



**Republic of the Philippines  
Supreme Court  
Manila**

**FIRST DIVISION**

**PALM TREE ESTATES, INC.  
and BELLE AIR GOLF AND  
COUNTRY CLUB, INC.,**  
Petitioners,

**G.R. No. 159370**

Present:

SERENO, *CJ.*,  
Chairperson,  
CARPIO,\*  
LEONARDO-DE CASTRO,  
VILLARAMA, JR., and  
REYES, *JJ.*

- versus -

**PHILIPPINE NATIONAL  
BANK,**  
Respondent.

Promulgated:

**03 OCT 2012**

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**DECISION**

**LEONARDO-DE CASTRO, J.:**

This is a Petition for Review on *Certiorari*<sup>1</sup> of the Decision<sup>2</sup> and Resolution<sup>3</sup> dated March 21, 2003 and August 4, 2003, respectively, of the Court of Appeals in CA-G.R. SP No. 67547, which granted the Petition for *Certiorari* filed by respondent Philippine National Bank (PNB) and reversed

\* Per Special Order No. 1315 dated September 21, 2012.

<sup>1</sup> Under Rule 45 of the Rules of Court.

<sup>2</sup> *Rollo*, pp. 46-51; penned by Associate Justice Eloy R. Bello, Jr. with Acting Presiding Justice Cancio C. Garcia and Associate Justice Sergio L. Pestaño, concurring.

<sup>3</sup> *Id.* at 123

and set aside the Orders dated May 17, 2001 and September 3, 2001 of the Regional Trial Court (RTC) of Lapu-Lapu City, Branch 27, in Civil Case No. 5513-L. The Order<sup>4</sup> dated May 17, 2001 of the trial court granted the application for issuance of writ of preliminary injunction of petitioners Palm Tree Estates, Inc. (PTEI) and Belle Air Golf and Country Club, Inc. (BAGCCI), while the Order<sup>5</sup> dated September 3, 2001 denied PNB's motion for reconsideration.

On January 29, 1997, PTEI entered into a seven-year term loan agreement<sup>6</sup> with PNB for the amount of ₱320 million, or its US dollar equivalent, in view of urgent need for additional funding for the completion of its ongoing projects in Lapu-Lapu City.<sup>7</sup> As security for the payment of the loan, a Real Estate Mortgage<sup>8</sup> over 48 parcels of land covering an aggregate area of 353,916 sq.m. together with the buildings and improvements thereon, was executed by PTEI in favor of PNB on February 21, 1997.

On June 15, 1998, upon the request of PTEI, an Amendment to Loan Agreement<sup>9</sup> was signed by PNB and PTEI -

[T]o (i) extend the grace period for the principal repayment of the Loan, (ii) amend the interest payment date of the Loan, and (iii) grant in favor of the Borrower an additional Loan (the "Additional Loan") in the amount not exceeding ₱80,000,000.00, x x x.<sup>10</sup>

On the same day, June 15, 1998, as a result of PTEI's transfer to BAGCCI of the ownership, title and interest over 199,134 sq.m. of the real properties mortgaged to PNB, PTEI executed an Amendment to Real Estate

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<sup>4</sup> Id. at 405-407.

<sup>5</sup> Id. at 408-409.

<sup>6</sup> Id. at 150-160.

<sup>7</sup> Id. at 46.

<sup>8</sup> Id. at 161-173.

<sup>9</sup> Id. at 67-73.

<sup>10</sup> Id. at 67.

Mortgage<sup>11</sup> in favor of PNB with BAGCCI as accommodation mortgagor with respect to the real properties transferred to it by PTEI. The relevant portion of the agreement provides:

SECTION 1. AMENDMENTS

1.01 The Mortgaged Properties including that portion transferred to BAGCCI shall continue to secure PTEI's obligations to the Mortgagee of whatever kind and nature, and whether such obligations have been contracted, before, during or after the date of this instrument.

1.02 The existing mortgage lien in favor of the Mortgagee annotated on the titles covering the portion of the Mortgaged Properties which is transferred in favor of BAGCCI shall be carried over to the new titles to be issued as a result of the transfer.<sup>12</sup>

On August 10, 1999, PTEI and PNB executed four documents. First, on account of PTEI's failure to avail of the ₱80 million additional loan granted under the amendment to Loan Agreement and upon its request, PTEI and PNB entered into a Loan Agreement<sup>13</sup> revalidating the said additional loan. Under this agreement, full payment of the additional loan shall be secured by a pledge on 204,000 shares of PTEI stock in the names of the accommodation pledgors, Matthew O. Tan and Rodolfo M. Bausa.<sup>14</sup>

Second, a Contract of Pledge<sup>15</sup> was executed by Matthew O. Tan and Rodolfo M. Bausa as accommodation pledgors in favor of PNB to secure the loan agreement covering the ₱80 million additional loan. Under this contract, Tan and Bausa pledged their 204,000 shares of PTEI stock in favor of PNB as security for the full payment of the ₱80 million additional loan.

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<sup>11</sup> Id. at 64-66.

<sup>12</sup> Id. at 65.

<sup>13</sup> Id. at 83-89.

<sup>14</sup> Id. at 84.

<sup>15</sup> Id. at 90-92.

Third, upon the request of PTEI, a Restructuring Agreement<sup>16</sup> was executed by PTEI and PNB. Under this agreement, the full payment of the restructured loan shall be secured not only by the 48 parcels of land previously mortgaged to PNB but also by an additional mortgage on three parcels of land registered in the name of the accommodation mortgagor, Aprodicio D. Intong.<sup>17</sup>

Fourth, a Supplement to Real Estate Mortgage<sup>18</sup> was executed by Aprodicio D. Intong as accommodation mortgagor in favor of the PNB. Under this instrument, in addition to the 48 parcels of land previously mortgaged to PNB, three parcels of land and their improvements have been included in the existing mortgage as additional security for the loans or credit facilities granted by PNB to PTEI.

In a letter<sup>19</sup> dated September 20, 2000, PNB demanded payment of PTEI's outstanding obligations which amounted to ₱599,251,583.18 as of

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<sup>16</sup> Id. at 74-78.

<sup>17</sup> Id. at 75.

<sup>18</sup> Id. at 282-284.

<sup>19</sup> Id. at 320. In its entirety, the letter reads (emphases in the original):  
September 20, 2000

PALM TREE ESTATES, INC.  
Barrio Agus and Marigondon  
Lapu-Lapu City  
Mactan Island, Cebu

ATTENTION: MR. KENICHI AKIMOTO  
President

Dear Sir:

Our Corporate Banking Division IV has referred to us for legal action your violation of the Pledge Agreement through your failure to deliver additional shares to be pledged to the Bank, despite the deadline imposed on you to comply with the same, subject of our Mr. Earl Montero's demand letter to you dated August 14, 2000.

As a consequence thereof, your obligations with the Bank **have now become due and demandable**. We therefore demand that you **pay in full within five (5) days** from receipt hereof your outstanding obligations with the Bank which as of August 31, 2000 stood at **PHP599,251,583.18**, inclusive of interests.

Your failure to heed this demand will leave us with no recourse but to institute the necessary legal measures to protect the interest of the Bank.

We enjoin you to give the matter your preferential attention.

Very truly yours,  
ATTY. RAUL D. MALLARI (Sgd.)  
9<sup>th</sup> Floor, PNB Financial Center  
Roxas Blvd., Pasay City

August 31, 2010. Thereafter, in a letter<sup>20</sup> dated February 19, 2001, PNB denied PTEI's request for another restructuring of its past due indebtedness which amounted to ₱621,977,483.61 as of December 6, 2000. In the said letter, the stated reason for the denial of PTEI's request was its failure to perform its contractual obligations:

It would be difficult for us to justify to our Board of Directors your request because of your failure to fulfill the basic terms and conditions agreed upon in our previous meetings. If you will recall, we mentioned that in order for us to evaluate PTEI's restructuring request, you should settle in full the company's unpaid insurance premium of ₱350,374.13, and your past due credit card advances of ₱1,848,292.78, and update the company's realty tax arrearages on the mortgaged properties. However, to this date, you have not remitted any payments nor submitted any payment plans therefor.<sup>21</sup>

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<sup>20</sup> Id. at 483-484. In its entirety, the letter reads:

February 19, 2001

MR. KENICHI AKIMOTO  
President  
Palm Tree Estates, Inc.  
Barrio Agus and Marigondon  
Lapu-lapu City  
Mactan Island, Cebu  
Dear Mr. Akimoto,

We acknowledge receipt of your letter dated January 23, 2001 (received on January 31, 2001) requesting another restructuring of PTEI's past due indebtedness totaling ₱621,977,483.61 as at December 6, 2000.

It would be difficult for us to justify to our Board of Directors your request because of your failure to fulfill the basic terms and conditions agreed upon in our previous meetings. If you will recall, we mentioned that in order for us to evaluate PTEI's restructuring request, you should settle in full the company's unpaid insurance premium of ₱350,374.13, and your past due credit card advances of ₱1,848,292.78, and update the company's realty tax arrearages on the mortgaged properties. However, to this date, you have not remitted any payments nor submitted any payment plans therefor.

As you are well aware, PNB had been very supportive of PTEI since 1996 when the Bank approved and released a ₱320 Million Term Loan to refinance the company's loan from another bank and to partly fund PTEI's expansion programs. The Bank continued to demonstrate its support in 1998 when it agreed to extend the grace period of the Term Loan for another one year in recognition of the difficult market conditions at that time. Furthermore, in 1999, the Bank approved an additional ₱80.0 Million to enable PTEI to complete the development of at least the golf course. We even allowed the capitalization of unpaid interest amounting ₱66.075 Million, and the restructuring of the original Term Loan. Despite all these support, PTEI has not complied with all its contractual obligations to PNB. Our records show that PTEI's last interest payment to PNB was made on March 6, 1998 yet.

In view of the foregoing, we regret to inform you that we cannot give due consideration to your restructuring proposal unless the committed settlement of the insurance premium, credit card advances and realty taxes are complied with.

Thank you.

Very truly yours,  
FELICIANO L. MIRANDA, JR. (Sgd.)  
President & CEO

<sup>21</sup> Id. at 483.

As PTEI defaulted in its payment of past due loan with PNB, the bank filed a Petition<sup>22</sup> for extrajudicial foreclosure of the mortgaged properties on March 27, 2001.<sup>23</sup> The following day, March 28, 2001, PTEI's President, Kenichi Akimoto, wrote a letter<sup>24</sup> to PNB's President, Feliciano L. Miranda, Jr., requesting for "another 30 days to settle" PTEI's "accrued obligations."

On April 23, 2001, to enjoin PNB from foreclosing on the mortgage, PTEI and BAGCCI filed a Complaint<sup>25</sup> in the RTC of Lapu-Lapu City for breach of contracts, nullity of promissory notes, annulment of mortgages, fixing of principal, accounting, nullity of interests and penalties, annulment of petition for extrajudicial foreclosure, injunction, damages, with prayer for temporary restraining order, and writ of preliminary injunction.<sup>26</sup> This was docketed as Civil Case No. 5513-L and raffled to Branch 27.

In their complaint, PTEI and BAGCCI claimed that, out of the ₱320 million term loan committed by PNB under the loan agreement, PNB released only a total amount of ₱248,045,679.36,<sup>27</sup> or a deficiency of ₱71,954,320.64 which PNB failed to release despite demands.<sup>28</sup> PTEI and BAGCCI also averred that PNB took advantage of their financial difficulty by unilaterally (1) converting the US dollar denominated loan to a peso loan at an unreasonable conversion rate of ₱38.50:US\$1, when the prevailing conversion rate at the time of the release of the loan was only ₱26.25:US\$1, and (2) re-pricing the interests to exorbitant and unconscionable rates.<sup>29</sup>

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<sup>22</sup> Id. at 101-121.

<sup>23</sup> Id. at 46-47.

<sup>24</sup> Id. at 482.

<sup>25</sup> Id. at 124-149.

<sup>26</sup> Id. at 47.

<sup>27</sup> Id. This was allegedly comprised of US\$7,923,005.69 and ₱40 million.

<sup>28</sup> Id. at 127-129 and 137; paragraphs 11 and 16 and 35-36, Complaint, pp. 4-6 and 14.

<sup>29</sup> Id. at 128 and 130; paragraphs 13 and 18-19, Complaint, pp. 5 and 7.

PTEI and BAGCCI further alleged that, under threat of foreclosure, they were forced to execute an amendment to the loan agreement acknowledging the principal obligation as of April 20, 1998 to be ₱345,035,719.07 even if they received only ₱248,045,679.36.<sup>30</sup> Moreover, PTEI and BAGCCI signed the amendment to the loan agreement because of PNB's offer to extend an additional ₱80 million loan which the latter failed to release despite the fact that all conditions for its release had been complied with in April 1999.<sup>31</sup> PTEI and BAGCCI further claimed that the amendment to the loan agreement, amendment to the real estate mortgage, certain promissory notes and their respective disclosure statements and the restructuring agreement should be declared void as they were executed pursuant to a void amendment to the loan agreement, and with vitiated consent and without full consideration.<sup>32</sup>

Finally, PTEI and BAGCCI stated that the extrajudicial foreclosure initiated by respondent on their properties was patently null and void since it included promissory notes which were supposed to have already been paid, as well as properties which have already been transferred to BAGCCI and were being made to answer under the restructuring agreement of which BAGCCI was not a party.<sup>33</sup> Furthermore, PTEI averred that the amendment to the real estate mortgage had been novated by a subsequent loan agreement covering the new ₱80 million loan which was secured by a pledge on 204,000 shares of stock of PTEI. PTEI also alleged that the machinery and equipments being chattels should not be included in the foreclosure of the real estate mortgage.<sup>34</sup>

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<sup>30</sup> Id. at 131-132 and 138-139; paragraphs 24-25 and 39, Complaint, pp. 8-9 and 15-16.

<sup>31</sup> Id. at 139; also paragraph 40, Complaint, p. 16.

<sup>32</sup> Id. at 138-140; paragraphs 39 and 42-44, Complaint, pp. 15-17.

<sup>33</sup> Id. at 141; paragraph 45, Complaint, p. 18.

<sup>34</sup> Id.

On the other hand, PNB refuted PTEI and BAGCCI's allegations and claimed that it had already issued to PTEI the total amount of ₱356,722,152.46 which exceeded the ₱320 million covered by the loan agreement by ₱36 million.<sup>35</sup> Whatever delay in the release of the loan proceeds, if any, was attributable only to PTEI.<sup>36</sup>

According to PNB, the conversion of dollar loans to peso loans was not unilateral but made upon the request of PTEI and that the use of dollar to peso rate of US\$1:₱39.975 was only proper as it was the prevailing exchange rate at the time of the conversion.<sup>37</sup> There was also no unilateral increase of the interest rate as PTEI never raised any objection to such an increase although it was duly notified of the loan repricing through various letter-advice.<sup>38</sup>

PNB likewise denied that the loan agreement and the amendment to it, the amendment to real estate mortgage, certain promissory notes and their disclosure statements, as well as the restructuring agreement, were all executed without PTEI's consent.<sup>39</sup> Under the law, Kenichi Akimoto, PTEI's president, and other executive officers could be presumed to be responsible and intelligent enough to carefully read, understand and evaluate each loan document for Akimoto's signature.<sup>40</sup>

PNB further claimed that PTEI was granted an additional ₱80 million loan which was secured by a pledge of PTEI's shares of stock. There was no novation because neither was the object and principal conditions changed, nor PTEI substituted as debtor, nor any third person subrogated in PNB's rights.<sup>41</sup>

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<sup>35</sup> Id. at 342 and 777; paragraph 5, Answer, p. 3 and paragraph 9.e, PNB's Memorandum, p. 8.

<sup>36</sup> Id. at 343-344 and 348; paragraphs 8 and 18, Answer, pp. 4-5 and 9.

<sup>37</sup> Id. at 343-346 and 353; paragraphs 7, 12-14 and 28, Answer, pp. 4-7 and 14.

<sup>38</sup> Id.

<sup>39</sup> Id. at 354; paragraphs 29 and 31, Answer, p. 15.

<sup>40</sup> Id. at 357; paragraph 36(i), Answer, p. 18.

<sup>41</sup> Id. at 347-351; paragraphs 17-21, Answer, pp. 8-12.



After hearing the PTEI and BAGCCI's application for issuance of writ of preliminary injunction, the RTC of Lapu-Lapu City required the parties to submit their respective memoranda.

Subsequently, the RTC of Lapu-Lapu City issued the Order dated May 17, 2001 ordering the issuance of a writ of preliminary injunction:

### O R D E R

For resolution is plaintiffs' application for issuance of writ of preliminary injunction to prevent the acts complained of.

It is to be noted that the resolution of the application is only preliminary in character and may change depending upon the nature, character and weight of evidence that will be presented during trial on the merits.

After carefully going through with the parties' arguments contained in their respective memorand[a] together with their respective documentary evidences appended thereto, it is very clear that the positions of the parties are completely opposed to each other which indicates (sic) that real controversies exist. The Court believes that all these legal controversies can only be resolved in a trial on the merits where the parties are given complete opportunity to present their case and adduce evidence.

The Court further believes that while all the legal controversies are being heard and tried, the *status quo ante litem* must be maintained which means that the acts being complained of must be enjoined *pendente lite*.

Noted by this Court is the issue of[, ] among others, the propriety of the foreclosure proceedings in line with plaintiffs' contention "x x x that properties of the plaintiffs are being made to answer by the defendants for obligations which are not secured by these properties, or that properties of plaintiffs which are already free from the mortgage are included in the Petition (Annex "W" of the Complaint) for extra-judicial foreclosure. Continuing, the plaintiffs elaborated that "While plaintiffs are not disputing the right of a creditor-mortgagee to proceed against the properties of a debtor-mortgagor to pay for any unpaid secured obligations, it must be clearly understood, however, that any foreclosure proceedings that may be effected relative thereto must only affect the properties subject of the mortgage contract and should only be made to answer for the correct and undisputed obligations which are secured by the properties sought to be foreclosed. Any foreclosure proceedings which will include properties which are not subject of the mortgage contract or which will make the said properties answer for obligations which are not secured by the said properties will be tantamount to taking of properties without due process of law in violation of the Constitution x x x."

In other words, there are serious controversies whose resolution must not be rendered moot and academic by the performance of the assailed acts. In this regard, the Court is adopting the ruling of the Supreme Court in the case of *Rava Development Corporation vs. Court of Appeals*, 211 SCRA 144[,] that says:

“ x x x it is a well settled rule that the sole object of a preliminary injunction whether prohibitory or mandatory is to preserve the status quo until the merits of the case can be heard (*Avila vs. Tapucan*, 200 SCRA 148 [1991]). It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case.”

The Court is convinced that[,] at the very least[,] plaintiffs have the right to be fully heard before it is finally deprived of its rights over the mortgaged properties in question in the same manner that defendant bank has the right to be fully heard on its claims. Plaintiffs have the right to be heard on their claim that the principal amount and the total obligation alleged by the defendant is not correct, that the escalation of the interest is not legal or that their property can only be foreclosed after final determination of the exact and correct amount of the total obligation. On the other hand, the defendant bank is fully protected because its claims on the mortgaged properties are properly recorded[,] if not registered. Besides, plaintiffs admitted their said indebtedness to the defendant bank and signified to meet their said obligations only after the determination of the exact amount of the same.

On the matter of the questioned and disputed principal obligation, interests and/penalties, the Court is of the opinion that it would be in the interest of justice and equity that the matter be also threshed out during the trial on the merits of this case before any foreclosure proceeding can proceed consonant to the following ruling of the Supreme Court in *Almeda vs. Court of Appeals*, 256 SCRA 292, 307, to wit:

“In the first place, because of the dispute regarding the interest rate increases, an issue which was never settled on the merit in the courts below, the exact amount of petitioner’s obligation could not be determined. Thus, the foreclosure provisions of P.D. 385 could be validly invoked by respondent bank only after the settlement of the question invoking the interest rate of the loan, and only after the spouses refused to meet their obligations following such determination.”

In essence, therefore, the Court is swayed to order the [maintenance of the] status quo and direct the issuance of the writ of preliminary injunction by the fact that if plaintiffs are immediately deprived of their said properties altogether disregarding the demands of

due process, plaintiffs will surely be damaged and injured gravely and even irreparably. The Court does not want that to happen until it has fully disposed of the case.

WHEREFORE, premises considered, let a writ of preliminary injunction issue enjoining the defendants, or any person or agents acting for and [in] their behalf, from foreclosing the subject properties of the plaintiffs, and/or from further proceeding with foreclosure under the Petition (Annex “W” of the Complaint), upon filing by the plaintiffs, and approval by this Court, of an injunction bond in the amount of ONE MILLION AND FIVE HUNDRED THOUSAND (₱1,500,000.00) PESOS.<sup>42</sup>

Reconsideration of the above order was denied in an Order dated September 3, 2001. Thereafter, PNB filed a Petition for *Certiorari* with the Court of Appeals alleging that the RTC of Lapu-Lapu City acted with grave abuse of discretion in issuing the Orders dated May 17, 2001 and September 3, 2001.

The Court of Appeals, in the assailed Decision dated March 21, 2003, found merit in PNB’s petition. According to the Court of Appeals, PTEI and BAGCCI failed to show a clear and unmistakable right which would have necessitated the issuance of a writ of preliminary injunction, while PNB had the right to extrajudicial foreclosure under the loan agreement when its debtors defaulted in their obligation.<sup>43</sup> Thus, the Court of Appeals granted PNB’s petition.

Reconsideration was denied in a Resolution dated August 4, 2003.

Hence, this petition.

This Court is asked to resolve the issue of whether the writ of injunction was issued by the trial court with grave abuse of discretion, in which case the appellate court correctly set it aside.

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<sup>42</sup> Id. at 405-407.

<sup>43</sup> Id. at 49a.

PTEI and BAGCCI claim that the Court of Appeals should not have given due course to PNB's Petition for *Certiorari* as such petition violated Section 1, Rule 65 of the Rules of Court when it deliberately omitted all the supporting material documents attached to the complaint such as the petition for foreclosure, the real estate mortgage, the loan agreements, and promissory notes. PTEI and BAGCCI question the reversal and setting aside by the Court of Appeals of the orders of the trial court although there was no finding that the trial court acted without or in excess of its jurisdiction in issuing the said orders. PTEI and BAGCCI further assert that the Court of Appeals was wrong in ruling that no clear and unmistakable right in favor of PTEI and BAGCCI was shown to exist.<sup>44</sup>

On the other hand, PNB insists that PTEI and BAGCCI failed to establish an indubitable right which was violated by PNB and which ought to be protected by an injunctive writ. They also failed to show that the absence of an injunctive writ would cause them irreparable injury.<sup>45</sup> For PNB, the Court of Appeals therefore correctly ruled that there was no basis for the trial court's issuance of a writ of preliminary injunction.

The petition has no merit.

The second paragraph of Section 1, Rule 65 of the Rules of Court provides:

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

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<sup>44</sup> Id. at 21-31.

<sup>45</sup> Id. at 696-700; PNB's Comments and Opposition to the Petition for Review on *Certiorari*, pp. 13-17.

In this case, PNB attached the following documents to the Petition for *Certiorari* which it filed in the Court of Appeals:

- (a) Order dated May 17, 2001 granting PTEI and BAGCCI's application for the issuance of preliminary injunction;
- (b) Order dated September 3, 2001 denying PNB's motion for reconsideration;
- (c) PNB's memorandum in support of its opposition to the issuance of preliminary injunction;
- (d) PNB's motion for reconsideration of the order dated May 17, 2001;
- (e) PNB's motion for early resolution dated July 4, 2011;
- (f) PNB's supplemental motion for early resolution dated July 26, 2001;
- (g) PNB's answer with counterclaim dated June 5, 2001, together with its annexes "A" to "L"; and
- (h) PTEI and BAGCCI's complaint dated April 16, 2001, without the annexes.

PTEI and BAGCCI fault PNB for not including the annexes to their complaint which consisted of PNB's petition for foreclosure, the real estate mortgage, the loan agreements, and promissory notes. They argue that such failure on PNB's part constituted a violation of the second paragraph of Section 1, Rule 65 of the Rules of Court. The Court is not persuaded.

The determination of the completeness or sufficiency of the form of the petition, including the relevant and pertinent documents which have to be attached to it, is largely left to the discretion of the court taking cognizance of the petition, in this case the Court of Appeals. If the petition is insufficient in form and substance, the same may be forthwith dismissed

without further proceedings.<sup>46</sup> That is the import of Section 6, Rule 65 of the Rules of Court:

Sec. 6. *Order to comment.* – If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

In petitions for *certiorari* before the Supreme Court and the Court of Appeals, the provisions of section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

The Court of Appeals already determined that PNB's petition complied with the second paragraph of Section 1, Rule 65 of the Rules of Court and, consequently, that the said petition is sufficient in form and substance when it ordered PTEI and BAGCCI to comment on PNB's petition. This Court sees no compelling reason to set aside the determination of the Court of Appeals on that matter. Moreover, PTEI and BAGCCI wasted their opportunity to question the formal sufficiency of PNB's petition when they failed to file their comment on time, leading the Court of Appeals to rule in its Decision dated March 21, 2003 as follows:

Parenthetically, the "Manifestation and Motion for Leave To Admit Respondents' Comment [on] the Petition", as well as respondents' Comment are hereby DENIED, considering that they were filed more than one (1) year from the lapse of the reglementary period of filing the same. Accordingly, respondents' Comment is ordered EXPUNGED from the record of this case.<sup>47</sup>

PTEI and BAGCCI compounded their error when they subsequently failed to raise the issue in their motion for reconsideration of the decision of

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<sup>46</sup> Regalado, Florenz, REMEDIAL LAW COMPENDIUM, Vol. I (10<sup>th</sup> Edition [2010]), p. 816.  
<sup>47</sup> *Rollo*, p. 50.

the Court of Appeals. Such omission constituted a waiver of the said issue pursuant to the omnibus motion rule.<sup>48</sup>

Nevertheless, an examination of PNB's petition and the documents attached to it would show that the Court of Appeals' determination as to the formal sufficiency of the petition is correct. The documents attached to the petition were adequate to support the arguments of PNB and to give the Court of Appeals a satisfactory, or at least substantial, picture of the case.

A complainant's wrongful conduct respecting the matter for which injunctive relief is sought precludes the complainant from obtaining such relief.<sup>49</sup> A petition for a preliminary injunction is an equitable remedy, and one who comes to claim for equity must do so with clean hands<sup>50</sup>:

Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. x x x.<sup>51</sup> (Citation omitted.)

In this case, the hands of PTEI were not unsullied when it sought preliminary injunction. It was already in breach of its contractual obligations when it defaulted in the payment of its indebtedness to PNB. PTEI's President, Akimoto, admitted that PTEI has unsettled accrued obligations in the letter dated March 28, 2001. Moreover, PTEI had sought the rescheduling or deferral of its payment as well as the restructuring of its loan. This Court has held that a debtor's various and constant requests for deferment of payment and restructuring of loan, without actually paying the

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<sup>48</sup> Section 8, Rule 15 of the Rules of Court provides:

Sec. 8. *Omnibus motion*. – Subject to the provisions of section 1 of Rule 9, **a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived.** (Emphasis supplied.)

<sup>49</sup> 42 Am Jur 2d 590 on Injunctions, § 20.

<sup>50</sup> *Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, February 19, 2007, 516 SCRA 231, 253.

<sup>51</sup> *University of the Philippines v. Hon. Catungal, Jr.*, 338 Phil. 728, 743-744 (1997).

amount due, are clear indications that said debtor was unable to settle his obligation.<sup>52</sup>

As PTEI is not entitled to the issuance of a writ of preliminary injunction, so is BAGCCI. The accessory follows the principal. The accessory obligation of BAGCCI as accommodation mortgagor is tied to PTEI's principal obligation to PNB and arises only in the event of PTEI's default. Thus, BAGCCI's interest in the issuance of the writ of preliminary injunction is necessarily prejudiced by PTEI's wrongful conduct and breach of contract.

In *Barbieto v. Court of Appeals*,<sup>53</sup> the Court stated the general principles in issuing a writ of preliminary injunction:

A preliminary injunction is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.

At times referred to as the "Strong Arm of Equity," we have consistently ruled that there is no power the exercise of which is more delicate and which calls for greater circumspection than the issuance of an injunction. It should only be extended in cases of great injury where courts of law cannot afford an adequate or commensurate remedy in damages; "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."

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<sup>52</sup> *RPRP Ventures Management & Development Corporation v. Guadiz, Jr.*, G.R. No. 152236, July 28, 2010, 626 SCRA 37, 44.

<sup>53</sup> G.R. No. 184645, October 30, 2009, 604 SCRA 825.



For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right. x x x.<sup>54</sup>

A writ of preliminary injunction is an extraordinary event which must be granted only in the face of actual and existing substantial rights.<sup>55</sup> The duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it.<sup>56</sup> In the absence of the same, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for having been rendered in grave abuse of discretion.<sup>57</sup>

The right of PNB to extrajudicially foreclose on the real estate mortgage in the event of PTEI's default is provided under various contracts of the parties. Foreclosure is but a necessary consequence of nonpayment of mortgage indebtedness.<sup>58</sup> In view of PTEI's failure to settle its outstanding obligations upon demand, it was proper for PNB to exercise its right to foreclose on the mortgaged properties. It then became incumbent on PTEI and BAGCCI, when they filed the complaint and sought the issuance of a writ of preliminary injunction, to establish that they have a clear and unmistakable right which requires immediate protection during the pendency of the action. The Order dated May 17, 2001 of the trial court granting the application for issuance of writ of preliminary injunction failed to show that PTEI and BAGCCI discharged that burden.

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<sup>54</sup> Id. at 844-845.

<sup>55</sup> *Overseas Workers Welfare Administration v. Chavez*, G.R. No. 169802, June 8, 2007, 524 SCRA 451, 476.

<sup>56</sup> Id. at 472, citing *Civil Service Commission v. Court of Appeals*, 475 Phil. 276, 287 (2005).

<sup>57</sup> Id.

<sup>58</sup> *Lotto Restaurant Corporation v. BPI Family Savings Bank, Inc.*, G.R. No. 177260, March 30, 2011, 646 SCRA 699, 705, citing *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91.

In this connection, this Court has denied the application for a writ of preliminary injunction that would enjoin an extrajudicial foreclosure of a mortgage, and declared that foreclosure is proper when the debtors are in default of the payment of their obligation. In particular, this Court ruled in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*<sup>59</sup>:

**Where the parties stipulated in their credit agreements, mortgage contracts and promissory notes that the mortgagee is authorized to foreclose the mortgaged properties in case of default by the mortgagors, the mortgagee has a clear right to foreclosure in case of default, making the issuance of a Writ of Preliminary Injunction improper. x x x.<sup>60</sup> (Citation omitted.)**

The Court of Appeals did not err when it ruled that PTEI and BAGCCI failed to show a clear and unmistakable right which would have necessitated the issuance of a writ of preliminary injunction. The Order dated May 17, 2001 of the trial court failed to state a finding of facts that would justify the issuance of the writ of preliminary injunction. It merely stated the conclusion that “real controversies exist” based on the observation that “the positions of the parties are completely opposed to each other.”<sup>61</sup> It simply declared:

Noted by this Court is the issue of[,], among others, the propriety of the foreclosure proceedings in line with plaintiffs’ contention “x x x that properties of the plaintiffs are being made to answer by the defendants for obligations which are not secured by these properties, or that properties of plaintiffs which are already free from the mortgage are included in the Petition (Annex “W” of the Complaint) for extra-judicial foreclosure. Continuing, the plaintiffs elaborated that “While plaintiffs are not disputing the right of a creditor-mortgagee to proceed against the properties of a debtor-mortgagor to pay for any unpaid secured obligations, it must be clearly understood, however, that any foreclosure proceedings that may be effected relative thereto must only affect the properties subject of the mortgage contract and should only be made to answer for the correct and undisputed obligations which are secured by the properties sought to be foreclosed. Any foreclosure proceedings which will include properties which are not subject of the mortgage contract or

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<sup>59</sup> Id.

<sup>60</sup> Id. at 91-92.

<sup>61</sup> *Rollo*, p. 405.

which will make the said properties answer for obligations which are not secured by the said properties will be tantamount to taking of properties without due process of law in violation of the Constitution x x x.”<sup>62</sup>

This clearly shows that the trial court relied only on the bare allegations of PTEI and BAGCCI that the mortgaged properties were being made to answer for obligations that are not covered by the mortgage and that properties which are not mortgaged are included in PNB’s petition for extrajudicial foreclosure. Beyond bare allegations, however, no specific evidence was cited. Thus, the trial court’s order granting the issuance of a writ of preliminary injunction had no factual basis. It is elementary that allegations are not proof.<sup>63</sup> Contentions and averments in pleadings do not constitute facts unless they are in the nature of admissions or proven by competent evidence. This becomes more significant in connection with the issuance of the writ of preliminary injunction in light of the Court’s pronouncement in *University of the Philippines v. Hon. Catungal, Jr.*<sup>64</sup>:

The [trial] court must state its own findings of fact and cite the particular law to justify the grant of preliminary injunction. Utmost care in this regard is demanded. x x x.<sup>65</sup>

Moreover, an application for injunctive relief is construed strictly against the pleader.<sup>66</sup> Also, the possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction to issue.<sup>67</sup>

At most, the trial court’s finding of the existence of a real controversy because the respective claims of the parties are opposing simply amounted to

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<sup>62</sup> Id. at 405-406.

<sup>63</sup> *People v. Cledoro, Jr.*, 412 Phil. 772, 778 (2001); *Angeles v. Polytex Design, Inc.*, G.R. No. 157673, October 15, 2007, 536 SCRA 159, 167.

<sup>64</sup> Supra note 51.

<sup>65</sup> Id. at 743.

<sup>66</sup> *Bangko Sentral ng Pilipinas Monetary Board v. Antonio-Valenzuela*, G.R. No. 184778, October 2, 2009, 602 SCRA 698, 721.

<sup>67</sup> *Nisce v. Equitable PCI Bank, Inc.*, supra note 50 at 253.

a finding that the rights of PTEI and BAGCCI are disputed, debatable or dubious. This Court has held, however, that:

In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. **It is not proper when the complainant's right is doubtful or disputed.**<sup>68</sup> (Emphasis supplied, citation omitted.)

In view of the doubtful nature of the alleged right of PTEI and BAGCCI, the trial court's pronouncement regarding the necessity to issue a writ of injunction to protect the right of PTEI and BAGCCI to be heard before they are deprived of such alleged right crumbles:

A writ of preliminary injunction is issued to prevent an extrajudicial foreclosure, only upon a clear showing of a violation of the mortgagor's unmistakable right. **Unsubstantiated allegations of denial of due process and prematurity of a loan are not sufficient to defeat the mortgagee's unmistakable right to an extrajudicial foreclosure.**<sup>69</sup> (Emphasis supplied.)

Furthermore, without pre-empting the trial court's ruling on the allegation of PTEI and BAGCCI regarding PNB's alleged unilateral increase of interest rates, the trial court misapplied *Almeda v. Court of Appeals*<sup>70</sup> when it opined that "it would be in the interest of justice and equity" that "the matter of the questioned and disputed principal obligation, interests and/penalties" "be also threshed out during the trial on the merits" "before any foreclosure proceeding can proceed." In *Almeda*, the petitioner spouses questioned from the very start the unilateral increases in interest rates made by the creditor bank. They also tendered payment and, when refused by the creditor bank, consigned the amount equivalent to the principal loan and accrued interest calculated at the originally stipulated rate. In this case, it

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<sup>68</sup> *Selegna Management and Development Corporation v. United Coconut Planters Bank*, 522 Phil. 671, 691 (2006).

<sup>69</sup> *Id.* at 674.

<sup>70</sup> 326 Phil. 309 (1996).

appears that, despite having previously received letter-advice<sup>71</sup> in October and November 1997 regarding changes in the loan interest rate, PTEI and BAGCCI assailed the alleged unilateral increases in interest rates only when they filed the complaint on April 23, 2001 and after PNB had already exercised its right to extrajudicial foreclosure. Moreover, despite admitting PTEI's indebtedness to PNB, no tender of payment or consignment was made. These substantial differences work against the applicability of *Almeda* in this case.

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

Costs against petitioners PTEI and BAGCCI.

**SO ORDERED.**

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

<sup>71</sup> The letter advices dated October 13, 1997, November 10, 1997 and November 12, 1997 were of the following standard form:

This will confirm our earlier advice to you that the rate of interest on the outstanding drawdowns/availments on the (Term Loan) has been repriced as follows:

PN NO.	PRINCIPAL AMOUNT	PERIOD COVERED	INTEREST RATE

in line with the provisions of the loan documents wherein you agreed to the right of PNB to increase or decrease the rate of interest on the (Term Loan), for the subsequent Interest Periods brought about by changes in interest rate prescribed by law or Monetary Board of the Bangko Sentral ng Pilipinas, or in PNB's policy.

Unless we receive a written objection from you within a period of ten (10) calendar days from interest setting date, it shall be deemed that you are agreeable to the interest rate quoted by

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**

Chief Justice  
Chairperson

  
**ANTONIO T. CARPIO**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

Pursuant<sup>a</sup> to Section 13, Article VIII of the Constitution, 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