BDO UNIBANK, INC. (FORMERLY BANCO DE ORO UNIVERSAL BANK), PETITIONER, VS. THE HONORABLE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MUNTINLUPA CITY, BRANCH 256, ROSEMARIE T. ...

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GALAPATE-LAGUILLES, J:

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the August 9, 2011 Omnibus Order[1] and the May 16, 2012 Order[2] of the Regional Trial Court, Branch 256 of Muntinlupa City (court a quo) in Civil Case No. 11-060 entitled “Rosemarie T. Lim, in Representation of Indiana Aerospace University v. Jovenal B. Toring, in his capacity as Chairman of the Board of Directors and President of Indiana Aerospace University, Spouses Jackson Siady and Arlyn Siady and Banco De Oro Universal Bank”; “Jovenal B. Toring, in his capacity as Chairman of the Board of Directors and President of Indiana Aerospace University v. Jackson Siady and Arlyn Siady and Banco De Oro Universal Bank” for Derivative Suit Pursuant to the Interim Rules Of Procedure Governing Intra-Corporate Controversies under R.R. No. 8799.

The court a quo essentially granted Jovenal Toring's application for a writ of preliminary prohibitory injunction which enjoined Banco De Oro from initiating foreclosure proceedings pursuant to the terms of the Mortgage Loan Agreement dated May 10, 2006 over a parcel of land with improvements located at Lot 1E, IAU Town Center, Brgy. Basak, Lapu-Lapu City.

The antecedent facts are as follows:

On May 10, 2006, Spouses Jackson and Arlyn Siady (Sps. Siady) obtained a loan from Banco De Oro (Bank) amounting to four million (P4,000,000.00) pesos as evidenced by Promissory Note no. 815515090002. To secure the payment of the said loan, Sps. Siady executed in favor of the Bank, a Mortgage Loan Agreement (MLA) over a parcel of land, located at Lot 1E, IAU Town Center, Brgy. Basak, Lapu-Lapu City (subject lot) which is covered by TCT No. 61184 of the Registry of Deeds of Lapu-Lapu City.[3]

On July 1, 2010 and without the Bank's knowledge, the Sps. Siady entered into a Deed of Sale with Assumption of Mortgage[4] with Jovenal Toring (Toring), in his capacity as Chairman of the Board of Directors and President of Indiana Aerospace University (IAU), conveying unto IAU the subject lot, including the commercial building and all the improvements thereon.[5]

On June 7, 2011, in view of the Sps. Siady's default and for having violated the terms of the MLA, the Bank sent a demand letter of even date declaring the Sps. Siady's entire obligation due and payable and demanding payment within five (5) days the total amount of Three Million Four Hundred Thirty Thousand Nine Hundred Seventy-Six & 54/100 Pesos (P3,430,976.54), plus interest, penalties and other charges. Despite the bank's demand, Sps. Siady failed to comply with their obligation.[6]

However, before the Bank could exercise its rights under the MLA, Rosemarie T. Lim (Lim) filed a Derivative Suit dated June 21, 2011[7] against Toring (in the latter's capacity as Chairman of the Board of Directors and

President of IAU), the Bank and the Sps. Siady. The suit alleged that when Toring entered into a Deed of Sale with Assumption of Mortgage over the subject lot with the Sps. Siady, the former was not authorized by the Board of Directors of IAU.

On July 20, 2011, the Bank filed its Verified Answer[8] essentially alleging that it has no knowledge and participation in the Deed of Sale with Assumption of Mortgage executed by Toring and the Sps. Siady and it did not give its consent to the said deed. The Bank further argued that the Sps. Siady violated the terms of the MLA for the latter's failure to secure the prior consent of the Bank.[9]

Toring likewise filed his Answer with counterclaim and cross-claims with plea for the issuance of a temporary restraining order and/or writ of preliminary prohibitory injunction dated July 13, 2011.[10]

After the parties have submitted their respective pleadings, the court a quo issued the assailed Omnibus Order dated August 9, 2011, in part granting Toring's prayer for the issuance of a writ of preliminary prohibitory injunction.[11] Relevant portion of the dispositive portion of the assailed Order is herein quoted as follows:

> WHEREFORE, in view of the foregoing, let a writ of preliminary prohibitory injunction be issued, enjoining the defendant and cross-defendant Banco De Oro from initiating a foreclosure proceeding of the Mortgage Loan Agreement, upon posting of a bond in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS to answer for damages which defendant and cross-defendant Banco De Oro may sustain by reason of the issuance of the writ. Further, defendant and cross-plaintiff is directed to pay the monthly amortization on the twelve (12%) percent interest per annum on the principal obligation in the amount of Three Million Four Hundred Thirty Thousand Nine Hundred Seventy-Six 54/100 (P3,430,976.54) Pesos which shall be updated monthly while the ase is pending pursuant to Administrative Matter No. 09-10-05-O issued by the Supreme Court.
>
> xxx
> xxx
> xxx
>
> SO ORDERED.

The Bank filed a timely Motion for Reconsideration dated October 11, 2011 to the aforementioned assailed Order but the court a quo in its May 16, 2012 Order,[12] denied the Bank's motion.

On October 11, 2013, Jovenal Toring filed a Motion to Set Case for Mediation[13] dated October 10, 2013 manifesting in part that he is willing and open on the possibility of mediating with the Bank and to work on a compromise agreement. Said motion was given due course by US and was referred to the Philippine Mediation Center-Court of Appeals (PMC-CA) Unit pursuant to Our Resolution dated October 21, 2013.[14]

On February 28, 2014, Appellate Court Mediator Atty. Angelito C. Imperio filed his Report indicating therein that the parties have settled their differences and that they have filed a Compromise Agreement, attaching thereto the parties' Joint Motion to Approve the same. The subject Compromise Agreement[15] is hereby quoted in full:

> COMPROMISE AGREEMENT
>
> KNOW ALL MEN BY THESE PRESENTS:

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This Compromise Agreement made and executed by and between:

BDO UNIBANK, INC. (formerly BANCO DE ORO UNIBANK, INC.), a domestic corporation duly organized and existing under and by virtue of Philippine laws, with office address at the BDO Corporate Towers, 7899 Makati Avenue corner H. V. Dela Costa Street, Makati City, Metro Manila, and represented herein by its Senior Vice President, MELANIE S. BELEN and First Vice President, EMILY D. SAMOY, hereinafter referred to as “BDO/Bank”;

-and-

ROSEMARIE T. LIM, of legal age, Filipino, with residence at No. 66, Balngasa Street, Balintawak, Quezon City, hereinafter referred to as “Ms. Lim”

-and-

JOVENAL B. TORING, of legal age, married, Filipino, with residence at No. 900 Acacia Street, Ayala Alabang Village, Muntinlupa City, hereinafter referred to as, “Mr. Toring”;

-and-

INDIANA AEROSPACE UNIVERSITY, an educational institution duly organized and existing under and by virtue of Philippine laws, with office address at No. 23, Buencamino Street, Alabang, Muntinlupa, and represented represented herein by its President and Chairman of the Board of Directors, JOVENAL B. TORING, hereinafter referred to as “IAU”;

-and-

INDIANA AEROSPACE UNIVERSITY ALUMNI ASSOCIATION, a non-stock, non-profit organization duly organized and existing under and by virtue of Philippine laws, with office address at Ground Floor, Indiana Condotel, Jakosalem corner Ranudo St., Cebu City, and represented herein by its President, NESTOR G. PAYPA or his attorney-in-fact, FELICIDAD G. ASUNCION, hereinafter referred to as “IAU Alumni Association”;

-and-

SPS. JACKSON SY SIADY AND ARLYN SIADY, both of legal age, Filipino, with residence at No. 324,

Junquera St., Cebu City, hereinafter referred to as “Sps. Siady”;

Witnesseth that:

WHEREAS, on May 10, 2006, Sps. Siady obtained a loan from BDO in the amount of P4,000,000.00 secured by a real estate mortgage over the real property with improvements thereon located at Lot1E, IAU Town Center, Brgy. Basak, Lapu Lapu City, with a total area of Five Hundred Two (502) square meters, more or less, and covered by a Transfer Certificate of Title No. 61184 issued by the Registry of Deed (sic) of Lapu Lapu City, registered in the name of Jackson Sy Siady married to Arlyn Siady, hereinafter referred to as the “Subject Property”, and covered by the Mortgage Loan Agreement executed by Sps. Siady in favor of BDO;

WHEREAS, without the prior consent of BDO, on 01 July 2010, Sps. Siady sold the subject property to IAU through its President, Mr. Toring, with assumption of their mortgage with BDO which is a violation of Section 21 of the Mortgage Loan Agreement;

WHEREAS, BDO declared Sps. Siady in default and the entire loan due and demandable and despite demand, Sps. Siady failed to pay the loan;

WHEREAS, on 28 June 2011, Ms. Lim, a minority stockholder of IAU, filed a Derivative Suit against Mr. Toring, Sps. Siady and BDO with the Regional Trial Court, Br. 256, Muntinlupa City docketed as Civil Case No. 11-060 seeking to declare the Deed of Sale with Assumption of Mortgage unenforceable since Mr. Toring did not have the authority from the Board of Directors of IAU to purchase the subject property and for damages against Sps. Siady and BDO for the sale of the subject property;

WHEREAS, Mr. Toring in his Answer with Counterclaim and Cross-claim against Sps. Siady and BDO with prayer for issuance of the Temporary Restraining Order and/or Writ of Preliminary Injunction seeking to enjoin Sps. Siady and BDO from foreclosing on the subject property on the ground that the mortgage obligation of Sps. Siady which he assumed has already been paid from the proceeds of the Mortgage Redemption Insurance and that the Mortgage Loan Agreement should be reformed due to the exhorbitant and unconscionable interests imposed to which the Bank vehemently opposed for lack of factual and legal basis;

WHEREAS, after due hearing, RTC, Br. 256, Muntinlupa City, issued an Omnibus Order dated 09 August 2011 granting Mr. Toring's Prayer for Writ of Preliminary Injunction. After said court denied BDO's Motion for Reconsideration, BDO filed a Petition for Certiorari with the Court of Appeals docketed as CA-G.R. SP No. 125737 now pending resolution from the Court of Appeals;

WHEREAS, while the case is pending, the parties are working for the settlement of the case whereby IAU Alumni Association has offered to pay the outstanding loan obligation of Sps. Siady with BDO;

WHEREAS, in order to put an end to a protracted litigation and settle all outstanding obligations of Sps. Siady with BDO, the parties have agreed to enter into this compromise agreement whereby BDO accepted the proposal of IAU Alumni Association to pay the loan obligation of Sps. Siady, based on the terms and conditions hereafter stipulated. IAU Alumni Association, not being a party to this case, voluntarily submits to the jurisdiction of RTC, Br. 256, Muntinlupa City and the Court of Appeals and it will abide by whatever decision/resolution these courts may issue.

NOW THEREFORE, for and in consideration of the above-mentioned premises, the parties have hereunto agreed and stipulated, as follows:

1. IAU Alumni Association shall pay BDO the total amount of PESOS: THREE MILLION FIVE HUNDRED FIFTY THOUSAND (P3, 550,000.00) representing full payment of the loan covered by Mortgage Loan

Agreement with Promissory Note No. 815515090002 of Sps. Siady, under the following terms:

a. The amount of P2,750,000.00 cash or Manager's Check payable upon signing of this compromise agreement;

b. Balance of P800,000.00 payable in six (6) equal monthly installments at P133,333.33 covered by postdated checks payable every 15th day of the month beginning 15 March 2014 to 15 August 2014, receipt of which is hereby acknowledged by BDO;

c. All obligations under this Compromise Agreement, including the terms of payment, shall immediately be enforceable even prior to the Court's approval of the Compromise Agreement;

2. Upon receipt of the full payment of the loan in the amount of P3,550,000.00, BDO shall release the mortgage and deliver the said title to IAU Alumni Association. In this regard, IAU, Mr. Toring, Ms. Lim and Sps. Siady voluntarily give their consent to IAU Alumni Association for the assumption of payment of the loan obligation with BDO as well as the release and delivery of the title to IAU Alumni Association.

3. Pending full compliance by IAU Alumni Association of this Agreement and during the period thereof, IAU Alumni Association shall be responsible for the preservation of the subject property. Likewise, all taxes due on the subject property, as well as insurance premiums and other fees, shall be for the account of IAU Alumni Association;

4. BDO shall also, not in any way be liable on incidents such as fire, earthquake, other calamities and/or man made activities that will affect the physical integrity of the improvement/s and value of the subject properties during the period of this Agreement. In case of any portion or part of the subject properties incurred damage, for causes other than the normal wear and tear of the property and through no fault of BDO, the cost of repair shall be for the account of IAU Alumni Association;

5. IAU, Mr. Toring, Ms. Lim, Sps. Siady and IAU Alumni Association acknowledges the validity and due execution of the Mortgage Loan Agreement with BDO and they irrevocably waive any and all claims, suits, demands, and causes of action of whatever kind and nature, which they have raised or may have raised against BDO, or any of its affiliates, subsidiaries and successors-in-interest, stockholders, officers, directors, agents, employees, associates, contractors and consultants or against each other in connection with the assumption of payment by IAU Alumni Association of Sps. Siady's loan obligation. They also agree to indemnify and render BDO, or any of its affiliates, subsidiaries and successors-in-interest, stockholders, officers, directors, agents, and employees, associates, contractors and consultants free and harmless on any claims, suits, demands, and causes of action of whatever kind and nature, by third persons pertaining to the payment and release of mortgage in favor of IAU Alumni Association. The PARTIES hereby acknowledge that should the parties hereafter discover facts different from, or in addition to, those which the parties believed to be true with respect to any or all of any claims, liabilities, causes of action, damages, cause or demands herein released, the parties hereby agree that the release, waiver and quitclaim herein set forth shall be and remain effective in all respects notwithstanding the discovery of such different or additional facts that have already accrued or yet to accrue. In this regard, Ms. Lim shall withdraw her case against IAU, Mr. Toring, Sps. Siady and BDO and the latter, in turn, withdraw their respective counterclaims and cross-claims in Civil Case No. 11-060. BDO shall also withdraw its case with the Court of Appeals docketed as SP G.R 125737;

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6. In the event that IAU Alumni Association fails to comply with its obligations under this Agreement, BDO shall have the right to cancel the Agreement and forfeit all payments made by IAU Alumni Association in favor of BDO. BDO shall have the right to foreclose on the mortgage and take possession of the subject property. Accordingly, IAU Alumni Association, its successors-in-interests and assigns, shall peacefully vacate the subject property without need of demand and voluntarily turn-over possession thereof to BDO;

7. In the event that any of the provisions of this Agreement shall be declared invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall in no way be impaired or affected thereby;

8. The parties warrant that they are fully authorized to enter into this Agreement;

9. The parties hereby acknowledge that the stipulations contained in the foregoing Agreement have been mutually agreed upon by them, without any act of force, fraud or undue intimidation. The parties also acknowledge that they have consulted their respective legal counsels and that they understand the legal consequences of this Agreement. Accordingly, the parties hereby agree to abide by the foregoing stipulations with the force and effect of a lawful right and a demandable obligation.

IN WITNESS WHEREOF, the parties have hereunto set their hands on _____ in Makati, Metro Manila.

BDO UNIBANK, INC.

By:

INDIANA AEROSPACE

UNIVERSITY ALUMNI ASSOCIATION

(signed)

By:

MELANIE S. BELEN

(signed)

(signed)

NESTOR G. PAYPA

EMILY D. SAMOY

President

First Vice-President

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(signed)

FELICIDAD G. ASUNCION

INDIANA AEROSPACE

Attorney-in-fact of Mr. Paypa

UNIVERSITY

By:

(signed)

JOVENAL B. TORING

(signed)

Defendant-Cross-Claimant

JOVENAL B. TORING

President

(signed)

ROSEMARIE T. LIM

(signed)

Plaintiff

JACKSON S. SIADY

(signed)

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ARLYN S. SIADY

Defendant and Cross-Defendants

Signed in the presence of:

(signed)

(signed)

MARIA FE LUNA U. SOLIS

A compromise agreement is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[16] It has been said that parties to a compromise agreement are motivated by hope of gaining, balance by the dangers of losing and it contemplates mutual concessions and mutual gains to avoid the expenses of litigation, or when litigation has already begun, to end it because of the uncertainty of the result.[17]

As a contract, a compromise agreement must comply with the following basic elements: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of obligation which is established.[18]

All of the foregoing elements are present in this case.

Thus, after a careful scrutiny of the subject Compromise Agreement, We are convinced that it was voluntarily agreed upon by the parties and the terms and conditions therein are not contrary to law, public policy or public morals.

WHEREFORE, premises considered, the Compromise Agreement dated February 28, 2014 is hereby APPROVED and judgment is hereby rendered in accordance therewith. The parties are enjoined to strictly abide by the terms and conditions set forth therein.

Consequently, the instant petition is now deemed CLOSED and TERMINATED.

SO ORDERED.

De leon[*], (Chairperson), and Diamante, JJ., concur.

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[*] Vice Justice Celia C. Librea-Leagogo per Raffle dated March 20, 2014

[1] Rollo, pp. 60-62

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[2] Id. at 63-64

[3] See; Petition p. 4 par. 12, Id. p. 8

[4] Rollo, p. 99

[5] Supra note 3

[6] Supra

[7] Rollo, pp. 73-77

[8] Id. at 103-112

[9] Supra

[10] Rollo, pp. 126-142

[11] Id. at 60-62

[12] Id. at 63-64

[13] Id. at 440-442

[14] Id. at 403

[15] Rollo

[16] Article 2028, Civil Code

[17] See Philippine Journalist, Inc. v. National Labor Relations Commission, G.R. No. 166421, September 5, 2006, 501 SCRA 75

[18] Art. 1318, Civil Code

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