following:

- A. Whether or not public respondent judge acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in issuing the assailed orders considering that petitioner had shown and demonstrated by his Judicial Affidavit as his direct testimony and documentary exhibits offered in evidence a right that is actual and existing, the invasion of that right, and that grave and irreparable injury would result thereby unless restrained, and there is no plain, speedy and adequate remedy in the ordinary course of law except this petition.
- B. Corollary to the first issue is whether the execution of the Term Sheet was attended with inequitable conduct preventing the true intention of the parties from being expressed therein. Thus, whether the petitioner, by the fact of the execution of the Term Sheet, was vested or imbued with a right that deserve protecting by way of preliminary injunction to prevent LNC from