



**Republic of the Philippines
Supreme Court
Baguio City**

FIRST DIVISION

**SOLID BUILDERS, INC. and
MEDINA FOODS INDUSTRIES,
INC.,**

Petitioners,

- *versus* -

G.R. No. 179665

Present:

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

**CHINA BANKING
CORPORATION,**

Respondent.

Promulgated:

X- - - - -X

DECISION

LEONARDO-DE CASTRO, *J.*:

This petition for review on *certiorari*¹ assails the Decision² dated April 16, 2007 and the Resolution³ dated September 18, 2007 of the Court of Appeals in CA-G.R. SP No. 81968.

During the period from September 4, 1992 to March 27, 1996, China Banking Corporation (CBC) granted several loans to Solid Builders, Inc. (SBI), which amounted to ₱139,999,234.34, exclusive of interests and other charges. To secure the loans, Medina Foods Industries, Inc. (MFII) executed in CBC's favor several surety agreements and contracts of real estate mortgage over parcels of land in the Loyola Grand Villas in Quezon City and New Cubao Central in Cainta, Rizal.⁴

Subsequently, SBI proposed to CBC a scheme through which SBI would sell the mortgaged properties and share the proceeds with CBC on a 50-50 basis until such time that the whole obligation would be fully paid. SBI also proposed that there be partial releases of the certificates of title of

¹ Under Rule 45 of the Rules of Court.

² *Rollo*, pp. 31-40; penned by Justice Rodrigo V. Cosico with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo, concurring.

³ *Id.* at 42-43.

⁴ *Id.* at 32-33.

the mortgaged properties without the burden of updating interests on all loans.⁵

In a letter dated March 20, 2000 addressed to CBC, SBI requested the restructuring of its loans, a reduction of interests and penalties and the implementation of a *dacion en pago* of the New Cubao Central property.⁶ The letter reads:

March 20, 2000

CHINA BANKING CORPORATION
Dasmarinas cor. Juan Luna Sts.
Binondo, Manila

Attn: Mr. George Yap
Account Officer

Dear Mr. Yap,

This is to refer to our meeting held at your office last March 10, 2000.

In this regard[,] please allow us to call your attention on the following important matters we have discussed:

1. With respect to the penalties, we are requesting for a reduction in the rates as we find it onerous considering the big amount of our loan (P218,540,648.00). The interest together with the penalties that you are imposing is similar to the ones being charged by private lending institutions, i.e., 4.5%/month total.
2. As I had discussed with you regarding *Dacion en Pago*, which you categorically stated that it could be a possibility, we are considering putting our New Cubao Central (NCC) on Dacion and restructuring our loan with regards to our Loyola Grand Villas.

Considering that you had stated that our restructuring had not been finalized, we find it timely to raise these urgent matters and possibly agree on a realistic and workable scheme that we can incorporate on our final agreement.

Thank you and we strongly hope for your prompt consideration on our request.

Very truly yours,

V. BENITO R. SOLIVEN (Sgd.)
President⁷

In response, CBC sent SBI a letter dated April 17, 2000 stating that the loans had been completely restructured effective March 1, 1999 in the

⁵ Id. at 33.

⁶ Id.

⁷ CA *rollo*, p. 101.

amount of ₱218,540,646.00. On the aspect of interests and charges, CBC suggested the updating of the obligation to avoid paying interests and charges.⁸ The relevant portion of the letter dated April 17, 2000 reads:

First of all, to clarify, the loan's restructuring has been finalized and completed on **3/01/99** with the booking of the Restructured loan of **₱218,540,646**. Only two Amendments of Real Estate Mortgages remain to be registered to date. Certain documents that we requested from your company since last year, that could facilitate this amendment have not yet been forwarded to us until now. Nevertheless, this does not change the fact that the restructuring of the loan has been done with and finalized.

This in turn is with regards to statement[s] no. 1 & 2 of your letter, referring to the interest rates and penalties. As per our records, the rates are actually the prevailing bank interest rates. In addition, penalty charges are imposed in the event of non-payment. To avoid experiencing having to pay more due to the penalty charges, updating of obligations is necessary. Thus[,] we advise updating of your obligations to avoid penalty charges. However, should you be able to update both interest and penalty through a "one-time" payment, we shall present your request to Senior Management for possible reduction in penalty charges.

Concerning statement no. 3 containing your request for the possible Dacion en Pago of your NCC properties, as was discussed already in the meeting, it is a concern that has to be discussed with Senior Management and approved by the Executive Committee before we can commit to you on the matter. We suggest that your company, Solid Builders, exhaust all possibilities to sell the NCC properties yourselves because, being a real estate company, Solid has better ways and means of selling the properties.⁹

This was followed by another communication from CBC to SBI reiterating, among others, that the loan has been restructured effective March 1, 1999 upon issuance by SBI of promissory notes in favor of CBC. The relevant portion of that letter dated May 19, 2000 reads:

Again, in response to your query with regards the issue of the loans restructuring, to reiterate, the loan restructuring has been finalized and completed on **3/01/99** with the **booking** of the Restructured loan of **₱231,716,646**. The Restructured Loan was effective ever since the new Promissory Note was signed on the said date.

The interest rates for the loans are actually rates booked since the new Promissory Notes were effective. Any move of changing it or "re-pricing" the interest is only possible every 90 days from the booking date, which represents the interest amortization payment dates. No change or "re-pricing" in interest rates is possible since interest payment/obligations have not yet been paid.

With regards to the possible Dacion en Pago of your NCC properties, as was discussed already in the meeting, it is a concern that has to be discussed with Senior Management and approved by the Executive

⁸ *Rollo*, p. 33.

⁹ *CA rollo*, pp. 104-105.

Committee before we can commit to you on the matter. We suggest that your company, Solid Builders, exhaust all possibilities to sell the NCC properties yourselves because, being a real estate company, Solid has better ways and means of selling the properties.¹⁰

Subsequently, in a letter dated September 18, 2000, CBC demanded SBI to settle its outstanding account within ten days from receipt thereof. The letter dated September 18, 2000 reads:

September 18, 2000

SOLID BUILDERS, INC.
V.V. Soliven Bldg., I
EDSA, San Juan, Metro Manila

PN NUMBER	O/S BALANCE	DUE DATE	INTEREST PAID UP TO
PN-MK-TS-342924	PHP 89,700,000.00	03/01/2004	04/13/1999
PN-MK-TS-342931	19,350,000.00	03/01/2004	08/05/1999
PN-MK-TS-342948	35,888,000.00	03/01/2004	-----
PN-MK-TS-342955	6,870,000.00	03/01/2004	-----
PN-MK-TS-342962	5,533,646.00	03/01/2004	07/26/1999
PN-MK-TS-342979	21,950,000.00	03/01/2004	-----
PN-MK-TS-342986	3,505,000.00	03/01/2004	08/09/1999
PN-MK-TS-342993	19,455,000.00	03/01/2004	-----
PN-MK-TS-343002	4,168,000.00	03/01/2004	-----
PN-MK-TS-343026	12,121,000.00	03/01/2004	-----
<u>PHP218,540,646.00</u>			

Greetings!

We refer again to the balances of the abovementioned Promissory Notes amounting to PHP218,540,646.00 excluding interest, penalties and other charges signed by you jointly and severally in our favor, which remains unpaid up to this date despite repeated demands for payment.

In view of the strict regulations of Bangko Sentral ng Pilipinas on past due accounts, we regret that we cannot hold these accounts further in abeyance. Accordingly, we are reiterating our request that arrangements to have these accounts settled within ten (10) days from receipt hereof, otherwise, we shall be constrained to refer the matter to our lawyers for collection.

We enclose a Statement of Account as of September 30, 2000 for your reference and guidance.

Very truly yours,

MERCEDES E. GERMAN (Sgd.)
Manager
Loans & Discounts Department – H.O.¹¹

¹⁰ Id. at 106.
¹¹ Id. at 113.

On October 5, 2000, claiming that the interests, penalties and charges imposed by CBC were iniquitous and unconscionable and to enjoin CBC from initiating foreclosure proceedings, SBI and MFII filed a Complaint “To Compel Execution of Contract and for Performance and Damages, With Prayer for Writ of Preliminary Injunction and Ex-Parte Temporary Restraining Order” in the Regional Trial Court (RTC) of Pasig City. The case was docketed as Civil Case No. 68105 and assigned to Branch 264.¹²

In support of their application for the issuance of writ of preliminary injunction, SBI and MFII alleged:

IV. APPLICATION FOR PRELIMINARY INJUNCTION WITH EX-PARTE TEMPORARY RESTRAINING ORDER

A. GROUND[S] FOR PRELIMINARY INJUNCTION

1. That [SBI and MFII] are entitled to the reliefs demanded, among which is enjoining/restraining the commission of the acts complained of, the continuance of which will work injustice to the plaintiffs; that such acts are in violation of the rights of plaintiffs and, if not enjoined/restrained, will render the judgment sought herein ineffectual.

2. That under the circumstances, it is necessary to require, through preliminary injunction, [CBC] to refrain from immediately enforcing its letters dated April 17, 2000 and May 19, 2000 and September 18, 2000 during the pendency of this complaint, and

3. That [SBI and MFII] submit that they are exempt from filing of a bond considering that the letters dated April 17, 2000, May 19, 2000 and September 18, 2000 are a patent nullity, and in the event [they are] not, they are willing to post such bond this Honorable Court may determine and under the conditions required by Section 4, Rule 58.¹³

In its Answer and Opposition to the issuance of the writ of preliminary injunction, CBC alleged that to implement the agreed restructuring of the loan, SBI executed ten promissory notes stipulating that the interest rate shall be at 18.5% per annum. For its part, MFII executed third party real estate mortgage over its properties in favor of CBC to secure the payment of SBI’s restructured loan. As SBI was delinquent in the payment of the principal as well as the interest thereon, CBC demanded settlement of SBI’s account.¹⁴

After hearing the parties, the trial court issued an Order dated December 14, 2000 granting the application of SBI and MFII for the issuance of a writ of preliminary injunction. The trial court held that SBI and MFII were able to sufficiently comply with the requisites for the issuance of an injunctive writ:

¹² *Rollo*, p. 34.

¹³ *CA rollo*, pp. 48-49.

¹⁴ *Rollo*, pp. 34-35.

It is well-settled that to be entitled to an injunctive writ, a party must show that: (1) the invasion of right sought to be protected is material and substantial; (2) the right of complainant is clear and unmistakable; and, (3) there is an urgent and paramount necessity for the writ to prevent serious damage.

The Court opines that the above-mentioned requisites have been sufficiently shown by plaintiffs in this case, accordingly, a writ of preliminary injunction is in order.

The three subject letters, particularly the letter dated September 18, 2000[,] indicate that the promissory notes executed by Benito Soliven as President of plaintiff SBI amounted to ₱218,540,646.00[,] excluding interest, penalties and other charges remained unpaid, and demand that the account be settled within ten days[,] else defendant bank shall refer the latter to its lawyers for collection.

The message in the letter is clear: If the account is not settled within the grace period, defendant bank will resort to foreclosure of mortgage on the subject properties.

The actual or imminent damage to plaintiffs is likewise clear. Considering the number of parcels of land and area involved, if these are foreclosed by defendant bank, plaintiffs' properties and source of income will be effectively diminished, possibly to the point of closure.

The only issue remaining is whether or not plaintiffs have the right to ask for an injunctive writ in order to prevent defendant bank from taking over their properties.

Plaintiff[s] argued that the interest and penalties charged them in the subject letters and attached statements of account increased during a seven-month period to an amount they described as "onerous", "usurious" ad "greedy".

They likewise asserted that there were on-going talks between officers of the corporations involved to treat or restructure the contracts to a dacion en pago, as there was a proposed plan of action by representatives of plaintiffs during the meetings.

Defendant, on the other hand, sought to explain the increase in the interest as contained in the promissory notes which were voluntarily and willingly signed by Soliven, therefore, binding on plaintiffs and that the proposed plan of action is merely an oral contract still in the negotiation stage and not binding.

The condition on the interest payments as contained in the promissory notes are as follows:

"Interest for the first quarter shall be @ 18.5% P.A. Thereafter, it shall be payable quarterly in arrears based on three months average rate."

In its Memorandum, defendant bank tried to show that the questioned increase in the interests was merely in compliance with the above condition. To this Court, the explanation is insufficient. A more

detailed rationalization is required to convince the court of the fairness of the increase in interests and penalties.

However, the coming explanation may probably be heard only during trial on the merits, and by then this pending incident or the entire case, may already be moot and academic if the injunctive writ is not issued.¹⁵

The dispositive portion of the trial court's Order dated December 14, 2000 reads:

WHEREFORE, premises considered, the application for issuance of writ of preliminary injunction is **GRANTED**.

Defendant CHINA BANKING CORPORATION, its representatives, agents and all persons working in its behalf are hereby enjoined from enforcing the contents of its letters to plaintiffs dated April 17, 2000, May 19, 2000 and September 18, 2000, particularly the bank's legal department or other counsel commencing collection proceedings against plaintiffs in the amount stated in the letters and statements of account.

The Writ of Preliminary Injunction shall be issued upon plaintiffs' posting of a bond executed to defendant in the amount of Two Million Pesos (₱2,000,000.00) to the effect [that] the plaintiff[s] will pay defendant all damages which the latter may sustain b[y] reason of the injunction if it be ultimately decided that the injunction [is] unwarranted.¹⁶

CBC sought reconsideration but the trial court denied it in an Order¹⁷ dated December 10, 2001.

Subsequently, CBC filed a "Motion to Dissolve Injunction Order" but this was denied in an Order¹⁸ dated November 10, 2003. The trial court ruled that the motion was in the nature of a mere belated second motion for reconsideration of the Order dated December 14, 2000. It also declared that CBC failed to substantiate its prayer for the dissolution of the injunctive writ.

Aggrieved, CBC filed a Petition for *Certiorari* docketed as CA-G.R. SP No. 81968 in the Court of Appeals where it claimed that the Orders dated December 14, 2000 (granting the application of petitioners SBI and MFII for the issuance of writ of preliminary injunction), December 10, 2001 (denying reconsideration of the order dated December 14, 2000), and November 10, 2003 (denying the CBC's motion to dissolve injunction order) were all issued with grave abuse of discretion amounting to lack of jurisdiction.¹⁹

¹⁵ CA rollo, pp. 33-34.

¹⁶ Id. at 34.

¹⁷ Id. at 185.

¹⁸ Id. at 27-31.

¹⁹ Rollo, p. 37.

In a Decision dated April 16, 2007, the Court of Appeals found that, on its face, the trial court's Order dated December 14, 2000 granting the application of SBI and MFII for the issuance of a writ of preliminary injunction had no basis as there were no findings of fact or law which would indicate the existence of any of the requisites for the grant of an injunctive writ. It appeared to the Court of Appeals that, in ordering the issuance of a writ of injunction, the trial court simply relied on the imposition by CBC of the interest rates to the loans obtained by SBI and MFII. According to the Court of Appeals, however, the records do not reveal a clear and unmistakable right on the part of SBI and MFII that would entitle them to the protection of a writ of preliminary injunction. Thus, the Court of Appeals granted the petition of CBC, set aside the Orders dated December 14, 2000, December 10, 2001, and November 10, 2003 and dissolved the injunctive writ issued by the RTC of Pasig City.²⁰

SBI and MFII filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution dated September 18, 2007.

Hence, this petition.

SBI and MFII assert that the Decision dated April 16, 2007 of the Court of Appeals is legally infirm as its conclusions are contrary to the judicial admissions of CBC. They allege that, in its Answer, CBC admitted paragraphs 25 and 26 of the Complaint regarding the interests and charges amounting to ₱35,093,980.14 and ₱80,614,525.15, respectively, which constituted more than 50% of the total obligation of ₱334,249,151.29 as of February 15, 2000. For SBI and MFII, CBC's admission of paragraphs 25 and 26 of the Complaint is an admission that the interest rate imposed by CBC is usurious, exorbitant and confiscatory. Thus, when the Court of Appeals granted the petition of CBC and ordered the lifting of the writ of preliminary injunction it effectively disposed of the main case, Civil Case No. 68105, without trial on the merits and rendered moot and academic as it enabled CBC to foreclose on the mortgages despite the usurious, exorbitant and confiscatory interest rates.²¹

SBI and MFII also claim that the Court of Appeals either overlooked or disregarded undisputed and admitted facts which, if properly considered, would have called for the maintenance and preservation of the preliminary injunction issued by the trial court. They argue that the Court of Appeals did not even consider Article 1229 of the Civil Code which provides:

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

²⁰ Id. at 39.

²¹ *Rollo*, pp. 9-29.

For SBI and MFII, the failure of the Court of Appeals to take into account Article 1229 of the Civil Code and its act of lifting the preliminary injunction “would definitely pave the way for [CBC’s] unbridled imposition of illegal rates of interest and immediate foreclosure” of the properties of SBI and MFII “without the benefit of a full blown trial.”²²

For its part, CBC assails the petition contending that it is not allowed under Rule 45 of the Rules of Court because it simply raises issues of fact and not issues of law. CBC further asserts that the Decision of the Court of Appeals is an exercise of sound judicial discretion as it is in accord with the law and the applicable provisions of this Court.²³

The petition fails.

This Court has recently reiterated the general principles in issuing a writ of preliminary injunction in *Palm Tree Estates, Inc. v. Philippine National Bank*²⁴:

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.”

A writ of preliminary injunction is an extraordinary event which must be granted only in the face of actual and existing substantial rights. 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.²⁵ In this connection, a writ of preliminary injunction is issued to preserve the *status quo ante*, upon the

²² Id. at 22.

²³ *Rollo*, pp. 226-228.

²⁴ G.R. No. 159370, October 3, 2012, citing *Barbieto v. Court of Appeals*, G.R. No. 184645, October 30, 2009, 604 SCRA 825, 844-845.

²⁵ Id.

applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists *prima facie*, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injury.²⁶

Here, SBI and MFII basically claim a right to have their mortgaged properties shielded from foreclosure by CBC on the ground that the interest rate and penalty charges imposed by CBC on the loans availed of by SBI are iniquitous and unconscionable. In particular, SBI and MFII assert:

There is therefore an urgent necessity for the issuance of a writ of preliminary injunction or at least a *status quo* [order], otherwise, respondent bank will definitely foreclose petitioners' properties without awaiting the trial of the main case on the merits[,] with said usurious and confiscatory rates of interest as basis.²⁷

and

There is therefore no legal justification for the Honorable Court of Appeals to lift/dissolve the injunction issued by the trial court, otherwise, respondent bank – on the basis of this illegal imposition of interest – can already foreclose the properties of petitioners and render the whole case (sans trial on the merits) moot and academic.²⁸

On this matter, the Order dated December 14, 2000 of the trial court enumerates as the first argument raised by SBI and MFII in support of their application for the issuance of a writ of preliminary injunction:

1. Their rights basically are for the protection of their properties put up as collateral for the loans extended by defendant bank to them[.]²⁹

As debtor-mortgagors, however, SBI and MFII do not have a right to prevent the creditor-mortgagee CBC from foreclosing on the mortgaged properties simply on the basis of alleged “usurious, exorbitant and confiscatory rate of interest.”³⁰ First, assuming that the interest rate agreed upon by the parties is usurious, the nullity of the stipulation of usurious interest does not affect the lender's right to recover the principal loan, nor affect the other terms thereof.³¹ Thus, **in a usurious loan with mortgage, the right to foreclose the mortgage subsists, and this right can be exercised by the creditor upon failure by the debtor to pay the debt due.**³²

²⁶ *Philippine National Bank v. Castallo Technology Corporation*, G.R. No. 178367, March 19, 2012, 668 SCRA 415, 421.

²⁷ *Rollo*, p. 25.

²⁸ *Id.* at 20.

²⁹ *CA rollo*, p. 33.

³⁰ *Rollo*, p. 20.

³¹ *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc.*, 420 Phil. 902, 918 (2001).

³² *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, G.R. No. 192986, January 15, 2013.

Second, even the Order dated December 14, 2000 of the trial court, which granted the application for the issuance of a writ of preliminary injunction, recognizes that the parties still have to be heard on the alleged lack of “fairness of the increase in interests and penalties” during the trial on the merits.³³ Thus, the basis of the right claimed by SBI and MFII remains to be controversial or disputable as there is still a need to determine whether or not, upon consideration of the various circumstances surrounding the agreement of the parties, the interest rates and penalty charges are unconscionable. Therefore, such claimed right cannot be considered clear, actual and subsisting. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.³⁴

The Order dated December 10, 2001 also shows the reasoning of the trial court which betrays that its grant of the application of SBI and MFII for the issuance of a writ of preliminary injunction was not based on a clear legal right. Said the trial court:

It was likewise shown that plaintiffs [SBI and MFII] had the clear right and urgency to ask for injunction **because of the issue of validity of the increase in the amount of the loan obligation.**³⁵ (Emphasis supplied.)

At most, the above finding of the trial court that the validity of the increase in the amount of the loan obligation is in issue simply amounted to a finding that the rights of SBI and MFII vis-à-vis that of CBC are disputed and debatable. In such a case where the complainant-movant’s right is doubtful or disputed, the issuance of an injunctive writ is not proper.³⁶

Even assuming that SBI and MFII are correct in claiming their supposed right, it nonetheless disintegrates in the face of the ten promissory notes in the total amount of ₱218,540,648.00, exclusive of interest and penalties, issued by SBI in favor of CBC on March 1, 1999 which until now remain unpaid despite the maturity of the said notes on March 1, 2004 and CBC’s repeated demands for payment.³⁷ Foreclosure is but a necessary consequence of nonpayment of mortgage indebtedness.³⁸ As this Court held in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*³⁹:

³³ *Rollo*, p. 51.

³⁴ *Palm Tree Estates, Inc. v. Philippine National Bank*, supra note 24.

³⁵ *CA rollo*, p. 185.

³⁶ *See Selegna Management and Development Corporation v. United Coconut Planters Bank*, 522 Phil. 671, 691 (2006). In this case, it was held that preliminary injunction is not proper when the complainant’s right is doubtful or disputed.

³⁷ Demand letters dated June 22, 2010 of CBC to SBI and MFII, respectively, Annexes “B” and “C” of the Urgent Ex-Parte Petition for Immediate Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction filed by SBI and MFII in this case on July 9, 2010.

³⁸ *Lotto Restaurant Corporation v. BPI Family Savings Bank, Inc.*, G.R. No. 177260, March 30, 2011, 646 SCRA 699, 705.

³⁹ G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91-92.

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. (Citation omitted.)

In addition, the default of SBI and MFII to pay the mortgage indebtedness disqualifies them from availing of the equitable relief that is the injunctive writ. In particular, SBI and MFII have stated in their Complaint that they have made various requests to CBC for restructuring of the loan.⁴⁰ The trial court's Order dated December 14, 2000 also found that SBI wrote several letters to CBC "requesting, among others, for a reduction of interests and penalties and restructuring of the loan."⁴¹ A debtor's various and constant requests for deferment of payment and restructuring of loan, without actually paying the amount due, are clear indications that said debtor was unable to settle his obligation.⁴² SBI's default or failure to settle its obligation is a breach of contractual obligation which tainted its hands and disqualified it from availing of the equitable remedy of preliminary injunction.

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

Even Article 1229 of the Civil Code, which SBI and MFII invoke, works against them. Under that provision, the equitable reduction of the penalty stipulated by the parties in their contract will be based on a finding by the court that such penalty is iniquitous or unconscionable. Here, the trial court has not yet made a ruling as to whether the penalty agreed upon by CBC with SBI and MFII is unconscionable. Such finding will be made by the trial court only after it has heard both parties and weighed their respective evidence in light of all relevant circumstances. Hence, for SBI and MFII to claim any right or benefit under that provision at this point is premature.

As no clear right that warrants the extraordinary protection of an injunctive writ has been shown by SBI and MFII to exist in their favor, the first requirement for the grant of a preliminary injunction has not been satisfied. In the absence of any requisite, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ of injunction must be struck down for having been rendered in

⁴⁰ Paragraphs 13-16 of Part II (General Allegations) and 2 of Part III.A. (First Cause of Action), *rollo*, pp. 62-63 and 67-68, respectively.

⁴¹ *Rollo*, p. 49.

⁴² *Palm Tree Estates, Inc. v. Philippine National Bank*, *supra* note 24.

grave abuse of discretion.⁴³ Thus, the Court of Appeals did not err when it granted the petition for *certiorari* of CBC and ordered the dissolution of the writ of preliminary injunction issued by the trial court.

Neither has there been a showing of irreparable injury. An injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. The provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation.⁴⁴

In the first place, any injury that SBI and MFII may suffer in case of foreclosure of the mortgaged properties will be purely monetary and compensable by an appropriate judgment in a proper case against CBC. Moreover, where there is a valid cause to foreclose on the mortgages, it cannot be correctly claimed that the irreparable damage sought to be prevented by the application for preliminary injunction is the loss of the mortgaged properties to auction sale.⁴⁵ The alleged entitlement of SBI and MFII to the “protection of their properties put up as collateral for the loans” they procured from CBC is not the kind of irreparable injury contemplated by law. Foreclosure of mortgaged property is not an irreparable damage that will merit for the debtor-mortgagor the extraordinary provisional remedy of preliminary injunction. As this Court stated in *Philippine National Bank v. Castalloy Technology Corporation*⁴⁶:

[A]ll is not lost for defaulting mortgagors whose properties were foreclosed by creditors-mortgagees. The respondents will not be deprived outrightly of their property, given the right of redemption granted to them under the law. Moreover, in extrajudicial foreclosures, mortgagors have the right to receive any surplus in the selling price. Thus, if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but will give the mortgagor a cause of action to recover such surplus. (Citation omitted.)

The *En Banc* Resolution in A.M. No. 99-10-05-0, *Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages*, further stacks the odds against SBI and MFII. Issued on February 20, 2007, or some two months before the Court of Appeals promulgated its decision in this case, the resolution embodies the additional guidelines intended to aid courts in foreclosure proceedings, specifically limiting the instances, and citing the conditions, when a writ against foreclosure of a mortgage may be issued, to wit:

⁴³ Id.

⁴⁴ *Philippine National Bank v. Castalloy Technology Corporation*, supra note 26 at 424.

⁴⁵ *G.G. Sportswear Manufacturing Corporation v. Banco De Oro Unibank, Inc.*, G.R. No. 184434, February 8, 2010, 612 SCRA 47, 53.

⁴⁶ Supra note 26 at 425.

(1) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the loan secured by the mortgage has been paid or is not delinquent unless the application is verified and supported by evidence of payment.

(2) **No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the interest on the loan is unconscionable, unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly while the case is pending.**

(3) Where a writ of preliminary injunction has been issued against a foreclosure of mortgage, the disposition of the case shall be speedily resolved. To this end, the court concerned shall submit to the Supreme Court, through the Office of the Court Administrator, quarterly reports on the progress of the cases involving ten million pesos and above.

(4) All requirements and restrictions prescribed for the issuance of a temporary restraining order/writ of preliminary injunction, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply as well to a *status quo* order.⁴⁷

The guidelines speak of strict exceptions and conditions.⁴⁸ To reverse the decision of the Court of Appeals and reinstate the writ of preliminary injunction issued by the trial court will be to allow SBI and MFII to circumvent the guidelines and conditions provided by the *En Banc* Resolution in A.M. No. 99-10-05-0 dated February 20, 2007 and prevent CBC from foreclosing on the mortgaged properties based simply on the allegation that the interest on the loan is unconscionable. This Court will not permit such a situation. What cannot be done directly cannot be done indirectly.⁴⁹

All told, the relevant circumstances in this case show that there was failure to satisfy the requisites for the issuance of a writ of preliminary injunction. The injunctive writ issued by the trial court should therefore be lifted and dissolved. That was how the Court of Appeals decided. That is how it should be.

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

⁴⁷ Id. at 423.

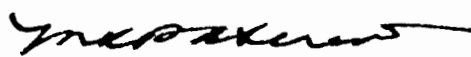
⁴⁸ Id. at 424.

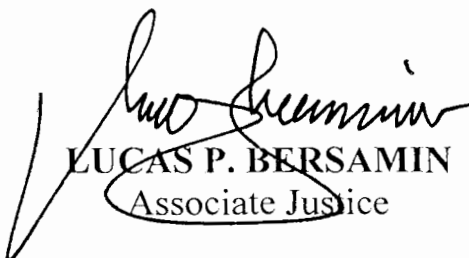
⁴⁹ *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, G.R. No. 166471, March 22, 2011, 646 SCRA 21, 31.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant 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