



Republic of the Philippines
 Supreme Court
 Manila

WILFREDO V. LAMIN
 Division Clerk of Court
 Third Division

JUL 28 2015

THIRD DIVISION

SPOUSES ROGELIO and SHIRLEY T. LIM, Agusan Institute of Technology, represented by DR. SHIRLEY T. LIM, President and as Attorney-in-Fact of FELIX A. CUENCA, MARY ANN M. MALOLOT, and REY ADONIS M. MEJORADA
 Petitioners,

G.R. No. 190134

- versus -

Present:

LEONARDO-DE CASTRO,* J.,
 PERALTA, J.,** *Acting Chairperson*,
 VILLARAMA, JR.,
 PEREZ,*** and
 PERLAS-BERNABE,**** JJ.

HONORABLE COURT OF APPELAS, TWENTY-SECOND DIVISION, CAGAYAN DE ORO CITY, MINDANAO STATION; SHERIFF ARCHIBALD C. VERGA, and his DEPUTIES, Regional Trial Court, Branch 33, Hall of Justice, Libertad, Butuan City; and FIRST CONSOLIDATED BANK,
 Respondents.

Promulgated:

July 8, 2015

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DECISION

PERALTA, J.:

Before us is a Petition for *Certiorari*, Prohibition and Mandamus with Prayer for a Temporary Restraining Order and/or Writ of Preliminary

* Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2095 dated July 1, 2015.

** Per Special Order No. 2071 dated June 23, 2015.

*** Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

**** Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr. Special Order No. 2072 dated June 23, 2015.

Injunction under Rule 65 of the Rules of Court which seeks to annul and set aside the Resolutions dated July 2, 2009¹ and September 30, 2009² of the Court of Appeals (CA) in CA-G.R. CV No. 01822-MIN.

The facts follow:

Between the periods March 25, 1996 to July 13, 2000, petitioners executed several real estate mortgages and chattel mortgage in favor of respondent First Consolidated Bank (*hereafter private respondent bank*), through its branch in Butuan City.

The loans obtained by petitioners were released on different dates and are summarized as follows:

Date the Loan was Granted		Principal Amount
March 19, 1996	Agusan Institute of Technology (owned by petitioners) was granted an Interim Financing Loan.	₱. 8,000,000.00
March 25, 1996	Agusan Institute of Technology was granted a second Interim Financing Loan.	2,000,000.00
March 27, 1996	Agusan Institute of Technology was granted a third Interim Financing Loan.	1,500,000.00
July 17, 1996	Rogelio Lim was granted a commercial loan.	300,000.00
October 20, 1996	Rogelio Lim was granted a second commercial loan.	1,300,000.00
October 31, 1996	Rogelio Lim was granted a fourth commercial loan.	60,000.00
February 5, 1997	Agusan Institute of Technology was granted a loan the entire proceeds of which was used to pay off the three Interim Financing Loans.	9,512,400.00
February 5, 1997	Agusan Institute of Technology was granted a loan.	1,987,600.00
July 20, 1997	Agusan Institute of Technology was granted another loan.	3,400,000.00
April 19, 1999	Agusan Institute of Technology was granted a loan.	45,000.00
June 30, 1999	Agusan Institute of Technology was granted a loan.	10,100,000.00

¹ Penned by Associate Justice Ruben C. Ayson, with Associate Justices Romulo V. Borja and Michael P. Elbinias, concurring; *rollo*, pp. 65-66.

² *Rollo*, pp. 71-72.

Private respondent bank admitted that the aforementioned loans were paid by Agusan Institute of Technology except for the 7th, 8th and 11th loans. Petitioners failed to religiously pay said loans as they became due and demandable, hence, private respondent bank was forced to file for an application for Extra-judicial Foreclosure of Real Estate Mortgage and Chattel Mortgage on December 28, 2000.

In response, petitioners filed an action for revocation and annulment of real estate mortgage and chattel mortgage with plea for the issuance of a temporary restraining order and preliminary injunction with the Regional Trial Court (RTC) of Butuan City. In its complaint, petitioners alleged that the contracts of mortgage cannot be foreclosed because Agusan Institute of Technology had already fully paid its obligation with private respondent Bank if the latter did not charge exorbitant and excessive interests and penalties in the computation of all payments made by the former. Petitioners assert that the total payments they tendered to private respondent bank constituted overpayments to the loan. They allege that there is no legal and factual basis or necessity for private respondent bank to effect the foreclosure of the real and personal properties mortgaged to secure the loan.

To prove their cause of action, petitioners presented one witness, petitioner Shirley Lim, who testified that due to private respondent bank's illegal application for the extrajudicial foreclosure of its mortgages, she suffered social humiliation, wounded feelings, sleepless nights and mental anxieties. Interesting to note, however, that despite petitioners' claims regarding overpayments of their loan obligations, no documentary evidence was ever attached to the complaint proving that indeed there were overpayments made and when it were actually made.

After proper hearing on petitioners' application for issuance of a writ of preliminary injunction, the RTC issued the writ ordering private respondent Bank to desist from foreclosing the said contracts of mortgage.

Trial on the merits then ensued.

On December 28, 2007, the RTC rendered a Decision³ lifting the writ of preliminary injunction and ruling in favor of private respondent Bank. The *fallo* of said judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendant Bank and against the plaintiff Agusan Institute of Technology, declaring, directing and ordering the following:

- a) The dismissal of the instant complaint.

³ *Id.* at 80-103.



- b) The plaintiff Agusan Institute of Technology (AIT) as represented by Dr. Shirley T. Lim to pay defendant Bank the following:
1. The outstanding balance of the 7th loan (₱9,512,400.00) which as of May 23, 2005 amounts to ₱20,213,240.55 until fully paid.
 2. The outstanding balance of the 8th loan (₱1,987,600.00) which amounts to ₱3,742,841.63 as of May 23, 2005 until fully paid.
 3. The outstanding balance of the 11th loan (₱10,100,000.00) which amounts to ₱46,569,275.26 as of May 23, 2005 until fully paid.
- c) Attorney's fees in the amount of 10% of the outstanding obligations.
- d) Litigation expenses in the amount of ₱30,000.00.
- e) Exemplary damages in the amount of ₱50,000.00.
- f) The writ of preliminary injunction is hereby ordered lifted and of no force and effect.

SO ORDERED.⁴

Dissatisfied, petitioners appealed to the CA.

In a Resolution dated July 2, 2009, the CA denied petitioners' appeal with prayer for the issuance of a Temporary Restraining Order (*TRO*) and/or Writ of Preliminary Injunction.

The CA held that injunction is an extraordinary remedy to be resorted to when there is a pressing necessity to avoid injurious consequences that cannot be remedied under any standard compensation. To be entitled to an injunctive writ, the applicants must show, *inter alia*, the existence of a clear and unmistakable right and an urgent and paramount necessity for the writ to prevent serious damages. The CA held that it neither appears from the facts shown by the *TRO* application that great or irreparable injury would result to petitioners before the matter can be heard, nor did petitioners show any clear and positive right to be entitled to the protection of the ancillary relief of *TRO*.⁵

Petitioners filed a motion for reconsideration, however, the same was denied in a Resolution dated September 30, 2009.

Hence, the present petition.

Petitioners raise the following grounds to support their petition:

⁴ *Id.* at 102-103.

⁵ *Id.* at 66.

I

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE JULY 2, 2009 RESOLUTION WHICH DENIED PETITIONERS' APPLICATION FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER, DESPITE THE FACT THAT PETITIONERS HAVE SHOWN THEIR CLEAR ENTITLEMENT TO THE ISSUANCE OF INJUNCTIVE RELIEF.

II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE SEPTEMBER 30, 2009 RESOLUTION WHICH DENIED PETITIONERS' MOTION FOR RECONSIDERATION OF THE RESOLUTION DATED JULY 2, 2009 DENYING PETITIONERS' APPLICATION FOR THE ISSUANCE OF INJUNCTIVE RELIEF, AND IN NOT ACTING ON THE MERITS ON PETITIONERS' SUPPLEMENTAL TO THE MOTION FOR RECONSIDERATION, DESPITE THE FACT THAT PETITIONERS HAVE CLEARLY SHOWN THAT GREAT AND IRREPARABLE INJURY WOULD BE COMMITTED AGAINST THEM IF THEIR PLEA FOR INJUNCTIVE RELIEF WOULD NOT BE ISSUED IN THEIR FAVOR AND THAT PETITIONERS RAISED COGENT GROUNDS IN THEIR SUPPLEMENTAL MOTION.⁶

In essence, at issue is whether or not the CA, in denying petitioners' application for a writ of preliminary injunction, committed grave abuse of discretion amounting to lack of jurisdiction.

We rule in the negative.

Section 5, Rule 58 of the Rules of Court provides that a temporary restraining order may be issued only if it appears from the facts shown by affidavits or by verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard. Thus:

Section 5. *Preliminary injunction not granted without notice; exception.* – No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

⁶ *Id.* at 22.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provide herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed, automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

From the foregoing, it is clear that to be entitled to an injunctive writ, the applicant must show that there exists a right to be protected which is directly threatened by an act sought to be enjoined. Furthermore, there must be a showing that the invasion of the right is material and substantial, and that there is an urgent and paramount necessity for the writ to prevent serious damage.⁷

In *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*,⁸ this Court held that a writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests. Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately.⁹

Also, the Court, in the case of *Pahila-Garrido v. Tortogo*,¹⁰ emphasized that -

⁷ *Medina v. City Sheriff, Manila*, 342 Phil. 90, 96 (1993).

⁸ 684 Phil. 283 (2012).

⁹ *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*, *supra*, at 291-292.

¹⁰ 671 Phil. 320 (2011)

[I]njunctive relief is resorted to only when there is a pressing necessity to avoid injurious consequences that cannot be redressed under any standard of compensation. The controlling reason for the existence of the judicial power to issue the writ of injunction is that the court may thereby prevent a threatened or continuous injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated. A writ of preliminary injunction is an extraordinary event and is the strong arm of equity or a transcendent remedy. It is granted only to protect actual and existing substantial rights. Without actual and existing rights on the part of the applicant, and in the absence of facts bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for being issued in grave abuse of discretion. Thus, injunction will not issue to protect a right not *in esse*, which is merely contingent, and which may never arise, or to restrain an act which does not give rise to a cause of action.¹¹

Worth noting also is the fact that the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.¹²

Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.¹³

In the present case, we find that the CA did not commit grave abuse of discretion in denying petitioners' application for preliminary injunction and TRO. As aptly held by the CA, it neither appears from the facts shown by the TRO application that great or irreparable injury would result to petitioners before the matter can be heard, nor did they show any clear and positive right to be entitled to the protection of the ancillary relief of TRO as they only claim that their debts would have been paid had respondent bank not impose astronomical interests on its loans.

Nevertheless, it appears that the acts sought to be enjoined by petitioners, that is, for respondents to cease and desist from conducting the extrajudicial foreclosure of its properties, are already *fait accompli*. As early as July 31, 2009, Sheriff Archibald Varga executed in favor of respondent

¹¹ *Pahila-Garrido v. Tortogo*, *supra*, at 342-343.

¹² *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*, *supra* note 8, at 293.

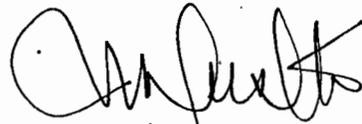
¹³ *Lukang v. Pagbilao Development Corporation*, G.R. No. 195374, March 10, 2014, 718 SCRA 297, 308.



bank the Sheriff's Certificate of Sale on said properties after petitioners failed to exercise the right of redemption within the period required of them under the law. Since the very evil that petitioners want to avoid no longer exists, there is nothing more to be restrained.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Court of Appeals Resolutions dated July 2, 2009 and September 30, 2009 are **AFFIRMED**.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

TERESITA LEONARDO-DE CASTRO
TERESITA J. LEONARDO-DE CASTRO
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
ESTELA M. PERLAS-BERNABE
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.



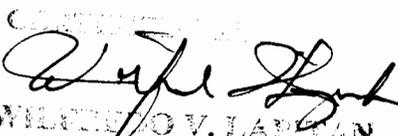
DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

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



WILFREDO V. LAPID
Division Clerk of Court
Third Division

JUL 28 2015