

SEVENTH DIVISION

[CA – G.R. SP No. 134186, November 24, 2014]

BANGKO SENTRAL NG PILIPINAS, PETITIONER, VS. HON. ISMAEL T. DULDULAO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 197 OF THE REGIONAL TRIAL COURT OF LAS PIÑAS CITY, THE EX-OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF LAS PIÑAS CITY, AND BF HOMES, INCORPORATED, RESPONDENTS.

DECISION

LOPEZ, J.:

This petition for certiorari under Rule 65 of the Rules of Court assails: (1) the September 15, 2013 Order of the Regional Trial Court of Las Piñas City that denied the Motion to Dismiss filed by the Bangko Sentral ng Pilipinas (BSP); and (2) the December 13, 2013 Order denying BSP's motion for reconsideration.

The facts are culled from the records.

In 2001, Filipino Vastland Company, Incorporated borrowed P349,500,000.00 from Banco Filipino Savings and Mortgage Bank, evidenced by promissory notes^[1] and secured by a deed of mortgage that covered several parcels of land. One of the mortgaged property is a 29,862 square meter land located in Las Piñas City covered by TCT No. (69062) T-34857-A registered to BF Homes, Incorporated. BF Homes had previously authorized Filipino Vastland, through a **Special Power of Attorney**, to use the property as collateral for its loan with Banco Filipino.^[2]

Sometime in April 2009, Banco Filipino obtained a thirty-day Emergency Loan from BSP pursuant to Monetary Board Resolution (MB Res.) No. 477.^[3] Banco Filipino then executed a Promissory Note with Trust Receipt Agreement for P534,477,550.00 payable not beyond May 1, 2009, secured by Banco Filipino's past due loan receivables that were, in turn, secured by real estate mortgages.^[4] Concurrently, a **Deed of Assignment of Mortgage** was executed wherein Banco Filipino assigned and indorsed several promissory notes and mortgages in favor of BSP, including the Filipino Vastland promissory notes and mortgages.^[5] The Deed of Assignment of Mortgage authorized BSP to foreclose the properties originally mortgaged to Banco Filipino.^[6]

Banco Filipino's Emergency Loan was renewed and extended several times^[7], the last of which was executed on October 28, 2009 with a face value of P487,334,650.00 and a maturity date of November 27, 2009.^[8] The Emergency Loan remained unpaid.^[9]

On March 17, 2011, the Monetary Board issued MB Res. No. 372-A placing Banco

Filipino under the receivership of Philippine Deposit Insurance Commission (PDIC). Consequently, BSP considered Banco Filipino as having defaulted on the Emergency Loan and started calling on the securities provided under the Promissory Note with Trust Receipt Agreement and the Deed of Assignment of Mortgage.

On March 21, 2011, the BSP's Department of Loans and Credit (DLC) sent a letter to Filipino Vastland demanding payment of the loans it acquired from Banco Filipino.^[10] Filipino Vastland, through its treasurer Rosalina Tacolod, sent letters to the BSP on May 9, 2011 and June 7, 2011 asking for additional time to respond to the demand letter.^[11] Meanwhile, on October 27, 2011, the Monetary Board issued MB Res. No. 1635 directing PDIC to proceed with the liquidation of Banco Filipino.^[12]

On April 31, 2013, BSP filed an Application for Extrajudicial Foreclosure Sale of Real Estate Mortgage of the property covered by TCT No. (69062) T-34857-A with the Office of the Clerk of Court as Ex-Officio Sheriff for the Regional Trial Court of Las Piñas City.^[13] A Notice of Extrajudicial Sale was issued on June 17, 2013, scheduling the public auction sale on July 24, 2013. BF Homes received the Notice of Extrajudicial Sale on July 9, 2013.^[14]

On July 23, 2013, BF Homes, filed a Petition for Declaratory Relief and Prohibition before the Regional Trial Court of Las Piñas City, Branch 197 (RTC). BF Homes, with office address at PSCOR Building, J. Elizalde St., BF Homes, Parañaque City, impleaded: (1) BSP with office address at A. Mabini St., cor. P. Ocampo St., Malate, Manila; (2) Banco Filipino with office address at 101 Paseo de Roxas, Makati City which is now under receivership of PDIC located at SSS Building, Ayala Avenue corner V.A. Rufino St., 1226, Makati City; and (3) the Ex-Officio Sheriff-Regional Trial Court of Las Piñas City. BF Homes alleged that a pronouncement, by way of declaratory relief, should be made on the rights of BSP, as mortgagee, to initiate foreclosure proceedings against BF Homes. The property to be foreclosed was meant to secure the loan of Filipino Vastland and not Banco Filipino's Emergency Loan. The continuation of the foreclosure proceedings and issuance of certificate of sale will necessarily result in breach or violation of the mortgagor's rights.^[15]

The public auction sale was conducted on July 24, 2013 and BSP emerged as the winning bidder.^[16] The Certificate of Sale was issued on July 31, 2013^[17] and subsequently annotated in TCT No. (69062) T-34857-A on October 29, 2013^[18].

Meanwhile, on July 31, 2013, BSP filed a motion to dismiss BF Homes' petition, arguing that despite being designated as an action for declaratory relief, the petition is a real action affecting the title to and interests in the subject property. Since the docket fees paid did not correspond to the value of the subject property, the RTC did not acquire jurisdiction over the subject matter of the case. Even if the petition is not a real action, the venue which was filed at the address of a nominal party, i.e. the Ex-Officio Sheriff of Las Piñas City, is improperly laid. Assuming that the petition is one for declaratory relief, it is dismissible since: (1) the auction sale conducted on July 24, 2013 has rendered the petition moot and academic; (2) BF Homes is not a party in interest, not being a party to the Deed of Assignment of Mortgage; and (3) BF Homes is guilty of laches. Further, assuming that the petition can be treated as one for prohibition, it should be dismissed for failure to comply with the requirements of Section 2, Rule 65^[19] in relation to Section 3, Rule 46^[20] of the

Rules of Court.

On September 15, 2013, the trial court issued an Order denying BSP's motion to dismiss, to wit:

In view thereof, the Motion to Dismiss of respondent BSP and that of respondent BFSMB are hereby both DENIED.

Accordingly, let summons be issued anew and served, together with a copy of the petition and its annexes, upon respondent BSP giving it a chance to file its answer to the petition within the period set therein.

SO ORDERED.^[21]

BSP moved for reconsideration but it was denied.^[22] Hence this petition for certiorari with prayer for the issuance of an injunctive writ, ascribing grave abuse of discretion upon the trial court for failing to dismiss BF Homes' petition.^[23]

On March 13, 2014, We issued a Resolution holding the issuance of an injunctive writ in abeyance and ordering private respondent BF Homes to file its Comment.^[24]

In its Comment, BF Homes insists that the petition is one for declaratory relief because it involves the determination of the respective rights of the parties under the Deed of Assignment of Mortgage. Also, declaratory relief is a personal action and the venue is at the option of the plaintiff. The petition was properly filed in Las Piñas City since one of the respondents is the Ex-Officio Sheriff of the RTC of Las Piñas City. BF Homes further stressed that the petition cannot be dismissed for being moot and academic since it was filed before the foreclosure sale was conducted or before there was breach or violation to the Deed of Assignment of Mortgage.^[25]

With the filing of BF Homes' Comment, the case is now considered ripe for decision.^[26]

Stripped of non-essentials, the allegations of the parties precipitate two primary issues: (1) whether the petition filed by BF Homes before the RTC of Las Piñas City is one for declaratory relief; and (2) if so, whether the petition is dismissible.

Section 1, Rule 63 of the Rules of Court on Declaratory Relief provides:

Section 1. Who may file petition. - Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

The requirements of an action for declaratory relief are as follows: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.^[27] There is no dispute that the first, second and fourth requisites are present in this case. The BSP, however, claims that BF Homes is not a proper party for declaratory relief because it is not a signatory to the Deed of Assignment of Mortgage. We disagree.

Legal standing or *locus standi* has been defined as a personal and substantial interest in the case, such that the party has sustained or will sustain direct injury as a result of the challenged act.^[28] Interest means a material interest in issue that is affected by the questioned act or instrument, as distinguished from a mere incidental interest in the question involved.^[29] Here, We recall that the property foreclosed by BSP is covered by TCT No. (69062) T-34857-A in the name of BF Homes. As the registered owner of the property foreclosed, it is indisputable that BF Homes has a legal interest in the case.

That BF Homes is not a party to the Deed of Assignment of Mortgage does not negate its interest in the case. The Deed of Assignment of Mortgage is not the only contract under scrutiny. At the heart of this controversy is the Special Power of Attorney executed by BF Homes in favor of Filipino Vastland allowing it to use the subject property as collateral to its loan with Banco Filipino. As BF Homes alleged in its petition, the foreclosed property was meant to secure the loan of Filipino Vastland and not Banco Filipino's Emergency Loan. The rights acquired by BSP as mortgagee under the Deed of Assignment of Mortgage must therefore be reconciled with the provisions of the Power of Attorney, making BF Homes' legal interest indubitable.

Considering that the petition filed by BF Homes is one for declaratory relief, We find that it should be dismissed for improper venue. Both the BSP and BF Homes agree that declaratory relief is a personal action. Section 2, Rule 4 of the Rules of Court reads:

Sec. 2. Venue of personal actions. - All other actions may be commenced and tried where the plaintiff or **any of the principal plaintiffs resides**, or where the defendant or **any of the principal defendants resides**, or in case of a non-resident defendant where he may be found, at the election of the plaintiff. (Emphasis Ours)

Sec. 2 of Rule 4 indicates clearly that when there is more than one plaintiff in a personal action, the residences of the **principal** parties should be the basis for determining proper venue. The word "principal" has been added in order to prevent the plaintiff from choosing the residence of a minor plaintiff or defendant as the venue.^[30] Eliminate the qualifying term "principal" and the purpose of the Rule would be defeated where a nominal or formal party is impleaded in the action since the latter would not have the degree of interest in the subject of the action which

would warrant and entail the desirably active participation expected of litigants in a case.^[31] The Ex-Officio Sheriff of the RTC of Las Piñas City is merely a nominal party. Hence, the petition for declaratory relief should have been filed where the principal parties are located, i.e. either at Parañaque City for BF Homes, at Manila for BSP, or at Makati City for Banco Filipino.

More importantly, the petition for declaratory relief can no longer prosper in light of the auction sale conducted on July 24, 2013, the issuance of the Certificate of Sale on July 31, 2013, and its annotation in TCT No. (69062) T-34857-A on October 29, 2013.^[32] An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising from them. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.^[33] We note that BF Homes filed the petition on July 23, 2014, or one day before the auction sale was conducted. The petition was filed to determine the rights of BSP as a mortgagee with the purpose of preventing it from foreclosing and auctioning off the subject property. Considering that the act sought to be prevented by the petition has already occurred, the necessity of a declaratory relief is rendered futile. Thus, the petition must be dismissed.

Incidentally, We note that Section 6, Rule 63 of the Rules of Court allows a petition for declaratory relief to be converted into an ordinary action if before the termination of the case, a breach or violation of an instrument should take place.^[34] In this case, however, We cannot apply the provisions of Section 6. BF Homes neither asked for the conversion of its petition for declaratory relief into an ordinary action nor did it specify the ordinary action it desired. The Court cannot reasonably assume that BF Homes now seeks either the annulment of the foreclosure sale or the annulment of the Deed of Assignment of Mortgages, or both.^[35]

ACCORDINGLY, the petition for certiorari is **GRANTED**. The September 15, 2013 and December 13, 2013 Orders of the Regional Trial Court of Las Piñas City are **SET ASIDE**. The petition for declaratory relief filed by BF Homes, Incorporated is **DISMISSED WITHOUT PREJUDICE** to the filing of the appropriate ordinary action.

SO ORDERED.

Reyes, Jr., J.C., (Chairperson) and Inting, S.B., JJ., concur.

^[1] Rollo, pp. 525-534. The promissory notes are: (1) Promissory Note No. 08-28543-8-01 for P106,000,000.00 payable on August 1, 2006; (2) Promissory Note No. 08-28572-1-01 for P163,000,000.00 payable on October 1, 2006; (3) Promissory Note No. 08-28584-5-01 for P5,000,000.00 payable on October 1, 2006; (4) Promissory Note No. 05-28591-8-01 for P37,000,000.00 payable on October 1, 2006; (5) Promissory Note No. 08-28612-4-01 for P35,500,000.00 payable on October 1, 2006; and (6) Promissory Note No. 08-28622-1-01 for P3,000,000.00 payable on August 1, 2006.