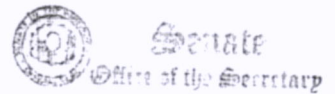


SEVENTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)



'18 AUG 15 P1:50

SENATE
S.B. NO. 1943

FILED

Introduced by Senator Maria Lourdes Nancy S. Binay

AN ACT
PROHIBITING COURTS FROM ISSUING RESTRAINING ORDERS OR
PRELIMINARY INJUNCTIONS IN CERTAIN CASES INVOLVING EXTRA-
JUDICIAL AND JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGES,
AND FOR OTHER PURPOSES

EXPLANATORY NOTE

On February 20, 2007, the Supreme Court En Banc on the recommendation of the Committee on Revision of the Rules of Court issued a Resolution in A.M. No. 99-10-05-0 adopting rules with respect to extra-judicial and judicial foreclosure of real estate mortgages. The Supreme Court Resolution provided that no restraining order or writ of preliminary injunction shall be granted in certain instances unless the applicant presents evidence in support of the application for the restraining order or the writ. The relevant provisions of the Supreme Court Resolution reads, thus:

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.

xxx

The intention of the Supreme Court Resolution intends to discourage party-litigants from delaying foreclosure proceedings by filing applications for restraining order or writ of preliminary injunction which are groundless and unjustified. However, despite the specific mandate of the Supreme Court, there are instances when courts grant the restraining order or writ notwithstanding the absence of evidence in support of the application. Thus, foreclosure proceedings are unduly delayed and, consequently, impair legitimate commercial interests.

Public policy dictates that legitimate commercial interests must be protected from unscrupulous litigants who abuse the judicial system. This is consistent with the policy of the state enshrined in Section 20, Article II of the 1987 Philippine Constitution which provides, thus:

Section 20. The State recognizes the indispensable role of the private sector, encourage private enterprise, and provides incentives to needed investments.

In view of the foregoing, it is therefore being proposed, consistent with the provisions of the Supreme Court Resolution, that foreclosure proceedings involving real estate mortgage, whether extra-judicial or judicial, may not be restrained or enjoined without the presentation of evidence in support of the application for the restraining order or writ of preliminary injunction.

In view of the foregoing, the timely passage of this bill is earnestly recommended.



MARIA LOURDES NANCY S. BINAY
Senator

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AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 Section 1. *Short Title.* – This Act shall be known as the “Real Estate
2 Mortgage Foreclosure Proceedings Act of 2018.”

3
4 Sec. 2. *Declaration of Policy.* – The state recognizes the indispensable role
5 of the private sector, encourages private enterprise, and shall provide incentives
6 to investments. To this end, the state shall promote and protect legitimate
7 commercial interests to encourage economic development.

8
9 Sec. 3. *No Restraining Order or Preliminary Injunction.* – No court in the
10 Philippines shall have jurisdiction to issue any temporary restraining order,
11 preliminary injunction, or preliminary mandatory injunction against extrajudicial
12 foreclosure of real estate mortgage in the following instances:

- 13
14 1. An allegation that the loan secured by the mortgage has been
15 paid or is not delinquent, unless the application for the
16 restraining order and/or preliminary injunction or preliminary

1 mandatory injunction is verified and duly supported by
2 evidence of payment of the loan; and
3

- 4 2. An allegation that the interest on the loan is usurious or
5 unconscionable, unless the debtor pays the mortgagee at least
6 twelve percent per annum interest on the principal obligation
7 as stated in the application for foreclosure sale, which shall be
8 updated monthly while the case is pending. In case of failure
9 by the debtor to update payment of the twelve percent per
10 annum interest, the preliminary injunction or preliminary
11 mandatory injunction may be lifted.
12

13 Sec. 4. *Speedy Disposition of Cases.* – Where a writ of preliminary
14 injunction or preliminary mandatory injunction has been issued against a
15 foreclosure of mortgage, the disposition of the case shall be speedily resolved.
16

17 Sec. 5. *Separability Clause.* – If any portion or provision of this Act is
18 declared void and unconstitutional, the remaining portions or provisions hereof
19 shall not be affected by such declaration.
20

21 Sec. 6. *Repealing Clause.* – All laws, decrees, orders, rules and
22 regulations, other issuances, or parts thereof inconsistent with the provisions of
23 this Act are hereby repealed or modified accordingly.
24

25 Sec. 7. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
26 after its complete publication in at least two (2) newspapers of general
27 circulation.

Approved,