Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus -

HON. JUDGE AGAPITO L. HONTANOSAS, JR., REGIONAL TRIAL COURT, BRANCH 16, CEBU CITY, SILVERIO BORBON, SPOUSES XERXES AND ERLINDA FACULTAD, AND XM FACULTAD & DEVELOPMENT CORPORATION,
Respondents.

G.R. No. 157163

Present:

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

JUN 25 2014

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DECISION

BERSAMIN, *J.*:

Injunction should not issue except upon a clear showing that the applicant has a right *in esse* to be protected, and that the acts sought to be enjoined are violative of such right. A preliminary injunction should not determine the merits of a case, or decide controverted facts, for, being a preventive remedy, it only seeks to prevent threatened wrong, further injury, and irreparable harm or injustice until the rights of the parties can be settled.

The Case

Under review at the instance of the defendant, now the petitioner herein, is the decision promulgated on July 9, 2002,[1] whereby the Court of Appeals (CA) upheld the order issued on July 5, 2001 in Civil Case No. CEB-26468 entitled *Spouses Silverio & Zosima Borbon, et al. v. Bank of the Philippine Islands* by the Regional Trial Court (RTC), Branch 16, in Cebu City, presided by Hon. Judge Agapito L. Hontanosas, Jr.

Antecedents

On May 22, 2001, respondents Spouses Silverio and Zosima Borbon, Spouses Xerxes and Erlinda Facultad, and XM Facultad and Development Corporation commenced Civil Case No. CEB-26468 to seek the declaration of the nullity of the promissory notes, real estate and chattel mortgages and continuing surety agreement they had executed in favor of the petitioner. They further sought damages and attorney's fees, and applied for a temporary restraining order (TRO) or writ of preliminary injunction to prevent the petitioner from foreclosing on the mortgages against their properties.

The *complaint* alleged that the respondents had obtained a loan from the petitioner, and had executed promissory notes binding themselves, jointly and severally, to pay the sum borrowed; that as security for the payment of the loan, they had constituted real estate mortgages on several parcels of land in favor of the petitioner; and that they had been made to sign a continuing surety agreement and a chattel mortgage on their Mitsubishi Pajero.

It appears that the respondents' obligation to the petitioner had reached ₱17,983,191.49, but they had only been able to pay ₱13 Million because they had been adversely affected by the economic turmoil in Asia in 1997. The petitioner required them to issue postdated checks to cover the loan under threat of foreclosing on the mortgages. Thus, the *complaint* sought a TRO or a writ of preliminary injunction to stay the threatened foreclosure.

On June 6, 2001, the petitioner filed its *answer with affirmative defenses and counterclaim*, as well as its *opposition* to the issuance of the writ of preliminary injunction, contending that the foreclosure of the mortgages was within its legal right to do.[2]

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1 *Rollo*, pp. 179-187; penned by Associate Justice Eugenio S. Labitoria (retired), and concurred in by Associate Justice Teodoro P. Regino (retired) and Associate Justice Juan Q. Enriquez, Jr. (retired).

2 Id. at 152-160.

Also on June 6, 2001 the petitioner filed a *motion to dismiss* reiterating its affirmative defenses, to wit:

> I) THAT THE COMPLAINT SHOULD BE DISMISSED BECAUSE VENUE IS IMPROPERLY LAID. (RULE 16, SECITON 1, PARAGRAPH (C);
>
> II) THAT THE COURT HAS NOT ACQUIRED JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIM BECAUSE THE PROPER LEGAL FEES HAS NOT BEEN PAID IN ACCORDANCE WITH RULE 14, OF THE RULES OF COURT AND CIRCULAR NO. 7 OF THE SUPREME COURT, SERIES OF 1988;
>
> III) THAT ZOSIMA BORBON'S COMPLAINT SHOULD BE DISMISSED BECAUSE PLAINTIFF ZOSIMA BORBON HAS NO LEGAL PERSONALITY TO SUE BEING DECEASED, SPOUSE OF PLAINTIFF SILVERIO BORBON. (RULE 16, SECTION 1(d);
>
> IV) THAT THE ESTATE OF ZOSIMA BORBON BEING AN INDISPENSABLE PARTY, THE COMPLAINT SHOULD BE AMENDED TO INCLUDE THE ESTATE OF ZOSIMA BORBON. (RULE 16, SECTION 1(j);
>
> V) THAT THE COMPLAINT OF PLAINTIFF XM FACULTAD AND DEVELOPMENT CORPORATION, SHOULD BE DISMISSED BECAUSE THERE IS NO BOARD RESOLUTION AUTHORIZING THE FILING OF THIS CASE. [RULE 16, SECTION 1 (d)];
>
> VI) THAT THE PLEADING ASSERTING THE CLAIM STATES NO CAUSE OF ACTION.[3]

On July 5, 2001, the RTC denied the petitioner's *motion to dismiss* for being unmeritorious,[4] but granted the respondents' application for preliminary injunction,[5] to wit:

> WHEREFORE, premises considered, the application for preliminary injunction is GRANTED. Upon filing by the plaintiff-applicants of a bond in the amount of ₱2,000,000 in favor of defendant to the effect that applicants will pay to adverse party all damages which it may sustain by reason of the injunction, let a writ of preliminary injunction be issued directing the defendant and its agents or representatives, to cease and desist from commencing foreclosure and sale proceedings of the mortgaged properties; from taking possession of the Mitsubishi Pajero subject of the chattel mortgage; and from using the questioned post-dated checks as evidence for the filing of complaint against plaintiffs Facultad for violation of Batas Pambansa Blg. 22, while the present case is pending litigation.

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3 Id. at 181-182.
4 Id. at 169-170.
5 Id. at 171.

> This writ of preliminary injunction shall continue until further orders from the Court.
>
> Notify the parties of this Order.
>
> SO ORDERED.[6]

The RTC later denied the petitioner's *motion for reconsideration* through its order[7] of August 22, 2001.

Ruling of the CA

Dissatisfied, the petitioner assailed the orders of the RTC by petition for *certiorari* in the CA, submitting the lone issue of:

> WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ISSUED AN ORDER DENYING THE MOTION TO DISMISS AND GRANTING THE WRIT OF PRELIMINARY MANDATORY INJUNCTION.

On July 9, 2002, however, the CA rendered the adverse decision under review, to wit:

> **WHEREFORE**, premises considered, the assailed order of the Regional Trial Court (RTC) of Cebu City, Branch 16 dated July 5, 2001 and August 22, 2001 are hereby **AFFIRMED**. Let the original records of this case be remanded immediately to the court a quo for further proceedings.
>
> SO ORDERED.[8]

The CA held that the petitioner's averment of non-payment of the proper docket fee by the respondents as the plaintiffs in Civil Case No. CEB-26468 was not substantiated; that even if the correct docket fee was not in fact paid, the strict application of the rule thereon could be mitigated in the interest of justice;[9] and that Civil Case No. CEB-26468, being a personal action, was properly filed in Cebu City where respondent XM Facultad and Development Corporation's principal office was located.[10]

The CA further held that Zosima Borbon's death rendered respondent Silverio Borbon, her surviving spouse, the successor to her estate; that although there was a valid transfer of interest pending the litigation, the

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6 Id. at 170.
7 Id. at 177.
8 Id. at 186.
9 Id. at 183.
10 Id. at 184.

dismissal of the *complaint* would not be in order because it was permissible under the rules to continue the action in the name of the original party;[11] and that the RTC did not commit grave abuse of discretion in issuing the writ of preliminary injunction because it thereby only applied the pertinent law and jurisprudence.[12]

The CA denied the petitioner's *motion for reconsideration* through its resolution of February 12, 2003.[13]

Issues

Hence, this appeal, with the petitioner positing as follows:

1. Whether or not Civil Case No. CEB-26468 should be dismissed for (*a*) non-payment of the correct amount of docket fee; and (*b*) improper venue;[14]

2. Whether or not the issuance of the writ of preliminary injunction against the petitioner, its agents and representatives, was in order.

Ruling of the Court

The appeal is partly meritorious.

1.
Civil Case No. CEB-26468 was a personal action; hence, venue was properly laid

The CA and the RTC held that Civil Case No. CEB-26468, being for the declaration of the nullity of a contract of loan and its accompanying continuing surety agreement, and the real estate and chattel mortgages, was a personal action; hence, its filing in Cebu City, the place of business of one of the plaintiffs, was correct under Section 2, Rule 4 of the *Rules of Court*.

The petitioner contends, however, that Civil Case No. CEB-26468 was a real action that should be commenced and tried in the proper court having jurisdiction over the area wherein the real property involved, or a portion thereof, was situated; and that consequently the filing and docket

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11 Id. at 184-185.
12 Id. at 186.
13 Id. at 239.
14 Id. at 24.

fees for the *complaint* should be based on the value of the property as stated in the certificate of sale attached thereto.

We sustain the lower courts' holdings.

The determinants of whether an action is of a real or a personal nature have been fixed by the *Rules of Court* and relevant jurisprudence. According to Section 1, Rule 4 of the *Rules of Court*, a real action is one that affects title to or possession of real property, or an interest therein. Such action is to be commenced and tried in the proper court having jurisdiction over the area wherein the real property involved, or a portion thereof, is situated, which explains why the action is also referred to as a local action. In contrast, the *Rules of Court* declares *all other actions* as personal actions.[15] Such actions may include those brought for the recovery of personal property, or for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property.[16] The venue of a personal action is the place where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff,[17] for which reason the action is considered a transitory one.

The *complaint* in Civil Case No. CEB-26468 pertinently alleged as follows:[18]

> x x x x
>
> 3.1 Plaintiffs signed blank pre-printed forms of promissory note no. 501253-000, continuing surety agreement, real estate mortgages, chattel mortgage which violates the principle of mutuality of contracts. These contracts are in the nature of contracts of adhesion with provisions favouring defendant bank and plaintiffs had nothing to do except to sign the unjust stipulations which should be declared as NULL AND VOID. These contracts do not reflect the real agreement of the parties and the stipulations are tilted in favor of defendant bank.
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> 3.2 Moreover, these real estate mortgages, chattel mortgages and continuing surety agreement are securing specific amounts of obligation and upon the payment of ₱13,000,000 to defendant bank, automatically, these became *functus de oficio* and should be released immediately without the encumbrance.
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> 3.3 As the chattel mortgage involving the Mitsubishi Pajero secured only ₱600,000.00, upon liquidation of more than ₱800,000.00

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15 Section 2, Rule 4 of the *Rules of Court*.

16 *Hernandez v. Development Bank of the Phil.*, No. L-31095, June 18, 1976, 71 SCRA 290, 292-293.

17 Section 2, Rule 4 of the *Rules of Court*; see also *Orbeta v. Orbeta*, G.R. No. 166837, November 27, 2006, 508 SCRA 265, 268.

18 *Rollo*, pp. 145-146.

> principal payment, the same became null and void, and defendant bank should be ordered to cancel the mortgage and to be directed not to take any appropriate action to take possession.
>
> 3.4 In addition, Penbank Checks Nos. 11237 to 11242 with amounts of ₱200,000.00 each and BPI Check Nos. 019098 & 019099 with amounts of ₱400,000.00 each, issued against the will of plaintiffs Facultad and without any consideration, should be declared null and void. Defendant bank should be directed not to deposit the same for collection with the drawee bank.
>
> x x x x
>
> 3.6 Furthermore, the total obligation of plaintiffs is void and baseless because it is based on illegal impositions of exorbitant interest and excessive charges. Interest was converted into principal which in turn earns interest. These illegal impositions are considered by law and jurisprudence as null and void. These excessive interest and charges should be applied to the principal unless there is application, defendant bank is enriching itself at the expense of plaintiffs.
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> x x x x

Based on the aforequoted allegations of the *complaint* in Civil Case No. CEB-26468, the respondents seek the nullification of the promissory notes, continuing surety agreement, checks and mortgage agreements for being executed against their will and vitiated by irregularities, not the recovery of the possession or title to the properties burdened by the mortgages. There was no allegation that the possession of the properties under the mortgages had already been transferred to the petitioner in the meantime. Applying the determinants, Civil Case No. CEB-26468 was unquestionably a personal action, for, as ruled in *Chua v. Total Office Products and Services (Topros), Inc.*:[19]

> Well-settled is the rule that an action to annul a contract of loan and its accessory real estate mortgage is a personal action. In a personal action, the plaintiff seeks the recovery of personal property, the *enforcement of a contract* or the recovery of damages. In contrast, in a real action, the plaintiff seeks the recovery of real property, or, as indicated in Section 2 (a), Rule 4 of the then Rules of Court, a real action is an action affecting title to real property or for the *recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property*.
>
> In the *Pascual* case, relied upon by petitioner, the contract of sale of the fishpond was assailed as fictitious for lack of consideration. We held that there being no contract to begin with, there is nothing to annul. Hence, we deemed the action for annulment of the said fictitious contract therein as one constituting a real action for the recovery of the fishpond subject thereof.

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[19] G.R. No. 152808, September 30, 2005, 471 SCRA 500, 507-509.

We cannot, however, apply the foregoing doctrine to the instant case. Note that in *Pascual*, title to and possession of the subject fishpond had already passed to the vendee. There was, therefore, a need to recover the said fishpond. But in the instant case, ownership of the parcels of land subject of the questioned real estate mortgage was never transferred to petitioner, but remained with TOPROS. Thus, no real action for the recovery of real property is involved. This being the case, TOPROS' action for annulment of the contracts of loan and real estate mortgage remains a personal action.

x x x x

The Court of Appeals finds that *Hernandez v. Rural Bank of Lucena, Inc.* provides the proper precedent in this case. In *Hernandez*, appellants contended that the action of the Hernandez spouses for the cancellation of the mortgage on their lots was a real action affecting title to real property, which should have been filed in the place where the mortgaged lots were situated. Rule 4, Section 2 (a), of the then Rules of Court, was applied, to wit:

> SEC. 2. *Venue in Courts of First Instance*. – *(a) Real actions*. – Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies.

The Court pointed out in the *Hernandez* case that with respect to mortgage, the rule on real actions only mentions an action for *foreclosure* of a real estate mortgage. It does not include an action for the *cancellation* of a real estate mortgage. *Exclusio unios est inclusio alterius.* The latter thus falls under the catch-all provision on personal actions under paragraph (b) of the above-cited section, to wit:

> SEC. 2 *(b) Personal actions*. – All other actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.

In the same vein, the action for *annulment* of a real estate mortgage in the present case must fall under Section 2 of Rule 4, to wit:

> SEC. 2. *Venue of personal actions*. – All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

Thus, Pasig City, where the parties reside, is the proper venue of the action to nullify the subject loan and real estate mortgage contracts. The Court of Appeals committed no reversible error in upholding the orders of the Regional Trial Court denying petitioner's motion to dismiss the case on the ground of improper venue.

Being a personal action, therefore, Civil Case No. CEB-26468 was properly brought in the RTC in Cebu City, where respondent XM Facultad and Development Corporation, a principal plaintiff, had its address.

Upon the same consideration, the petitioner's contention that the filing and docket fees for the *complaint* should be based on the assessed values of the mortgaged real properties due to Civil Case No. CEB-26468 being a real action cannot be upheld for lack of factual and legal bases.

2.
Respondents were not entitled to the writ of preliminary injunction

In their application for the issuance of the writ of preliminary injunction, the respondents averred that the nullity of the loan and mortgage agreements entitled them to the relief of enjoining the petitioner from: *(a)* foreclosing the real estate and chattel mortgages; *(b)* taking possession, by replevin, of the Mitsubishi Pajero; and (*c*) depositing the postdated checks; that respondents Spouses Facultad would suffer injustice and irreparable injury should the petitioner foreclose the mortgages and file criminal complaints for violation of *Batas Pambansa Blg.* 22 against them; and that such threatened acts, if done, would render ineffectual the judgment of the trial court.[20] They prayed that the petitioner be enjoined from doing acts that would disturb their material possession of the mortgaged properties, manifesting their willingness to post a bond for the issuance of the writ of preliminary injunction.[21]

As mentioned, the RTC issued the writ of preliminary injunction on July 16, 2001 based on the foregoing allegations of the respondents' application,[22] and the CA upheld the issuance in its assailed July 9, 2002 decision.[23]

The petitioner submits that the issuance of the writ of preliminary injunction constituted a violation of Administrative Circular (AC) No. 07-99 dated June 25, 1999, and thus subjected respondent Judge to administrative sanction;[24] that injunction could not issue to enjoin the prosecution of the criminal offenses because such prosecution was imbued with public interest;[25] and that the petitioner, as the mortgagee, could not be prohibited

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20 *Rollo*, p. 147.
21 Id.
22 Id. at 171.
23 Id. at 185-186.
24 Id. at 27-30.
25 Id. at 30.

from exercising its legal right to foreclose the mortgages because foreclosure of the mortgages was its proper remedy under the law.[26]

AC No. 07-99 was issued as a guideline for lower court judges in the issuance of TROs and writs of preliminary injunctions to prevent the implementation of infrastructure projects, or the seizure and forfeiture proceedings by the Bureau of Customs, *viz*:

> ADMINISTRATIVE CIRCULAR NO. 07-99 June 25, 1999
>
> TO: ALL JUDGES OF LOWER COURTS
>
> RE: EXERCISE OF UTMOST CAUTION, PRUDENCE, AND JUDICIOUSNESS IN ISSUANCE OF TEMPORARY RESTRAINING ORDERS AND WRITS OF PRELIMINARY INJUNCTIONS
>
> Despite well-entrenched jurisprudence and circulars regarding exercise of judiciousness and care in the issuance of temporary restraining orders (TRO) or grant of writs of preliminary injunction, reports or complaints on abuses committed by trial judges in connection therewith persist. Some even intimated that irregularities, including corruption, might have influenced the issuance of the TRO or the writ of preliminary injunction.
>
> No less than the President of the Philippines has requested this Court to issue a circular reminding judges to respect P.D. No. 1818, which prohibits the issuance of TROs in cases involving implementation of government infrastructure projects. The Office of the President has likewise brought to the attention of this Court orders of judges releasing imported articles under seizure and forfeiture proceedings by the Bureau of Customs.
>
> Judges are thus enjoined to observe utmost caution, prudence and judiciousness in the issuance of TRO and in the grant of writs of preliminary injunction to avoid any suspicion that its issuance or grant was for considerations other than the strict merits of the case.
>
> Judges should bear in mind that in *Garcia v. Burgos* (291 SCRA 546, 571-572 [1998]), this Court explicitly stated:
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> > Sec. 1 of PD 1818 distinctly provides that "[n]o court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project . . . of the government, . . . to prohibit any person or persons, entity or government official from proceeding with, or continuing the execution or implementation of any such project . . . or pursuing any lawful activity necessary for such execution, implementation or operation." At the risk of being repetitious, we stress that the foregoing statutory provision expressly deprives

[26] Id. at 32.

> courts of jurisdiction to issue injunctive writs against the implementation or execution of an infrastructure project.
>
> Their attention is further invited to Circular No. 68-94, issued on 3 November 1994 by the OCA OIC Deputy Court Administrator Reynaldo L. Suarez, on the subject "Strict Observance of Section 1 of P.D. 1818 Envisioned by Circular No. 13-93 dated March 5, 1993, and Circular No. 20-92 dated March 24, 1992.
>
> Finally, judges should never forget what the Court categorically declared in *Mison v. Natividad* (213 SCRA 734, 742 [1992] that "[b]y express provision of law, amply supported by well-settled jurisprudence, the Collector of Customs has exclusive jurisdiction over seizure and forfeiture proceedings, and regular courts cannot interfere with his exercise thereof or stifle or put it to naught."
>
> The Office of the Court Administrator shall see to it that this circular is immediately disseminated and shall monitor implementation thereof.
>
> STRICT OBSERVANCE AND COMPLIANCE of this Circular is hereby enjoined.

AC No. 07-99 was irrelevant herein, however, because Civil Case No. CEB-26468 did not involve the implementation of infrastructure projects, or the seizure and forfeiture proceedings by the Bureau of Customs. Consequently, the petitioner's urging that respondent Judge be held administratively liable for violating AC No. 07-99 was misplaced.

However, the RTC's issuance of the writ of preliminary injunction to enjoin the petitioner from proceeding with the foreclosure of the mortgages was plainly erroneous and unwarranted.

A preliminary injunction is an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, agency or a person to refrain from a particular act or acts.[27] It is the "strong arm of equity," an extraordinary peremptory remedy that must be used with extreme caution, affecting as it does the respective rights of the parties.[28] The requirements for the issuance of a writ of preliminary injunction or TRO are enumerated in Section 3, Rule 58 of the *Rules of Court*, to wit:

> Section 3. *Grounds for issuance of preliminary injunction*. - A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

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27 Section 1, Rule 58 of the *Rules of Court*.

28 *China Banking Corporation v. Ciriaco*, G.R. No. 170038, July 11, 2012, 676 SCRA 132, 137-138.

> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In *City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc.*,[29] the Court restated the nature and concept of a writ of preliminary injunction, as follows:

> A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order requiring a party or a court, an agency, or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it is known as a preliminary mandatory injunction. Thus, a prohibitory injunction is one that commands a party to refrain from doing a particular act, while a mandatory injunction commands the performance of some positive act to correct a wrong in the past.
>
> **As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought. Accordingly, the conditions for the issuance of the injunctive writ are: (*a*) that the right to be protected exists *prima facie*; (*b*) that the act sought to be enjoined is violative of that right; and (*c*) that there is an urgent and paramount necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute. Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.** (Bold emphasis supplied)

Under the circumstances averred in the *complaint* in Civil Case No. CEB-26468, the issuance of the writ of preliminary injunction upon the application of the respondents was improper. They had admittedly constituted the real estate and chattel mortgages to secure the performance of their loan obligation to the petitioner, and, as such, they were fully aware of the consequences on their rights in the properties given as collaterals should the loan secured be unpaid. The foreclosure of the mortgages would be the

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[29] G.R. No. 157315, December 1, 2010, 636 SCRA 320, 336-337.

remedy provided by law for the mortgagee to exact payment.[30] In fact, they did not dispute the petitioner's allegations that they had not fully paid their obligation, and that Civil Case No. CEB-26468 was precisely brought by them in order to stave off the impending foreclosure of the mortgages based on their claim that they had been compelled to sign pre-printed standard bank loan forms and mortgage agreements.

It is true that the trial courts are given generous latitude to act on applications for the injunctive writ for the reason that conflicting claims in an application for the writ more often than not involve a factual determination that is not the function of the appellate courts;[31] and that the exercise of sound discretion by the issuing courts in injunctive matters ought not to be interfered with except when there is manifest abuse.[32] Nonetheless, the exercise of such discretion must be sound, *that is*, the issuance of the writ, though discretionary, should be upon the grounds and in the manner provided by law.[33] Judges should always bear in mind that the writ of preliminary injunction is issued upon the satisfaction of two 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.

According to *Saulog v. Court of Appeals*,[34] the applicant must have a sufficient interest or right to be protected, but it is enough that:-

> x x x for the court to act, there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established. In fact, the evidence to be submitted to justify preliminary injunction at the hearing thereon need not be conclusive or complete but need only be a "sampling" intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. This should really be so since our concern here involves only the propriety of the preliminary injunction and not the merits of the case still pending with the trial court.
>
> Thus, to be entitled to the writ of preliminary injunction, the private respondent needs only to show that it has the ostensible right to the final relief prayed for in its complaint x x x.

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30 *China Banking Corporation v. Court of Appeals*, G.R. No. 121158, December 5, 1996, 265 SCRA 327, 343 ("xxx On the face of the clear admission by private respondents that they were unable to settle their obligations which were secured by the mortgages, petitioners have a clear right to foreclose the mortgages which is a remedy provided by law.)

31 *Urbanes Jr. v. Court of Appeals*, G.R. No. 117964, March 28, 2001, 355 SCRA 537, 548.

32 *Searth Commodities Corp. v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622, 628; *S & A Gaisano, Incorporated v. Hidalgo*, G.R. No. 80397, December 10, 1990, 192 SCA 224, 229; *Genoblazo v. Court of Appeals*, G.R. No. 79303, June 20, 1989, 174 SCRA 124, 133; *Detective and Protective Bureau, Inc. v. Cloribel*, No. L-23428, November 29, 1968, 26 SCRA 255, 266.

33 *Republic Telecommunications Holdings, Inc. v. Court of Appeals*, G.R. No. 135074, January 29, 1999, 302 SCRA 403, 409.

34 G.R. No. 11969, September 18, 1996, 262 SCRA 51, 60.

It is also basic that the power to issue a writ of injunction is to be exercised only where the reason and necessity therefor are clearly established, and only in cases reasonably free from doubt.[35] For, truly, a preliminary injunction should not determine the merits of a case,[36] or decide controverted facts.[37] As a preventive remedy, injunction only seeks to prevent threatened wrong,[38] further injury,[39] and irreparable harm[40] or injustice[41] until the rights of the parties can be settled. As an ancillary and preventive remedy, it may be resorted to by a party to protect or preserve his rights during the pendency of the principal action, and for no other purpose.[42] Such relief will accordingly protect the ability of the court to render a meaningful decision;[43] it will further serve to guard against a change of circumstances that will hamper or prevent the granting of proper relief after a trial on the merits.[44] Verily, its essential function is to preserve the *status quo* between the parties until the merits of the case can be heard.[45]

Moreover, the applicant must prove that the violation sought to be prevented would cause an irreparable injustice.[46] But the respondents failed to establish the irreparable injury they would suffer should the writ of preliminary injunction not be issued. They principally feared the loss of their possession and ownership of the mortgaged properties, and faced the possibility of a criminal prosecution for the post-dated checks they issued. But such fear of potential loss of possession and ownership, or facing a criminal prosecution did not constitute the requisite irreparable injury that could have warranted the issuance of the writ of injunction. “An injury is

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35 43 CJS Injunctions § 15.

36 43 CJS Injunctions § 5, citing *B. W. Photo Utilities v. Republic Molding Corporation*, C. A. Cal., 280 F. 2d 806; *Duckworth v. James*, C. A. Va. 267 F. 2d 224; *Westinghouse Electric Corporation v. Free Sewing Machine Co*., C. A. Ill, 256 F. 2d 806.

37 43 CJS Injunctions § 5, citing *Lonergan v. Crucible Steel Co. of America*, 229 N. E. 2d 536, 37 Ill. 2d 599; *Compton v. Paul K. Harding Realty Co*., 231 N. E. 2d 267, 87 Ill. App. 2d 219.

38 *Doeskin Products, Inc. v. United Paper Co*., C. A. Ill., 195 F. 2d 356; *Benson Hotel Corp. v. Woods*, C. C. A. Minn., 168 F. 2d 694; *Spickerman v. Sproul*, 328 P. 2d 87, 138 Colo. 13; *United States v. National Plastikwear Fashions*, D. C. N. Y., 123 F. Supp. 791.

39 *Career Placement of White Plains, Inc. v. Vaus*, 354 N. Y. S. 2d 764, 77 misc. 2d 788;*Toushin v. City of Chicago*, 320 N. E. 2d 202, 23 Ill. App. 3d 797; *H. K. H. Development Corporation v. Metropolitan Sanitary District of Greater Chicago*, 196 N. E., 2d 494, 47 Ill. App. 46.

40 *Exhibitors Poster Exchange, Inc. v. National Screen Service Corp*., C. A. La., 441 F. 2d 560; *Marine Cooks & Stewards, AFL v. Panama S. S. Co*., C. A. Wash., 268 F. 2d 935.

41 *City of Cleveland v. Division 268 of Amalgamated Association of St. Elec. Ry. & Motor Coach Emp. Of America*, 81 N. E. 2d 310, 84 Ohio App. 43; *Slott v. Plastic Fabricators, Inc*., 167 A. 2d 306, 402 Pa. 433.

42 *Mabayo Farms, Inc. v. Court of Appeals*, G.R. No. 140058, August 1, 2002, 386 SCRA 110, 115; *China Banking Corporation v. Court of Appeals*, G.R. No. 121158, December 5, 1996, 265 SCRA 327, 343; *Bengzon v. Court of Appeals*, No. L-82568, May 31, 1988, 161 SCRA 745, 749; *Calo v. Roldan*, 76 Phil. 445, 451-452 (1946).

43 *Meis v. Sanitas Service Corporation*, C. A. Tex., 511 F. 2d 655; *Gobel v. Laing*, 231 N. E., 2d 341, 12 Ohio App. 2d 93.

44 *United States v. Adler’s Creamery*, C. C. A. N. Y., 107 F. 2d 987; *American Mercury v. Kiely*, C. C. A. N. Y., 19 F. 2d 295.

45 *Rava Development Corporation v. Court of Appeals*, G.R. No. 96825, July 3, 1992, 211 SCRA 144, 154; *Avila v. Tapucar*, G.R. No. 45947, August 27, 1991, 201 SCRA 148, 155.

46 *Los Baños Rural Bank, Inc. v. Africa*, G.R. No. 143994, July 11, 2002, 384 SCRA 535; see also *Power Sites and Signs, Inc. v. United Neon*, G.R. No. 163406, November 24, 2009, 605 SCRA 196, 208.

considered irreparable," according to *Philippine National Bank v. Castalloy Technology Corporation*,[47]

> x x x 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.
>
> The injury being feared by the herein respondents is not of such nature. Ultimately, the amount to which the mortgagee-bank shall be entitled will be determined by the disposition of the trial court in the main issue of the case. We have explained in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.* that all 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.

As a general rule, the courts will not issue writs of prohibition or injunction – whether preliminary or final – in order to enjoin or restrain any criminal prosecution.[48] But there are extreme cases in which exceptions to the general rule have been recognized, including: (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; (2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question that is *sub judice*; (4) when the acts of the officer are without or in excess of authority; (5) when the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) when the court has no jurisdiction over the offense; (8) when it is a case of persecution rather than prosecution; (9) when the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.[49] However, the respondents did not sufficiently show that Civil Case No. CEB-26468 came under any of the foregoing exceptions. Hence, the issuance by the RTC of the writ of preliminary injunction to enjoin the petitioner from instituting criminal complaints for violation of BP No. 22 against the respondents was unwarranted.

Every court should remember that an injunction should not be granted lightly or precipitately because it is a limitation upon the freedom of the

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47 G.R. No. 178367, March 19, 2012, 668 SCRA 415, 424-425.
48 *Samson v. Guingona, Jr.*, G.R. No. 123504, December 14, 2000, 348 SCRA 32, 36.
49 Id.

defendant's action. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it,[50] for no power exists whose exercise is more delicate, which requires greater caution and deliberation, or is more dangerous in a doubtful case, than the issuance of an injunction.[51]

In view of the foregoing, the CA grossly erred in not declaring that the RTC committed grave abuse of discretion in granting the application of the respondents as the plaintiffs in Civil Case No. CEB-26468. The RTC apparently disregarded the aforecited well-known norms and guidelines governing the issuance of the writ of injunction. Thereby, the RTC acted capriciously and arbitrarily. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[52]

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review on *certiorari*; **MODIFIES** the decision promulgated on July 9, 2002 by annulling and setting aside the writ of preliminary injunction in Civil Case No. CEB-26468 issued by the Regional Trial Court, Branch 16, in Cebu City for being devoid of factual and legal bases; **ORDERS** the Regional Trial Court, Branch 16, in Cebu City to proceed with dispatch in Civil Case No. CEB-26468; and **DIRECTS** the respondents to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[50] *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*, G.R. No. 165950, August 11, 2010, 628 SCRA 79, 90; *Tanduay Distillers, Inc. v. Ginebra San Miguel, Inc.*, G.R. No. 164324, August 14, 2009, 596 SCRA 114, 135-136.

[51] *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553, 578; *Lu v. Lu Ym, Sr.*, G.R. No. 153690, 157381 and 170889, August 26, 2008, 563 SCRA 254, 280.

[52] *Delos Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012, 684 SCRA 410.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
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