

FOURH DIVISION

[CA-G.R. SP NO. 75127, September 06, 2006]

**PISO DEVELOPMENT BANK, REPRESENTED BY ITS LIQUIDATOR
THE PHILIPPINE DEPOSIT INSURANCE CORPORATION,
PETITIONER, VS. HON. IGNACIO M. CAPULONG AND LORENZANA
FOOD CORPORATION, RESPONDENTS.**

D E C I S I O N

BARRIOS, J.:

The respondent Lorenzana Food Corporation (or LFC) sued petitioner PISO Development Bank (or PISO Bank) principally for *specific performance and injunctive relief* before the Regional Trial Court of Makati City (or RTC). This was docketed as Civil Case No. 01-1312 and raffled to Branch 134 presided by the respondent Hon. Ignacio M. Capulong.

This petition is an offshoot of the said civil case in the course of which the application for writ of preliminary injunction of LFC was granted in the Resolution dated March 13, 2002. Asserting that this was issued with grave abuse of discretion, PISO Bank asks that this be nullified and set aside.

In 1981, LFC obtained a loan from PISO Bank. To secure this, LFC executed a Real Estate Mortgage over its properties located in Heroes Hills, Quezon City (or Heroes Hill property) and Habay Bacoar Cavite (or Habay property), embraced in TCT No. RT-7225 and TCT No. (T-87546) RT-19991.

LFC had made partial payments, unfortunately it soon experienced financial difficulties and so failed to pay the remaining installments. By then PISO Bank was also in financial distress, and LFC negotiated with it through its liquidator Philippine Deposit Insurance Corporation for the settlement of its unpaid obligations. Allegedly, a *dacion en pago* arrangement was initially agreed upon whereby LFC was to transfer to PISO Bank its Habay property as full settlement of its outstanding obligations. But PISO Bank later reneged on its commitment, and to top it all also imposed a higher interest rate.

PISO Bank filed a petition for extra-judicial foreclosure of the mortgage executed by LFC with the Office of the Sheriff of the Regional Trial Court of Makati City. A Notice of Sale was issued setting the Heroes Hills property for public auction on August 23, 2003 to satisfy the full amount of LFC's indebtedness and the interest thereon.

To prevent this foreclosure sale from proceeding, LFC filed the said civil suit *for specific performance with urgent motion for issuance of temporary restraining order*. After an *ex-parte* hearing a temporary restraining order was issued providing that:

This Court, after considering the complaint and the allegations thereof supporting the prayer, as well as the evidence so far adduced, and without necessarily implying that plaintiff has a clear right for the relief prayed for, but solely to preserve the status quo between the parties, until after the writ of preliminary injunction shall been heard and resolved, the defendants, their agents, representatives, and all persons acting for and in their behalf, are hereby enjoined from continuing with the foreclosure proceedings and sale of the subject property at public auction on 23 August 2001 at 10:00 o' clock in the morning.

This Temporary Restraining Order shall expire Twenty (20) days from today.

The Sheriff of this Branch is hereby directed to serve copies of this Order upon the defendants at their given addresses.

Let the hearing on the application for the writ of preliminary injunction be set on August 30, 2001 at 2:00 in the afternoon.

SO ORDERED.(pp. 81-82, rollo)

The trial court thereafter heard LFC's application for the writ of preliminary injunction, and on March 13, 2002 the RTC handed down the assailed Resolution disposing that:

WHEREFORE, without necessarily touching on the merits of the case and upon plaintiff's filing of a bond in the amount of ONE MILLION PESOS (Php1,000,000.00), duly approved by this Court, let a WRIT OF PRELIMINARY INJUNCTION be issued enjoining the defendants Piso Development Bank, Inc. and its Liquidator, Philippine Deposit Insurance Corporation to proceed with the threatened foreclosure of the plaintiff's property covered by TCT No. RT-72255 of the Registry of Deeds of Quezon City.

SO ORDERED.(p. 37, rollo)

As recourse against the said set back, PISO Bank has come to this Court by this *Petition for Certiorari*, theorizing that:

RESPONDENT JUDGE COMMITTED GRAVE AND FUNDAMENTAL ERRORS OF FACT AND/OR LAW TANTAMOUNT TO HAVING ACTED WITH GRAVE ABUSE OR PATENT ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTION DESPITE (1) THE FAILURE OF THE RESPONDENT LFC TO ESTABLISH CLEAR AND UNMISTAKABLE RIGHT OVER THE FORECLOSED PROPERTY AS WOULD ENTITLE IT TO AN INJUNCTIVE RELIEF; (2) FAILURE OF RESPONDENT LFC TO CONVINCINGLY AND CLEARLY SHOW THAT PETITIONER HAS COMMITTED AN ACT IN VIOLATION OF RESPONDENT LFC'S SUBSTANTIVE RIGHTS; AND (3) THE ABSENCE OF IRREPARABLE INJURY TO RESPONDENT LFC, IF THE INJUNCTIVE WRIT IS NOT GRANTED. (p. 18, rollo)