

LA CAMPANA FOOD PRODUCTS, INC., PETITIONER-APPELLANT, VS. PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, AND L.F. VILLASEÑOR, IN HIS CAPACITY AS CITY SHERIFF OF QUEZON CITY, RESPOND...

G.R. No. L-46405. June 30, 1986

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal to the then Court of Appeals (now Intermediate Appellate Court) from the judgment of the Court of First Instance of Rizal, dismissing the petition for certiorari, mandamus and prohibition with preliminary injunction, which was certified to this Court, involving as it does pure questions of law.

The factual antecedents of the case as summarized by the then Court of Appeals are as follows:

"Petitioner had a credit line with respondent Philippine Commercial and Industrial Bank (hereinafter referred to as PCIB) secured by two real estate mortgages executed on March 23, 1960 and August 25, 1961. As of December 24, 1968, the credit accommodation extended by PCIB to petitioner amounted to P526,632.67.

"Petitioner negotiated a loan of \$1,400,000.00 with Intercontinental Monetary Corporation of New York, U.S.A., to be guaranteed by the Development Bank of the Philippines (hereinafter referred to as DBP). On April 18, 1968, DBP agreed to guarantee petitioner's foreign loan subject to the condition that petitioner should deposit with it the proceeds of the loan which should be made available for payment of petitioner's obligation to local financial institutions and to serve as working capital.

"In a letter dated September 23, 1968, DBP informed PCIB that it had guaranteed petitioner's foreign loan and asked that it be lent Transfer Certificates of Title Nos. 24402 and 24403 covering the parcels of land mortgaged to PCIB by petitioner for it to be able to register its mortgage thereon.

"Replying thereto, PCIB interposed no objection to the registration of DBP's mortgage on petitioner's TCT Nos. 24402 and 24403 on the condition that it (PCIB) would be favored immediately with a remittance in full of petitioner's outstanding obligations, after which it would issue the necessary Deed of Release of Real Estate Mortgage.

"On November 11, 1968, DBP registered its mortgage on petitioner's TCT Nos. 24402 and 24403.

"On May 16, 1969, DBP remitted P140,000.00 to PCIB representing partial payment of petitioner's outstanding obligation of P526,632.67.

"No further payment on petitioner's outstanding obligations with PCIB was made either by DBP or by petitioner itself.

"On June 28, 1971, PCIB instituted foreclosure proceedings on the real estate mortgages executed by petitioner in its favor. Respondent Sheriff of Quezon City then set the auction sale of petitioner's properties on July 30, 1971.

"On July 26, 1971, petitioner filed the Petition for Certiorari, Mandamus, Prohibition with Preliminary Injunction with the lower Court seeking to set aside the Notice of Sheriff's Sale, to order PCIB to release it from the mortgage, and for the payment of damages. Petitioner contended that PCIB had lost its right of action against it because it (PCIB) had allowed DBP to assume petitioner's obligations by giving the titles to the property mortgaged to DBP and by accepting from DBP partial payment of its obligations. It likewise claimed that PCIB is estopped from foreclosing the mortgage as the Statement of Account issued to it shows that it has a zero balance with PCIB. It further averred that under Section 19 of Republic Act No. 85 (DBP Charter), as long as the mortgage with the DBP is existing, no foreclosure may prosper until the encumbrance shall have been released.

"In an Order dated July 27, 1971, issued by the lower Court, the Petition was given due course and a Restraining Order was issued enjoining respondent Sheriff from proceeding with the auction sale, pending resolution of the petition for Injunction.

"PCIB, on the other hand, maintains that petitioner's obligations with it still subsist as the same was not assumed by DBP. Opposing the issuance of a Writ of Preliminary Injunction, PCIB alleged that since there has been no full payment of petitioner's obligations no release of the mortgage executed by petitioner in its favor has been made. With respect to the Statement of Accounts, PCIB claimed that it was merely intended to show that petitioner's account had been transferred from its Dasmariñas Branch to its Legal Department for proper action and not as evidence of extinguishment of obligation.

"In an Order dated October 26, 1971, the Lower Court directed the issuance of a Writ of Preliminary Injunction restraining respondents from proceeding with the foreclosure sale of petitioner's properties upon the filing of a bond by petitioner in the sum of P70,000.00.

"Acting on PCIB's Motion to Dissolve Writ of Preliminary Injunction, the lower Court, on April 24, 1972, set aside the Order of October 26, 1971. However, on Motion by petitioner, the lower Court, on July 26, 1972, set aside the Order of April 24, 1972 and revived the Order of October 26, 1971 directing the issuance of a Writ of Preliminary Injunction.

"On July 25, 1975, the lower Court rendered judgment, the dispositive portion of which reads:

'WHEREFORE, judgment is rendered dismissing the petition, with costs against the petitioner. The writ of preliminary injunction issued against respondent PCIB and the Sheriff of Quezon City is hereby lifted and dissolved.

"The counterclaim of the respondents is dismissed for being without merit.

'SO ORDERED.'

"Petitioner's Motion for New Trial and/or for Reconsideration was denied by the lower Court in an Order dated October 10, 1975. It held that there was undoubtedly a novation of debtor as the consent of the PCIB to the new debtor (DBP) is of record; however, since the consent was conditioned on full payment by DBP and that condition was not fulfilled, PCIB may still demand the enforcement of the unreleased mortgages.

"On October 22, 1975, the lower Court issued an Order reinstating the Order of September 17, 1975 enjoining the Sheriff of Quezon City from conducting foreclosure sale of petitioner's properties, 'in order not to render moot and academic the appeal interposed by petitioner from the decision rendered in this case.'"

The main assignment of error raised by petitioner-appellant in its brief is that while the lower court correctly found and concluded that the appellant's obligations with PCIB had been novated by its being substituted as debtor of PCIB by the DBP, nevertheless it erred in concluding that the mortgage over appellant's property subsisted and may be foreclosed.

On the other hand, respondent-appellee assigned as error the holding of the lower court that appellant's obligations with it had been novated inasmuch as DBP was substituted as debtor to it in lieu of appellant by assuming the obligation of the latter to the former.

At this juncture, it is advisable to reiterate the rule that an appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment on other grounds, but he cannot seek modification or reversal of the judgment or affirmative relief unless he has also appealed. (Cf. *Saenz vs. Mitchell*, 60 Phil. 69; *Relativo vs. Castro*, 76 Phil. 563; *Aparri vs. Court of Appeals*, 13 SCRA 611)

We agree with respondent-appellee's contention that there was no novation. DBP did not substitute petitioner-appellant as debtor to respondent-appellee. It merely agreed to guarantee petitioner's foreign loan subject to the condition that petitioner should deposit with it the proceeds of the loan which should be made available for payment of petitioner's obligation to local financial institutions and to serve as working capital. The DBP guarantee was to be secured by a first mortgage on the assets then mortgaged to DBP and the assets offered as additional securities, which included the parcels of land mortgaged to petitioner. (Exh. "B") Consequently, DBP requested respondent bank to lend Transfer Certificates of Title Nos. 24402 and 24403 covering the parcels of land mortgaged to respondent bank by petitioner for DBP to be able to register its mortgage thereon. (Exhs. "D", "2", and "2-A")

Respondent bank interposed no objection to the registration of DBP's mortgage on petitioner's TCT Nos. 24402 and 24403 on the condition that it (PCIB) would be favored immediately with a remittance in full of petitioner's outstanding obligations, after which it would issue the necessary Deed of Release of Real Estate Mortgage. (Exhs. "E", "3" and "3-A")

The exact wording of respondent bank's written consent reads as follows:

"Our above consent however is premised on your undertaking that upon registration of your mortgage on the above titles, we will be favored immediately with a remittance in full of the outstanding obligation of the said firm with us, after which we will simultaneously issue the necessary Deed of Release of Real Estate Mortgage." (Exh. "3-A")

In other words, respondent bank agreed to the registration of DBP's second mortgage and to cancel or release its first mortgage upon receipt in full of the payment of petitioner's mortgage debt.

Inasmuch as only the sum of P140,000.00 was remitted by DBP to respondent bank representing partial payment of petitioner's outstanding obligation of P526,632.67, the first mortgage of respondent bank was not cancelled or released and the mortgage of DBP remained a second mortgage. Clearly, then, respondent bank had the right to institute fore-closure proceedings on its first mortgage in view of the non-payment of the balance of the mortgage debt.

In the case of *Duño vs. Lopeña*, this Court ruled as follows:

"Herein petitioner claims that when a third party Emma R. Santos, came in and assumed the mortgaged obligation, novation resulted thereby inasmuch as a new debtor was substituted in place of the original one. In this kind of novation, "however, it is not enough that the juridical relation of the parties to the original contract is extended to a third person; it is necessary that the old debtor be released from the obligation, and the third person or new debtor take his place in the new relation. Without such release, there is no novation; the third person who has assumed the obligation of the debtor merely becomes a co-debtor or surety. If there is no agreement as to solidarity, the first and the new debtors are considered obligated jointly. (IV Tolentino, Civil Code, p. 360; citing *Manresa*). There was no such release of the original debtor in the Tri-Party Agreement.

"It is a very common thing in the business affairs for a stranger to a contract to assume its obligations; and,

while this may have the effect of adding to the number of persons liable, it does not necessarily imply the extinguishment of the liability of the first debtor (Rios vs. Jacinto, etc., 49 Phil. 7; Garcia vs. Khu Yek Ching, 65 Phil. 466). The mere fact that the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation, when there is no agreement that the first debtor shall be released from responsibility, does not constitute a novation, and the creditor can still enforce the obligation against the original debtor (Straight vs. Haskell, 49 Phil. 614; Pacific Commercial Co. vs. Sotto, 34 Phil. 237; Estate of Mota vs. Serra, 47 Phil. 446)." (6 SCRA 1007, 1015-1016) (See also Magdalena Estate Inc. vs. Rodriguez, 18 SCRA 967, 972.)

This ruling applies, a fortiori, to the case at bar, inasmuch as DBP did not assume the obligation of petitioner to respondent bank.

Petitioner belatedly filed a motion for reconsideration of the Resolution of the then Court of Appeals certifying the case to this Court, on the ground that there is a necessity of a finding on the question whether or not PCIB's Statement of Account (Exh. "J") was the result of an alleged transfer of account, which finding is indispensable to the resolution of the Second Assignment of Error. We have examined the record of this case and find that this was an internal transfer of account from the Dasmarias Branch to the Legal Department of respondent Bank. There is no merit to this Assignment of Error.

Finally, there is a noteworthy statement in the Order of the trial Court denying petitioner's Motion for New Trial and/or Reconsideration to the effect that petitioner had disclosed a fact hitherto unknown to said Court; that there was another suit pending which petitioner had filed against DBP before another branch to compel that bank to release the proceeds of the foreign loan allocated for the payment of petitioner's obligation to PCIB.

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed with cost against petitioner-appellant.

SO ORDERED.

Fernan, Alampay, Gutierrez, Jr., and Paras, JJ., concur.

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