

BANCO DE ORO, PETITIONER-APPELLANT, VS. JAIME Z. BAYUGA AND ROBERTO P. TOLENTINO, RESPONDENTS-APPELLEES, THE COURT OF APPEALS AND HON. FRANCISCO DE LA ROSA IN HIS CAPACITY AS JU...

G.R. No. L-49568. October 17, 1979

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

A Petition for Review by Certiorari of the Decision of the Court of Appeals* upholding with modification the Special Order, dated March 10, 1978, issued by the Court of First Instance of Rizal, Branch VII, Pasay City, directing the issuance of a Writ of Execution pending appeal.

Factual Antecedents:

Respondent Roberto P. TOLENTINO is a lawyer appearing on his own behalf and as counsel for his co-respondent Jaime Z. Bayuga.

On November 2, 1976, as security for a loan of P375,000.00, respondent Jaime Z. Bayuga, as attorney-in-fact of respondent Roberto P. TOLENTINO, and Leonardo Zaballero, executed a Real Estate Mortgage in favor of the Acme Savings Bank (now Banco de Oro, petitioner herein) over a parcel of land covered by TCT No. 48418 in the names of TOLENTINO and Zaballero, with an area of 2 hectares, more or less, situated at Mabato, Calamba, Laguna.[1] The purpose of the loan was for the "acquisition of real estate property." [2] The mortgage was duly registered.

According to petitioner BANK, it approved the loan subject to the following terms and conditions:

- "1. That the interest rate shall be 19% per annum;
2. That the monthly amortization shall be P7,000.12;
3. That the loan shall be payable within ten (10) years;
4. That the property sought to be acquired which is located in Tagaytay City, covered and described under TCT No. 2703, Lot B (LRC) Psd-1537 registered in the name of Algue Incorporated shall be given as additional collateral;
5. That the property located at Calamba, Laguna (TCT No. T-48418, Lot 1995-U (LRC) Psd-6481) shall first be registered, provided, however, that the release of the proceeds shall be paid directly to the owner of the property above-mentioned, and
6. That the loan shall be subject to availability of funds." [3]

Private respondents contend, however, that they were unaware of the foregoing conditions, the same having been embodied only in the Minutes of the meeting of "the Board of Directors/Executive Committee" of petitioner

BANK, and, therefore, self-serving, as held by the trial Court.

On November 15, 1976, the BANK made a partial release of P200,000.00 less charges of P6,000.00, which amount was credited to the account of TOLENTINO in the said BANK. On the same date, out of the balance of P194,000.00, TOLENTINO purchased from the BANK a certificate of time deposit in the amount of P50,000.00. He also withdrew on the said date P100,000.00, and on November 16, 1976, the amount of P44,000.00. TOLENTINO then purchased from the BANK a Manager's check in the total amount of P144,000.00, P135,000.00 of which he deposited in his savings account, and P9,000.00 in his checking account, both with the Far East Bank & Trust Company.

Thereafter, claiming that the borrowers showed no indication of complying with his obligation to pay the amount of the loan to the vendor (Algue, Inc.) of the Tagaytay City property, which constituted diversion in violation of Sec. 77, Republic Act No. 337, the BANK stopped payment of its Manager's check at the same time that it refused to release the balance of the loan. That action was necessary, according to the BANK, in order to prevent private respondent from perpetrating a fraud against it.

CC NO. 5271-B, CFI, Rizal,

Branch VII, Pasay City, and

CA-G.R. No. SP-07573, Court

of Appeals

On December 2, 1976, private respondents TOLENTINO and Bayuga, as plaintiffs, brought an action for Specific Performance with Damages against the BANK before the Court of First Instance of Rizal, Branch VII, Pasay City, docketed as CC No. 5271-B. On December 27, 1976, after a preliminary hearing, the trial Court ordered the issuance of a Writ of Preliminary Mandatory Injunction directing the BANK to comply with the mortgage contract by releasing immediately to Bayuga the consideration thereof in the amount of P375,000.00 upon private respondents' posting of a bond of P200,000.00.[4] Apparently, however, the BANK did not release the amount.

On December 12, 1977, the trial Court rendered its Decision with the following decretal portion:

"WHEREFORE, judgment is hereby rendered in favor of plaintiffs (private respondents herein):

a) Ordering Defendant Bank (petitioner in this case) to comply with its obligations towards Plaintiff Bayuga under the Real Estate Mortgage (Exhibit 'E', Exhibit '14');

b) Ordering Defendant Bank to pay to Plaintiff Tolentino P144,000.00 in its manager's check and P50,000.00 in its Certificate of Time Deposit;

c) Ordering Defendant Bank to pay to Plaintiff Bayuga the balance of P175,000.00 in cash or in check, as said Plaintiff Bayuga may demand;

d) Ordering Defendant Bank to pay to Plaintiff Bayuga the following:

- 1) P 5,000.00 – as nominal damages,
- 2) P20,000.00 – as moral damages,
- 3) P10,000.00 – as exemplary damages,
- 4) P10,000.00 - as attorney's fees;

e) Ordering Defendant Bank to pay Plaintiff Tolentino the following:

- 1) P80,000.00 - as actual damages,
- 2) P20,000.00 – as moral damages,
- 3) P10,000.00 – as exemplary damages,
- 4) P10,000.00 – as attorney's fees.

COSTS AGAINST DEFENDANT BANK."

On December 27, 1977, the BANK filed its Notice of Appeal to the Court of Appeals, posted an appeal bond, and moved for extension of time within which to submit its Record on Appeal.

Before the perfection of said appeal, however, and upon private respondents' "Petition for Execution with Prayer for Contempt", the trial Court issued an Order, dated February 10, 1978, confirming and reiterating the Writ of Preliminary Mandatory Injunction it had issued on December 27, 1976 and ordering the BANK to comply therewith.

The BANK challenged the aforesaid Orders of December 27, 1976 and February 10, 1978 in a Petition for Certiorari and Prohibition filed before the Court of Appeals on February 16, 1978 in CA-G.R. No. SP-07573.

On March 10, 1978, upon private respondents' Motion for Execution Pending Appeal, the trial Court released a "Special Order" authorizing execution in this wise:

"WHEREFORE, independently of whatever resolution the Honorable Court of Appeals may hand down in the Petition now pending before it (CA-G.R. No. 07573), and without the necessity of passing upon the issue of delay allegedly intended by the Defendant Bank, this Court finds that there is a good reason for the granting of the writ of execution pending the appeal herein - to deny the issuance of the writ of execution pending appeal will be to deny from the Plaintiffs the relief from the substantial injustice which they have been burdened, which injustice started from the time the parcel of land of Plaintiff Tolentino was mortgaged in favor of Defendant Bank, and the same will continue for some time more unless the writ of execution is immediately granted. It bears repeating that their substantial injustice consists of having said parcel of land mortgaged to Defendant Bank and said Defendant Bank not paying any single centavo of the loan guaranteed by the mortgage. Plaintiffs are willing to post sufficient bonds, as a token of good faith, to cover the award of damages of P120,000.00 in favor of Plaintiff Tolentino and of P45,000.00 in favor of Plaintiff Bayuga. It is, therefore, hereby ordered that a writ of execution pending appeal be issued immediately for the enforcement and execution of the DECISION of this Court dated December 12, 1977, upon the posting, in favor of Defendant Bank, a bond in the amount of P40,000.00 by Plaintiff Tolentino and a bond in the amount of P15,000.00 by Plaintiff Bayuga."

On March 13, 1978, private respondents posted the required bonds for special execution in the total sum of P55,000.00.[5] The bonds were approved by the trial Court on the same date.

On March 14, 1978, the corresponding Writ of Execution was issued by the trial Court, by virtue of which, the amount of P389,000.00, the BANK's deposit with the Central Bank, was garnished.

On March 16, 1978, a Supplemental Petition for Certiorari was filed by the BANK with the Court of Appeals in the same CA-G.R. No. SP-07573, seeking the nullification of the aforementioned Special Order of March 10, 1978 and the issuance of a Restraining Order enjoining the enforcement of execution pending appeal.

On March 17, 1978, the Court of Appeals issued a Restraining Order as prayed for by the BANK.

On October 16, 1978, the Court of Appeals ruled that the trial Court committed no grave abuse of discretion in granting execution pending appeal but excluded the damages awarded to private respondents. Its Decision, in

CA-G.R. No. SP-07573, reads thus in its dispositive portion:

"WHEREFORE, the herein petition is denied. The challenged order is accordingly modified in order to exclude the damages assessed in favor of respondent Bayuga and respondent Tolentino (letters D and C of the dispositive portion of the decision a quo). In all other respects, the challenged order dated March 10, 1978 and all other orders flowing therefrom stand. With costs."

On October 20, 1978, in virtue of said Decision of the Court of Appeals, the trial Court issued its Order granting private respondents' ex-parte Motion for the enforcement of the Writ and/or the issuance of an Alias Writ. On October 25, 1978, the BANK filed a Motion to Quash/Lift Order dated October 20, 1978, or in the alternative, a Motion for Authority to File Supersedeas Bond to stay execution pending appeal.

On December 11, 1978, the trial Court denied quashal of the Writ as well as the BANK's alternative prayer to be allowed to file a supersedeas bond, and ordered the Central Bank, upon receipt of the Order, to deliver to the Deputy Sheriff the amount of P389,000.00, the amount garnished by virtue of the Writ of Execution of March 14, 1978, for said Sheriff to deliver the mentioned amount to the Clerk of Court, and for the latter, in turn, to deliver the same to private respondents.[6]

On December 15, 1978, the Court of Appeals, upon the BANK's Motion, issued a Restraining Order enjoining the execution of its Decision until the BANK would be able to elevate an appeal to this Court. [7] On January 22, 1979, the Court of Appeals lifted its Restraining Order since a Petition for Review on Certiorari had actually been filed with this Court.[8]

In the meantime, or on August 10, 1978, the trial Court approved the BANK's Record on Appeal. In the Court of Appeals, the appealed case was docketed as GA-G.R. No. 64130-R, where it is still pending.

G.R. No. L-49568 before the

Supreme Court

On January 12, 1979, after an extension having been granted, the BANK filed the instant appeal by way of Certiorari before this Court impugning the Decision of the Court of Appeals, as well as the trial Court Orders a) of December 27, 1976 ordering the issuance of a Writ of Preliminary Mandatory Injunction, b) of February 10, 1978 reiterating the said Order, and c) the Special Order of March 10, 1978 granting execution pending appeal. On January 19, 1979, the BANK filed an Urgent Petition for the Issuance of Preliminary Injunction with Restraining Order,[9] to enjoin the trial Court "from further proceeding with any matter in connection with Civil Case No. 5271-P of this Court" and praying that Injunction be made permanent until the final outcome of the appeal on the merits in C.A.-G.R. No. 64130 of the Court of Appeals is known.

In a Resolution dated January 24, 1979, we required private respondents to submit their Comment and issued a Restraining Order enjoining the trial Judge from further proceeding with Civil Case No. 5271-P and from enforcing his Order dated December 11, 1978, authorizing the Central Bank to release the amount of P389,000.00. Private respondents' Comment, which included a prayer for the dismissal of the Petition and the immediate quashing of the Restraining Order, was filed on January 29, 1979,[10] and contended mainly that execution pending appeal is a necessity in order to serve the interest of justice.

On February 14, 1979, we denied the Petition for lack of merit and, on February 21, 1979, lifted the Restraining Order.[11] The BANK moved for reconsideration and for the restoration of the Restraining Order, which was opposed by private respondents. In support of its Motion for Reconsideration, the BANK claimed that the amount of P375,000.00 would be secured only by the Calamba property, with a loan value of only P157,889.76; that the bonds posted by private respondents totalling P55,000.00 only are grossly inadequate; that it would be made to

violate the General Banking Act, R. A. No. 337, which mandates that the loan in question should be used only for the purpose of acquiring urban or rural land; and that release of the loan would render its appeal in CA-G. R. No. 64130-R moot and academic.

In the interim, in view of the lifting of the Restraining Order, a check for P389,000.00 was released by the Central Bank to the Deputy Sheriff on February 26, 1979. The check was encashed on the same date and turned over to private respondents. The BANK claims that execution was implemented with irregularity and haste, with no explanation as to why the amount of P369,000.00 was raised to P389,000.00.

In a Motion filed before the trial Court on March 15, 1979, the BANK prayed for an Order directing private respondents to execute the corresponding promissory note in its favor.[12] This was followed by a Manifestation that it was without prejudice to whatever action the Supreme Court may take in the premises.[13]

In our Resolution of March 19, 1979, we required the BANK to file a Reply to private respondents' Opposition to the Motion for Reconsideration, and we reinstated the Restraining Order lifted on February 21, 1979, unaware that execution had been implemented.[14] The BANK filed its Reply on March 26, 1979 and reiterated its prayer for the restoration of the amount of P389,000.00.

We set the Petition and all pending incidents for hearing, which was tantamount to a due course Order, on April 16, 1979.[15] This was reset to May 14, 1979 for non-service of the notice of hearing of April 16 on TOLENTINO. On the date of the first hearing on April 16, however, the same having been attended by the BANK's counsel, the Court required the BANK to submit such pertinent documents as would give the Court a complete picture of the controversy. In its Compliance, petitioner submitted Application for Loan of Jaime Z. Bayuga (Annex "A"); Application for Loan of Roberto P. Tolentino (Annex "A-1"); Resolution No. 76-93-G M of the Board of petitioner Bank (Annex "B"); Real Estate Mortgage (Annex "C"); Affidavit of Undertaking signed by Bayuga (Annex "D"); Letter of the Bank dated April 4, 1979 addressed to Bayuga, Zaballero and TOLENTINO reminding them of the monthly amortization due (Annex "E"). For its part, private respondents claimed that those documents were misleading;[16] that the Application for Loan, which he had signed (Annex "A-1"), had nothing to do with the transaction in question; that the excerpt of the Minutes of the meeting of petitioner Bank (Annex "B") is self-serving; that the Real Estate Mortgage (Annex "C") was executed only between Bayuga and the BANK; that the Affidavit of Undertaking signed by Bayuga (Annex "D") should not be given any value; that the subject mortgage is not yet due and the BANK'S letter dated April 4, 1979 (Annex "E") is "a worthless piece of paper coming from (the BANK's) dirty heart."

The hearing of May 14, 1979 was further postponed to June 6, 1979 after denying TOLENTINO's prayer that said hearing of May 14, 1979 be cancelled for being "unnecessary, the facts of the case being beyond dispute." We resolved to impose upon Atty. TOLENTINO a fine of P200.00, and instead we required the personal appearance of both private respondents Bayuga and TOLENTINO at the hearing set for June 6, 1979.

During the oral argument, the Bank was required to submit copies of the Record on Appeal filed in CA-G.R. No. 64130-R of the Court of Appeals and a chronology of relevant incidents. Its Compliance was filed on June 8, 1979. TOLENTINO was also required to submit, not later than the close of office hours of June 7, 1979, copy of the alleged deed showing the purchase by him of about eight hectares of real estate in Tagaytay City on account of which he allegedly paid P350,000.00 out of the P389,000.00 received by him from the loan proceeds. TOLENTINO complied by submitting on June 7, 1979, at 11:00 A.M., a Deed of Sale dated March 9, 1979 of a parcel of land of 5 hectares in Tagaytay City for which he is shown to have made a down payment of P280,000.00. At 3:00 P.M. of the same day, he submitted another Deed of Sale dated April 2, 1979 over a piece of property of 2 hectares in Tagaytay City for which he obligated himself to make a down payment of P70,000.00.

Both sales, while duly acknowledged before a Notary Public, do not disclose any evidence of registration.

On July 2, 1979, we granted private respondents' prayer for 10 days within which to file a comment to the BANK's Compliance dated June 7, 1979, but the said comment was not filed. On August 3, 1979, the case was considered submitted for resolution, with the Court noting a Motion for Early Resolution filed by the BANK on July 31, 1979.

In this Petition before us, the BANK contends:

"I

RESPONDENT COURT OF APPEALS ERRED IN DISREGARDING THE ELEMENTARY PRINCIPLE OF LAW THAT A MORTGAGE CONTRACT IS MERELY AN ACCESSORY CONTRACT, THUS DISPLAYING LACK OF INSIGHT IN THE LAW AND THE REASONS OR PRINCIPLES UNDERLYING THE SAME;

"II

RESPONDENT COURT OF APPEALS COMMITTED ERRORS OF LAW BY NOT CONSIDERING THE LEGAL PROVISION ATTENDANT TO THE ORDERS COMPLAINED OF BEFORE IT ISSUED BY THE RESPONDENT JUDGE;

"III

RESPONDENT COURT OF APPEALS ENTIRELY DISREGARDED THE SPECIFIC DIRECTION LAID DOWN BY R.A. NO. 337;

"IV

RESPONDENT COURT OF APPEALS ERRED IN ARRIVING AT A DECISION OBVIOUSLY CONTRARY TO PUBLIC INTEREST AND TO PUBLIC POLICY; and

"V

RESPONDENT COURT OF APPEALS ERRED IN NOT CONSIDERING THE FACT THAT A WRIT OF EXECUTION IS NOT PROPER IN THE ABOVE-ENTITLED CASE, AGAIN DISPLAYING LACK OF INSIGHT IN THE LAW."

The critical issue posed before us is the propriety of the issuance of the Writ of execution pending appeal by the trial Court, and its affirmance, except as to the aspect of damages, by the Court of Appeals. The trial Court opined that to deny execution pending appeal would have been to deny the borrowers relief from the substantial injustice with which they have been burdened considering that their land had been mortgaged without the BANK having paid any centavo for the loan. The Court of Appeals, in turn, ruled that the issuance of a Writ of execution pending appeal is a matter of discretion on the part of the issuing Court and as long as it is not exercised in a capricious or whimsical manner, and a special reason for its issuance is stated in the Order, appellate Courts will not disturb the same. The Court of Appeals was "most persuaded by the fact that the loan is intended to buy real estate property, the price of which varies as days go by." Upon the other hand, the BANK maintains that the issuance of the Writ would patently work violence with justice and equity because the property given as collateral as well as the bonds which have been posted are inadequate, and petitioner would be made to violate the General Banking Act,[17] which provides that the loan in question should be for the purpose only of acquiring urban or rural land; and that the appeal in CA-G.R. No. 64130 would be rendered moot and academic.

While, prima facie, execution pending appeal seemed justified because of the unilateral cancellation of the release of the loan by the BANK without notice, and the absence of complete supporting documents to the Petition, disclosures by the parties during the hearing and pleadings and documents subsequently filed uphold a contrary view. Thus, during the hearing as well as in his Comments filed on May 30, 1979, TOLENTINO contended that he is not a party to the mortgage contract which was executed only between the BANK and Bayuga; that he became a party only because he was "injured and damaged by the bad faith of the BANK;" that he is not willing to co-sign a promissory note in the BANK's favor for the amount of P389,000.00, alleging that Bayuga had already signed a promissory note in November, 1976 in the sum of P200,000.00; and that neither he nor Bayuga had obligated himself to put up any additional collateral. Bayuga, for his part, during the hearing, assumed a very passive role admitting that he was but an employee of TOLENTINO who was the prime mover in the entire transaction. The lack of good faith and of a sense of fair play on the part of private respondents was all too evident. They were treating the release of the amount of P389,000.00 in their favor more as a money judgment, which it is not, rather than as a loan which it is. They want to avail of the full benefits of the loan without assumption of the corresponding obligations, or very minimally at that. Since receipt of the aforesaid amount, they have even refused to make any monthly amortizations even upon demand by the BANK, contending that "no amount of the said loan is due. It will only be paid ten (10) years after the execution of the mortgage contract as interpreted by our Courts." [18]

The unfairness and inequity of this posture to the banking business is too evident to require elaboration. Funds of a bank are, in a sense held in trust. There are the interests of depositors to be protected. The collateral the BANK has in its favor, with a loan value of only P157,889.76, is far from adequate to answer for the amount of P389,000.00 that is now in the hands of private respondents. The manner of re-payment by private respondents of that amount remains nebulous. Of course, the BANK is not without fault for this sorry state of affairs.

The special reason cited by the trial Court and upheld by the Court of Appeals, i.e., the "substantial injustice" wrought on private respondents whose land had been mortgaged without any centavo paid for the loan, does not exist in law. As pointed out by the BANK, the Calamba property need not have remained subject to the mortgage, the mortgage being but an accessory contract to the contract of loan which is the principal obligation and which has been cancelled. The consideration of the mortgage is the same consideration of the principal contract without which it cannot exist as an independent contract. [19] The "persuasive" factor considered by the Court of Appeals "that the loan is intended to buy real estate property, the price of which varies as days go by" was disproved by the fact that TOLENTINO utilized the amount initially released to purchase a certificate of time deposit and to open bank accounts in his name rather than pay for the Algue property.

In the absence of good reasons, [20] private respondents have not shown a clear entitlement to execution pending appeal. Moreover, after having received the loan proceeds of P389,000.00 on February 26, 1979 by means of the execution pending appeal improvidently granted, they refused to make any monthly amortizations since March, 1979, notwithstanding the BANK's demands, on the outrageous claim against all banking practice that they are not obligated to pay any amount on the loan until the lapse of ten (10) years after the execution of the mortgage contract. Under the circumstances, defendants are clearly in default on their loan and are liable to repay the whole amount with the stipulated interest.

WHEREFORE, the judgment of the Court of Appeals in CA-G.R. No. SP-07573 is hereby set aside. Private respondents are hereby jointly and severally ordered to restore and repay petitioner Banco de Oro the sum of P389,000.00 with the stipulated interest of nineteen per cent (19%) per annum from February 26, 1979 until the whole amount due shall have been fully paid. The property given in mortgage by respondents under the mortgage contract as well as the bonds totaling P55,000.00 posted by respondents for the issuance of the questioned order of

execution pending appeal shall stand liable for satisfaction of the judgment herein rendered in favor of petitioner bank.

In effect, this conclusion renders the appeal in CAG.R. No. 64130-R moot and academic and the judgment of the trial court is accordingly set aside. The interests of substantial justice and demands of fair play so dictate.

Costs against private respondents-appellees jointly and severally.

This judgment shall be immediately executory upon its promulgation.

SO ORDERED.

Teehankee, (Acting Chief Justice), Makasiar, Fernandez, Guerrero, and De Castro, JJ., concur.

* Former Fourth Division, composed of Justices Ramon G. Gaviola, Jr., ponente, Buenaventura S. de la Fuente, and Hugo E. Gutierrez, Jr.

[1] Annex C, Compliance and Motion filed by petitioner, p. 254, Rollo.

[2] *ibid.*

[3] Resolution No. 76-93-GM, Annex I, Petition, pp. 54-55, Rollo.

[4] Annex B, Petition, pp. 29-30, Rollo.

[5] Annex A, Urgent Petition for Issuance of Preliminary Injunction with Restraining Order, p. 71, Rollo.

[6] Annex A, Urgent Petition for Issuance of Preliminary Injunction with Restraining Order, pp. 71-81, Rollo.

[7] Annex C, p. 85, Rollo.

[8] Annex 13, Respondents' Comment, p. 194, Rollo.

[9] Pp. 66-70, Rollo.

[10] P. 95, Rollo.

[11] Pp. 214-215, Rollo.

[12] P. 264, Rollo.

[13] P. 271, Rollo.

[14] P. 225, Rollo.

[15] P. 240, Rollo.

[16] Comments, p. 277, Rollo.

[17] Republic Act No. 337.

[18] Annex 1, Manifestation filed by petitioner on September 20, 1979.

[19] *China Banking Corporation vs. Lechauco*, 46 Phil. 460 (1924).

[20] Sec. 2, Rule 39, Rules of Court.

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