

SPOUSES BHAGWANDAS & SATI GIDWANI AND SAMUEL SHARUFF, PETITIONERS, VS. DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES AND MARINDUQUE MINING & INDUSTRIAL CORPORATION (FORMERLY MAR...

G.R. No. L-31442. June 24, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal by certiorari from the decision of respondent Judge of the Court of First Instance of Manila (Branch XXII), in Civil Case No. 75092, entitled: "Spouses Bhagwandas & Sati Gidwani, et al. vs. Domestic Insurance Company of the Philippines, et al.", the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered dismissing plaintiffs' complaint, and spouses Bhagwandas Gidwani and Sati B. Gidwani, with Samuel Sharuff, are jointly and severally sentenced to pay to Domestic Insurance Company of the Philippines and Marinduque Mining & Industrial Corporation the sum of P1,500.00 each, plus the costs of suit."

Both parties are in agreement with respect to the finding of facts made by respondent Judge, as stated in the appealed decision, to wit:

"The Manufacturers' Bank & Trust Company granted Plastic Era Manufacturing Co., Inc. (hereinafter referred to for brevity as Plastic Era) a discounting line of P20,000.00. To secure the payment of any loan which said bank may extend to Plastic Era, the latter posted a surety bond for P20,000.00 issued by the Domestic Insurance Company of the Philippines (hereinafter referred to as Domestic Insurance).

"On September 9, 1959, Plastic Era, Bhagwandas B. Gidwani and Kishu Gidwani executed an indemnity agreement whereby they bound themselves, jointly and severally, to indemnify Domestic Insurance against all damages, losses and expenses which the latter may incur as a consequence of having issued said surety bond.

"On September 10, 1959, Plastic Era signed and executed a promissory note in favor of the Manufacturers Bank & Trust Company, wherein the former promised to pay the latter the sum of P20,000.00, with interest thereon at the rate of 10% per annum payable 120 days from said date.

"DOMESTIC INSURANCE required PLASTIC ERA to give additional security and so on September 23, 1959, Sati B. Gidwani, wife of Bhagwandas Gidwani, pledged to DOMESTIC INSURANCE her shares of stock in three corporations, among which were 12,000 shares of the Marinduque Iron Mines, Inc. (which corporate name has subsequently been changed to Marinduque Mining & Industrial Corporation). This pledge agreement was to secure the fulfillment by PLASTIC ERA of its undertaking to indemnify DOMESTIC INSURANCE from any and all damages, losses and expenses which the latter may sustain as a consequence of its having executed a surety bond in favor of the Manufacturers Bank & Trust Company.

"On September 26, 1959, the Marinduque Mining & Industrial Corporation (hereinafter referred to as MARINDUQUE) was notified of the pledge of the shares of Sati Gidwani and a 'stop transfer' notice was

entered in its books. Since then, all stock dividends declared and cash dividends paid corresponding to the pledged shares were delivered to DOMESTIC INSURANCE.

"PLASTIC ERA failed to pay the promissory note it executed in favor of the Manufacturers Bank & Trust Company, and as a result thereof, the latter in turn files a claim against the bond issued by DOMESTIC INSURANCE, which on October 27, 1960, paid the sum of P20,000.00 to said bank.

"On January 26, 1961, DOMESTIC INSURANCE filed an action in the Court of First Instance of Manila, which was docketed therein as Civil Case No. 46142, against PLASTIC ERA, Kishu Gidwani and Bhagwandas Gidwani, for the recovery of the sum of P20,000.00 which DOMESTIC INSURANCE paid to the Manufacturers Bank & Trust Company, plus interest and attorney's fees.

"On November 9, 1961, the Court of First Instance of Manila rendered judgment in Civil Case No. 46142, based on a compromise agreement, wherein the defendants therein were sentenced to pay to DOMESTIC INSURANCE the sum of P20,000.00, with interest thereon at the rate of 12% per annum from October 27, 1960, plus P1,100.00 as attorney's fees, without costs. The decision, however, provided that any amount payable to the plaintiff in excess of P20,000.00, including interest and attorney's fees would not be due until one year from the finality of the judgment.

"Pursuant to a writ of execution issued in said Civil Case No. 46142, the Sheriff garnished the liquidating dividends of Bhagwandas Gidwani in the Old Manila Club amounting to P3,950.00. One Gustav Real, claiming to be the assignee of said dividends, filed a suit in the City Court of Manila against the sheriff and DOMESTIC INSURANCE for the recovery thereof. The City Court of Manila rendered judgment for Gustav Real but DOMESTIC INSURANCE and the Sheriff appealed from the decision and the appealed case is still pending before another branch of this court.

"On October 1, 1968, DOMESTIC INSURANCE requested Notary Public Antonio Manzano to sell at public auction the shares pledged to it by Sati Gidwani for the satisfaction of the sum of P44,656.55. After the corresponding notice had been given, on October 31, 1968, all the pledged shares were sold at public auction for the sum of P19,322.30 to DOMESTIC INSURANCE, which was the highest bidder.

"On November 7, 1968, DOMESTIC INSURANCE surrendered to MARINDUQUE the certificate of stock of the pledged shares and requested that they be cancelled and new certificates of stock issued in its name. In due time, MARINDUQUE complied, but it only issued 232 and 46/100 shares in the name of DOMESTIC INSURANCE, which was based on the adjusted new par value of P15.00 per share, instead of the original par value of P0.10 per share.

"On November 5, 1968, the transfer agents of MARINDUQUE on the same occasion received two letters signed by the spouses Bhagwandas B. Gidwani and Sati B. Gidwani. In the first letter, the spouses stated that they have assigned all their rights to 34,846 shares belonging to them in favor of Samuel Sharuff and requested that the corresponding notation be made thereof in the stock and transfer book of the corporation, with the promise, however, that 'in due time . . . the stock certificate duly accomplished and endorsed in favor of Mr. Samuel Sharuff' would be forwarded to MARINDUQUE.

"In the second letter, the Gidwani spouses stated that they were not yet able to recover the corresponding stock certificates which they assigned to Samuel Sharuff and so they requested that they be cancelled, and thereafter new ones be issued in lieu thereof in favor of Samuel Sharuff.

"At first, the stock transfer clerk refused to acknowledge receipt of the letters for the reason that the corresponding stock certificates had not been enclosed therewith. Later, she had a telephone conversation with a party who introduced himself as Samuel Sharuff. After talking for a time, the party claiming to be Samuel Sharuff was able to prevail upon the stock transfer clerk to receive the two letters and to prepare a reply thereto along the line suggested by the former. The stock transfer clerk typed the letter, after which she signed it in

behalf of the transfer agents of MARINDUQUE. In the third paragraph of the letter, it was stated that a 'stop transfer' notation would be made in the records of the corporation that the stock certificates in the name of either the Gidwani spouses would be cancelled only if the instruction accompanying them was to issue new shares in the name of Samuel Sharuff.

"On December 5, 1968, counsel for Sharuff wrote the transfer agents of MARINDUQUE to cancel the stock certificates issued in the name of DOMESTIC INSURANCE and to issue in lieu thereof new ones in the name of his client.

"The transfer agents of MARINDUQUE declined to recall the shares issued in the name of the plaintiff with the explanation that the 'stop order' notation made at the instance of Samuel Sharuff had no basis because the shares in question were pledged to DOMESTIC INSURANCE and the pledge had been foreclosed, with the pledgee acquiring them at the auction sale.

"As a result of this denial, the Gidwani spouses, joined by Samuel Sharuff, sued DOMESTIC INSURANCE and MARINDUQUE, and in their complaint, the plaintiffs prayed that the pledge of the shares of Sati Gidwani be declared to have been extinguished; that the sale of the pledged shares to DOMESTIC INSURANCE was null and void; and that MARINDUQUE be ordered to issue new shares in favor of Samuel Sharuff and to condemn the defendants to pay attorney's fees in the sum of P10,000.00.

"The plaintiffs contend that the filing by DOMESTIC INSURANCE of an action based on the counter-guaranty, and obtaining therein a judgment in its favor with a partial satisfaction thereof, released the lien of the plaintiff on the shares pledged to it by Sati Gidwani. The defendants, more particularly, DOMESTIC INSURANCE, however, maintain the contrary view." (Decision pp. 1-7)

Not satisfied with the decision of respondent Judge, petitioners filed this appeal by certiorari, claiming that respondent Judge erred: (1) when he did not find and hold that the pledge constituted on the subject shares of stock had already been extinguished and released at the time its extrajudicial foreclosure was belatedly instituted by the pledgee; (2) when he did not invalidate for being null and void the extrajudicial foreclosure of the pledge in question; (3) When he did not find and hold that since petitioner-pledgor Sati Gidwani continued to be the lawful owner of the subject shares, her assignment thereof to Samuel Sharuff was, therefore, valid and the same produced legal and binding effects even as against the pledgee, Domestic Insurance Company of the Philippines; (4) when he did not order Marinduque Mining and Industrial Corporation to cancel the certificates of stock illegally issued to Domestic Insurance Company of the Philippines and issue new stock certificates to Samuel Sharuff, the assignee thereof; and (5) when he refused or failed to grant the other relief prayed for in the complaint filed by herein petitioners.

It is the position of the petitioners that the pledge constituted on the subject shares was given as security in favor of Domestic Insurance to guarantee the fulfillment of the obligation assumed by Plastic Era, Bhagwandas Gidwani and Kishu Gidwani under the Indemnity Agreement which they executed, jointly and severally, "to indemnify (Domestic Insurance) from and against any and all liabilities, damages, losses, costs and expenses which said (Domestic Insurance) may incur in consequence of having become surety" in its D.I.C.P. Surety Bond No. 04739 (Annex 1, Answer of Domestic Insurance); that the pledge of the shares of stock of Sati Gidwani to respondent Domestic Insurance was extinguished when the latter sued Plastic Era, Bhagwandas Gidwani and Kishu Gidwani in Civil Case No. 46142 of the Court of First Instance of Manila to enforce the Indemnity Agreement; and that when Domestic Insurance instituted the above action and obtained a favorable judgment against the defendants in Civil Case No. 46142, said respondent abandoned and waived its rights or cause of action under the Pledge Agreement.

We are not persuaded. As aptly observed by the trial court, "there were two securities given to DOMESTIC

INSURANCE for the faithful compliance of the obligation of PLASTIC ERA to pay the promissory note it executed in favor of the Manufacturers Bank & Trust Co., namely, the counter-guaranty agreement jointly executed by PLASTIC ERA, Kishu Gidwani and Bhagwandas Gidwani, and the second was the pledge of shares of stock made by Sati B. Gidwani. By paying the promissory note to the Manufacturers Bank & Trust Company, DOMESTIC INSURANCE thereby was subrogated to the rights of the former to demand for and collect payment of the amount due thereon from PLASTIC ERA, the maker of the promissory note. Had DOMESTIC INSURANCE sued PLASTIC ERA under this cause of action, and assuming that the ruling in the cited cases which referred to real estate and chattel mortgages would also be applicable where the security given is pledge, then the plaintiff would thereafter be barred from enforcing its claim against any of the securities given to it to guaranty the faithful payment of the original obligation. The indemnity agreement jointly signed by PLASTIC ERA, Kishu Gidwani and Bhagwandas Gidwani and the pledge agreement of the shares are the two securities, and as the creditor did not avail of the remedy to obtain a personal judgment against the debtor, it is not barred to enforce its claim against both securities. From the nature of the situation, DOMESTIC INSURANCE cannot prosecute its claim against the two securities in one and the same action. The foreclosure of the pledged shares would not require an action in court, whereas it would be necessary if the claim would be enforced under the indemnity agreement. The Court is, therefore, of the opinion and so holds that the filing of Civil Case No. 46142, and securing a judgment therein against the counter-guarantors, did not release, much less extinguish, the lien of DOMESTIC INSURANCE on the shares of stock of Sati B. Gidwani which were pledged in its favor." Further, the pledge of the shares of stock of Sati Gidwani did not release the obligation of the indemnitors. The pledge was an additional security for the indemnification of the damages and losses which Domestic Insurance might, and did, suffer under the surety bond which it issued for Plastic Era.

ACCORDINGLY, the appealed decision is hereby AFFIRMED in toto. Without costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.

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