



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOVATEKNIKA LAND  
CORPORATION,

Petitioner,

G.R. No. 194104

Present:

- versus -

LEONARDO-DE CASTRO,  
PERALTA, J., *Acting Chairperson*,\*\*  
ABAD,  
MENDOZA, and  
LEONEN, JJ.

PHILIPPINE NATIONAL BANK  
and THE REGISTER OF DEEDS  
OF MANILA CITY,

Respondents.

Promulgated:

March 13, 2013

*Macapagal*

X ----- X

DECISION

**MENDOZA, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, assailing the July 19, 2010 Resolution<sup>1</sup> and the October 6, 2010 Resolution<sup>2</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 114674, entitled *Novateknika Land Corporation v. Hon. Thelma Bunyi-Medina, in her capacity as Presiding Judge of the Regional Trial Court (Branch 32) of Manila, et al.*

\* Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1430 dated March 12, 2013.

\*\* Per Special Order No. 1429 dated March 12, 2013.

<sup>1</sup> *Rollo*, pp. 68-70; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justice Remedios A. Salazar-Fernando and Associate Justice Michael P. Elbinias of the Second Division.

<sup>2</sup> *Id.* at 62-66.

### **The Facts**

On December 13, 1993, petitioner Novateknika Land Corporation (*NLC*), together with Kenstar Industrial Corporation (*KIC*), Plastic City Corporation (*PCC*), Recovery Real Estate Corporation, Rexlon Realty Group, Inc., Pacific Plastic Corporation, Inland Container Corporation, Kennex Container Corporation, Rexlon Industrial Corporation and MPC Plastic Corporation, entered into a Credit Agreement<sup>3</sup> with respondent Philippine National Bank (*PNB*) for the availment of an omnibus line in the principal amount of ₱500,000,000.00. The borrowers bound themselves to be jointly and severally liable to PNB for the full payment of their obligations, such that the bank can demand payment and performance from any one of the borrowers.<sup>4</sup> As one of the securities for the credit accommodation to be extended by PNB pursuant to the Credit Agreement, the borrowers, on the same date, executed the Real Estate and Chattel Mortgage<sup>5</sup> covering 21 properties which included four (4) parcels of land under the name of NLC.

On January 2, 1996, the parties executed the Renewal and Conversion Agreement<sup>6</sup> extending the term of the omnibus line, which expired on December 22, 1994, and converting it into a peso/foreign currency convertible omnibus line. The Second Renewal Agreement,<sup>7</sup> dated March 17, 1997, prolonged the term of the omnibus line to December 18, 1997.

Several drawdowns, evidenced by promissory notes and trust receipts, were made by KIC and PCC during the effectivity of the abovementioned loan documents, bringing their total outstanding principal obligation to ₱593,449,464.79.<sup>8</sup> Despite repeated demands made by PNB, the loan remained unpaid. PNB was then constrained to file petitions for extrajudicial foreclosure over the properties covered by the Real Estate and Chattel Mortgage, which included the four (4) parcels of land of NLC.<sup>9</sup>

On March 8, 2010, the Regional Trial Court of Manila issued the Notice of Extrajudicial Sale,<sup>10</sup> announcing the sale of NLC properties on May 5, 2010. The properties were awarded to PNB, as the sole bidder, and

---

<sup>3</sup> Id. at 111-131.

<sup>4</sup> Id. at 122.

<sup>5</sup> Id. at 132-141.

<sup>6</sup> Id. at 188-204.

<sup>7</sup> Id. at 205-211.

<sup>8</sup> Id. at 377 and 382.

<sup>9</sup> Id. at 382-404 and 490.

<sup>10</sup> Id. at 405-408.

the bid amount was applied in partial satisfaction of the outstanding obligation of the borrowers.<sup>11</sup>

NLC filed an action for injunction with a prayer for the issuance of a temporary restraining order (*TRO*) and/or a writ of preliminary injunction (*WPI*) in the Complaint,<sup>12</sup> dated May 5, 2010, arguing that: (1) PNB's right to bring a mortgage action had already prescribed because the demand letter was sent to NLC more than 10 years after the expiration of the omnibus line and more than 14 years after the execution of the Real Estate and Chattel Mortgage; (2) NLC did not benefit from the loans and acted merely as a third-party mortgagor; and (3) the stockholders of NLC did not properly authorize the execution of a mortgage over its properties.

In its May 20, 2010 Order,<sup>13</sup> the Regional Trial Court, Branch 32, Manila (*RTC*), granted NLC's application for the issuance of a *TRO*, preventing PNB from consummating the public sale and from doing any act that would tend to impede, hamper, limit or adversely affect its full enjoyment of its ownership of the subject properties.

Later, on June 22, 2010, the *RTC* issued the Order<sup>14</sup> denying NLC's prayer for injunctive relief, pronouncing that the evidence so far presented by NLC did not warrant the issuance of a *WPI* because it failed to show that the right alleged in its complaint was clear and unmistakable. The *RTC* found that, contrary to the assertions of NLC, the mortgage action had not prescribed. The receipt of the demand letters from PNB by KIC and PCC served to halt the running of the prescriptive period. That NLC did not receive a demand letter from PNB within the 10-year period was of no moment because the obligation it contracted, together with the other borrowers, was solidary in nature and was necessarily indivisible insofar as prescription was concerned. NLC could not evade liability either, by reasoning that it only acted as a third-party mortgagor. The terms of the Credit Agreement, as well as the succeeding loan documents, explicitly stated that PNB could demand payment from any of the borrowers, including NLC, regardless of whether it availed of the credit line or not. Finally, the *RTC* discounted NLC's claim that the execution of the mortgage contract was not authorized by its stockholders and was, therefore, *ultra vires* and not binding upon it.

Aggrieved, NLC elevated the case to the *CA* via a petition for *certiorari* under Rule 65 of the Rules of Court. In its Resolution, dated July 19, 2010, the *CA* dismissed the petition outright for failure of NLC to file a

---

<sup>11</sup> Id. at 490.

<sup>12</sup> Id. at 410-432.

<sup>13</sup> Id. at 437-440.

<sup>14</sup> Id. at 489-494.

motion for reconsideration before the RTC. The CA noted that NLC simply averred that the filing of the said motion was unnecessary because of the alleged extreme urgency for the CA to annul the questioned order of the trial court. The CA then reiterated the rule that the filing of a motion for reconsideration is an indispensable condition to the filing of a special civil action for *certiorari*.<sup>15</sup>

Hence, this petition.

### **The Issues**

Petitioner NLC raises the following:

- 1. Whether the Court of Appeals erred in refusing to give due course to NLC's Petition for Certiorari under Rule 65 of the Rules of Court in CA-G.R. SP No. 114674.**

and

- A. Whether there is extreme urgency for petitioner to resort directly to the Court of Appeals to annul and set aside the Trial Court's Order dated 22 June 2010.**<sup>16</sup>

In other words, the only question to be resolved by the Court in the case at bench is whether the petitioner was justified in elevating the case to the CA without filing the requisite motion for reconsideration before the RTC.

### **The Court's Ruling**

Petitioner NLC argues that although the filing of a motion for reconsideration is necessary before instituting a special civil action for *certiorari*, the rule admits of certain exceptions; such as, when there is an urgent necessity for the resolution of the question and any further delay would prejudice the interest of the petitioner or if the subject matter of the action is perishable.<sup>17</sup> NLC asserts that its situation falls under this exception because once the properties subject of the mortgage are sold and the corresponding certificates of sale are issued and registered, it loses the

---

<sup>15</sup> Id. at 68-70.

<sup>16</sup> Id. at 40.

<sup>17</sup> Id. at 686.

right to redeem its properties under Section 47 of the General Banking Law.<sup>18</sup> Consequently, it posits that a motion for reconsideration is not a plain, speedy and adequate remedy to address the extreme urgency of the case, considering that any judgment on the merits of the civil case would be ineffectual after the issuance and registration of the certificates of sale as the properties may be freely sold by PNB to another buyer.<sup>19</sup>

The Court disagrees.

*Motion for reconsideration is a condition sine qua non to certiorari*

Section 1, Rule 65 of the Rules of Court states that:

**Section 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied)**

X X X X

Unmistakably, before a petition for *certiorari* can prosper, the petitioner must be able to show, among others, that he does not have any other “plain, speedy and adequate remedy in the ordinary course of law.” This remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the questioned order.<sup>20</sup>

Well established is the rule that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for *certiorari*, subject to certain exceptions,<sup>21</sup> to wit:

---

<sup>18</sup> Id. at 689; Republic Act No. 8791, *The General Banking Law of 2000*, Section 47:

“x x x, Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. x x x”

<sup>19</sup> *Rollo*, pp. 689-690.

<sup>20</sup> *Metro Transit Organization, Inc. v. The Court of Appeals*, 440 Phil. 743, 753 (2002).

<sup>21</sup> Id. at 751.

- (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
- (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
- (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner or the subject matter of the action is perishable;
- (d) where, under the circumstances, a motion for reconsideration would be useless;
- (e) where petitioner was deprived of due process and there is extreme urgency for relief;
- (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
- (g) where the proceedings in the lower court are a nullity for lack of due process;
- (h) where the proceedings was *ex parte* or in which the petitioner had no opportunity to object; and
- (i) where the issue raised is one purely of law or where public interest is involved.<sup>22</sup>

None of the exceptions, however, is present in this case.

The supposed urgency of the case was not of such a nature as to necessitate the direct resort to the CA. The petitioner failed to show that a petition for *certiorari* would be a more speedy and adequate remedy than a motion for reconsideration from the order of the RTC.

Jurisprudence is replete with decisions which reiterate that before filing a petition for *certiorari* in a higher court, the attention of the lower court should be first called to its supposed error and its correction should be sought. Failing this, the petition for certiorari should be denied.<sup>23</sup> The reason for this is to afford the lower court the opportunity to correct any actual or fancied error attributed to it through a re-examination of the legal and factual aspects of the case. The petitioner's disregard of this rule deprived the trial court the right and the opportunity to rectify an error unwittingly committed or to vindicate itself of an act unfairly imputed.<sup>24</sup>

---

<sup>22</sup> *Delos Reyes v. Flores*, G.R. No. 168726, March 5, 2010, 614 SCRA 270, 277-278.

<sup>23</sup> *Butuan Bay Wood Export Corporation v. Court of Appeals*, 186 Phil. 174, 184 (1980).

<sup>24</sup> *Estate of Salvador Serra Serra v. Heirs of Hernaez*, 503 Phil. 736, 743 (2005).

As aptly declared by this Court in the case of *Cervantes v. Court of Appeals*:<sup>25</sup>

**It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do. Thus, the Court of Appeals correctly dismissed the petition.<sup>26</sup> (Emphasis supplied)**

In the case at bench, the proper recourse of NLC was to have filed a motion for reconsideration of the June 22, 2010 Order of the RTC denying its application for injunctive relief. Only after the denial of such motion can it be deemed to have exhausted all available remedies and be justified in elevating the case to the CA through a petition for *certiorari* under Rule 65.

The petitioner is reminded that procedural rules are instituted to facilitate the adjudication of cases and, as such, the courts and the litigants are enjoined to abide strictly by the rules. While it is true that litigation is not a game of technicalities, it is equally important that every case must be prosecuted in accordance with the prescribed rules of procedure to ensure an orderly and speedy administration of justice.<sup>27</sup> Only for the most persuasive of reasons can such rules be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.<sup>28</sup>

#### *No grave abuse of discretion*

At any rate, even if the Court allows the premature recourse to *certiorari* without the petitioner having filed a motion for reconsideration in the trial court, the petition would still fail. Nothing is more settled than the principle that a special civil action for *certiorari* under Rule 65 will prosper only if grave abuse of discretion is alleged and proved to exist. “Grave abuse of discretion,” as contemplated by the Rules of Court, is “the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power” that is so patent and gross that it “amounts to an evasion or refusal to perform a positive duty

---

<sup>25</sup> 512 Phil. 210 (2005).

<sup>26</sup> *Id.* at 217.

<sup>27</sup> *Garbo v. Court of Appeals*, 327 Phil. 780, 784 (1996).

<sup>28</sup> *Galang v. Court of Appeals*, 276 Phil. 748, 755 (1991).

enjoined by law or to act at all in contemplation of law.”<sup>29</sup> Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order.<sup>30</sup> The burden of proof is on the petitioner to show that the RTC issued its June 22, 2010 Order with grave abuse of discretion. This petitioner failed to do.

Based on the records of the case, the Court finds that the RTC did not abuse its discretion in denying NLC’s application for a writ of preliminary injunction.

The sole object of a preliminary injunction is to preserve the *status quo* of the parties until the merits of the case can be heard.<sup>31</sup> “A writ of preliminary injunction may be issued only upon clear showing by the applicant of the existence of the following: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; and (3) an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.”<sup>32</sup>

In this case, NLC was unable to convincingly substantiate its claim that it had an unmistakable right to be protected which was in danger of being violated by respondent PNB. Although it is clear, as the petitioner avers, that it was the registered owner of the four (4) properties subject of this petition, it is similarly clear that the said properties were mortgaged to PNB, as evidenced by the Real Estate and Chattel Mortgage<sup>33</sup> which was duly registered with the Register of Deeds who then annotated such encumbrance in the transfer certificates of title.<sup>34</sup> Moreover, the Credit Agreement, the Renewal and Conversion Agreement and the Second Renewal Agreement (collectively, the “Loan Documents”), documenting the terms of the omnibus line granted to the petitioner and its co-borrowers, all indicate that the full payment of the availments or advances on the omnibus credit line are secured by the Real Estate and Chattel Mortgage, as stipulated in Section 7 of the Credit Agreement:

#### Section 7. Security

**7.01 Security Document.** The full payment of the Availments/Advances on the Omnibus Line and any and all sums payable by the Borrowers in connection with the Omnibus Line and other documents contemplated hereby and the performance of all

---

<sup>29</sup> *Beluso v. Commission on Elections*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456.

<sup>30</sup> *Republic of the Philippines v. Sandiganbayan*, 499 Phil. 138, 152 (2005).

<sup>31</sup> *Buyco v. Baraquia*, G.R. No. 177486, December 21, 2009, 608 SCRA 699, 704.

<sup>32</sup> *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*, G.R. No. 161004, April 14, 2008, 551 SCRA 183, 189.

<sup>33</sup> *Rollo*, pp. 132-141.

<sup>34</sup> *Id.* at 602-613.



obligations of the Borrowers hereunder and under the Notes and such other documents shall be secured by the following, *viz.*:

(a) real estate mortgage on twenty one (21) parcels of land, with an aggregate area of 91,659 square meters, more or less, located in Metro Manila and covered by various transfer certificates of title and chattel mortgage on various machineries and equipment located at Bo. Canumay, Valenzuela, Metro Manila, which mortgage shall be evidenced by a Real Estate and Chattel Mortgage with Power of Attorney (the "Mortgage Document") to be executed by the Borrowers in favor of the Bank in form and substance satisfactory to the Bank.<sup>35</sup>

x x x x

Section 8 of the Renewal and Conversion Agreement and Section 3 of the Second Renewal Agreement contain a similarly worded provision.<sup>36</sup>

Thus, the foreclosure of the mortgage is but a necessary consequence of the non-payment by petitioner of its obligation which was secured by the mortgage.<sup>37</sup> It would have been improper for the RTC to enjoin the foreclosure, the succeeding auction sale and the issuance and registration of the certificate of sale in favor of the winning bidder in face of the failure of petitioner to establish, at that time, its legal right to prevent and consummate such foreclosure by PNB.

In addition, it must be pointed out that, as a general rule, the RTC decision granting or, in this case, denying injunctive relief will not be set aside on appeal unless the court abused its discretion. The trial court can be said to have abused its discretion if it lacked jurisdiction over the case, failed to consider and make a record of the factors relevant to its determination, relied on clearly erroneous factual findings, considered irrelevant or improper factors, gave too much weight to one factor, relied on erroneous conclusions of law or equity, or misapplied its factual or legal conclusions.<sup>38</sup>

The June 22, 2010 Order of the RTC denying NLC's application for preliminary injunction plainly stated the reasons for its decision, based on the evidence presented before it so far. The Court agrees with the evaluation of the facts made by the RTC and, consequently, sees no reason to reverse its findings.

As regards NLC's allegation that it cannot be held liable for the promissory notes executed by KIC and PCC because it did not benefit from

---

<sup>35</sup> Id. at 120.

<sup>36</sup> Id. at 200 and 207.

<sup>37</sup> *Spouses Delos Santos v. Metropolitan Bank and Trust Company*, G.R No. 153852, October 24, 2012.

<sup>38</sup> *Almeida v. Court of Appeals*, 489 Phil. 648, 663-664 (2005).

the proceeds of the loan, the following provisions in the Loan Documents reveal that the petitioner bound itself to be solidarily liable for the loans made by its co-borrowers:

*Credit Agreement dated December 13, 1993, Sec. 9.3:*

The Borrowers shall be jointly and severally liable to the Bank for the full payment and complete performance of all obligations of the Borrower as provided herein. Accordingly, the Bank may demand payment and performance from any one of the Borrowers.

*Renewal and Conversion Agreement dated January 2, 1996, Sec. 10.03:*

Nature of the Borrowers' Liability. The Borrowers shall be jointly and severally liable to the Bank for the full payment and complete performance of all obligations of the Borrowers as provided herein. Accordingly, the Bank may demand payment and performance from any one of the Borrowers.

Because there is no ambiguity in the terms of the Loan Documents, NLC must honor the conditions of the omnibus credit line granted to it and its co-borrowers by respondent PNB. The Court has repeatedly emphasized that "a contract duly executed is the law between the parties and they are obliged to comply fully and not selectively with its terms."<sup>39</sup> Petitioner NLC, as a solidary debtor, can be made to answer for the promissory notes executed by KIC and PCC, in accordance with the Loan Documents, unless it can prove otherwise. Hence, the Court agrees with the RTC when it justifiably ruled that NLC could not escape liability for the reason that it simply acted as a third-party mortgagor and did not profit from the loan.

Therefore, even if this Court permits the petitioner to dispense with the requirement of filing a motion for reconsideration before resorting to *certiorari*, the petitioner still cannot be granted the injunctive relief it prayed for because the Court finds no abuse of discretion on the part of the RTC in denying the application for a writ of preliminary injunction by the petitioner.

**WHEREFORE**, the petition is **DENIED**.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

<sup>39</sup> *Pilipino Telephone Corporation v. Tecson*, G.R. No. 156966. May 7, 2004, 428 SCRA 378, 382.

**WE CONCUR:**

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*[Signature]*  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson

*[Signature]*  
**ROBERTO A. ABAD**  
Associate Justice

*[Signature]*  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

*[Signature]*  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson, Third Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice