

HEIRS OF JOSE D. ALARILLA, SABINA L. ALARILLA, DIVINA L. ALARILLA, JUDITH L. ALARILLA, PRISCILLA A. SAMSON, JOSELITO L. ALARILLA, REPRESENTED BY DESIGNATED REPRESENTATIVE JUDITH...

Ponente: LAZARO-JAVIER, A.C., J.

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LAZARO-JAVIER, A.C., J.:

This is an appeal from the Decision[1] dated March 12, 2012 of the Regional Trial Court of Parañaque City-Branch 274, in Civil Case No. 00-0509, dismissing the complaint for annulment of foreclosure sale and damages filed by appellants Heirs of Jose Alarilla against appellee Guagua Rural Bank, and granting the latter's counterclaim.

Appellants are the heirs of Jose Alarilla who substituted the latter as original plaintiff in Civil Case No. 00-0509. Jose Alarilla died on August 23, 2004. The complaint averred:

(1) Spouses Jose and Sabina Alarilla were engaged in the realty business through their corporation, J.D. Alarilla Construction and Development Corporation, developer and owner of Prince Court I and II at El Dorado Avenue, Parañaque City.

(2) On November 25, 1992, Jose and Sabina obtained a loan from appellee amounting to P 1,500,000.00 secured by a real estate mortgage over their property under TCT No. 6003-60024.

(3) The Asian financial crisis gravely affected the real estate business, but realizing the value of their property holdings and sensing their financial difficulties, appellee, through its Managing Director, Jose Carlos, offered them a credit line of P7,500,000.00 to help them finance their business.

(4) They were offered an interest rate of 18% per annum with option to renew their credit line yearly until full payment, just as they had been renewing their existing 1992 loan.

(5) This time, to secure the credit line, appellee specifically required them to constitute a second mortgage on their lot under TCT No. 6663-60024 and their commercial building under TCT No. 63177.

(6) After they agreed to avail of the credit line, Jose Carlos left at their house several blank copies of bank documents, including promissory notes and mortgage documents for their parents' signatures.

(7) According to Carlos, they had to sign several copies of bank documents because their P7.5 million credit line would be released on staggered basis and every release of the credit line would be covered by a corresponding promissory note and mortgage document.

(8) After several months of waiting, Carlos eventually informed them that appellee had released P4,500,000.00 covered by the following promissory notes: (a) Promissory Note dated February 4, 1997[2] for P500,000.00 secured over TCT Nos. 06663-60024; (b) Promissory Note dated July 22, 1997[3] for P2,000,000.00, and (c) Promissory Note dated September 3, 1997[4] for P2,000,000.00, and Real Estate Mortgage dated July 10, 1997[5]

for the same amount, secured by TCT No. 63177.

(9) The amount, however, of P2,000,000.00 out of the supposed P4 Million loan was applied to redeem TCT No. 63177 from Premier Bank where it was then mortgaged. Incidentally, Premiere's majority stockholder was Edward Carlos, Jose Carlos's brother.

(10) They did not have a prior agreement with appellee that the proceeds of the loan would be used to redeem said property, nor did they assent to the 19%, 22%, and 30% interest rates indicated in the various promissory notes because they agreed on different interest rates.

(11) When they complained to appellee, the latter promised them that the remaining P3,000,000.00 loan proceeds would be given to them directly, and the erroneous interest rates appearing on the promissory notes, corrected.

(12) Despite several assurances, however, appellee never released the remaining P3,000,000.00 loan, nor changed the erroneous interest rates appearing on the promissory notes.

(13) Consequently, their mortgage was foreclosed and the properties sold at public auction where appellee emerged as sole and highest bidder.

(14) They were merely inveigled to secure loans from appellee through the latter's gross misrepresentation and fraudulent schemes, thus, making the loan contract and mortgages void.

(15) The sale at public auction was tainted with irregularities for lack of the requisite publication, and posting, as required under Act 3135.

(16) Notwithstanding the non-observance of legal requirements, appellee succeeded in annotating the certificate of sale and threatened to consolidate title in its name after the lapse of the one year redemption period.

(17) As a consequence of appellee's fraudulent schemes, appellant Jose Alarilla suffered a nervous breakdown that prevented him from functioning normally for nearly a year.

(18) They also stood to lose properties valued at not less than P32,000,000.00 and to suffer moral damages conservatively estimated at P1,000,000.00.

(19) Appellee should also be made liable for reasonable exemplary damages and legal expenses.

Appellee filed its verified Answer[6] dated March 20, 2001, alleging:

(1) Appellants obtained from it several loans between November 1992 up to September 1997, secured by real estate mortgages on properties under TCT Nos. (26663) 60024 and 63177.

(2) Despite repeated demands, appellants failed and refused to pay their overdue loans. Parenthetically, appellants did not dispute the validity and due execution of the loan documents.

(3) Due to non-payment of appellants' loans, it applied for extrajudicial foreclosure of the real estate mortgages.

(4) The Notice of Sheriff's Sale was posted in three separate conspicuous places and published in the Philippine Expose on June 21, 28, and July 5, 1999.

(5) At the auction sale of December 16, 1999, it emerged as highest bidder, and the Certificate of Sale was registered and annotated on the Memorandum of Encumbrances of TCT Nos. (26663) 60024 and 63177.

(6) On November 16, 2000, it reminded appellants that the redemption period was set to expire on December 16, 2000. At this point, appellants still did not raise any issue pertaining to the validity and due execution of the loan

documents.

(7) On January 10, 2001, it informed appellants of the expiration of the redemption period and demanded from the latter to vacate the premises.

(8) Due to appellants' refusal, it filed the corresponding Petition for Writ of Possession docketed as LRC-01-0031.

(9) Appellants, thus, had no cause of action against it. Even assuming that appellants had a cause of action, the same had been extinguished by laches and other statutes of limitation.

(10) It was entitled to attorney's fees because it was constrained to hire a legal counsel to defend itself from appellant's ill-motivated suit.

The Pre-Trial Order[7] dated November 5, 2003 bore the parties' conflicting claims and the issues to be resolved, viz:

1. It is the theory of the plaintiffs that the documents made subject of this case on which the cause of action of the plaintiffs hinges namely: Four (4) promissory notes dated November 25, 1992, February 4, 1997, July 22, 1997, and September 3, 1997, and three (3) real estate mortgage documents dated November 25, 1992, February 18, 1997 and July 10, 1997, though signed by them, contained material entries therein that were falsified, thereby rendering the said documents not reflective of the true agreement between the plaintiffs and the bank and hence, these said documents are null and void. Furthermore, the subsequent foreclosure is also null and void.
2. It is the theory of the defendant that the loan documents made subject of this case were valid and that the subsequent corresponding foreclosure sale is also valid.
3. Whether each party is entitled to their respective claim for damages.
4. Whether plaintiffs' cause of action is barred by laches.

By Decision[8] dated March 12, 2012, the trial court dismissed the complaint, ratiocinating, viz:

Firstly, the net proceeds from the loan amounts of P2,000,000.00 under Promissory Note dated July 22, 1997 and P2,000,000.00 under Promissory Note dated September 3, 1997 were, from the very own evidence of plaintiffs, shown as having been received by the plaintiff Jose D. Alarilla.

Secondly, if ever the proceeds of the first P2,000,000.00 went to Premiere Development Bank, the application by defendant bank was with the express or tacit conformity or approval of plaintiff Jose D. Alarilla, thereby making the payment in legal subrogation. It is provided in Art. 1302, Civil Code thus -

“Art. 1302. It is presumed that there is legal subrogation:

x x x

2. When a third person, not interested in the obligation, pays with the express approval of the debtor;

x x x”

The subrogation, thus, transfers to the person subrogated (in the present case, the defendant bank) the credit with all the rights thereto appertaining against the debtor (herein plaintiffs) (Art. 1303, Civil Code).

Thirdly, the alleged payment of the other P2,000,000.00 to a certain Mr. Edward Carlos of Equicore Credit Corporation was never preponderantly proven by plaintiffs. It is only the bare testimony of plaintiffs' only witness, Judith Alarilla who says the said amount was never received by plaintiffs but instead was paid or given to Mr. Edward Carlos (see TSN of May 4, 2005, p. 18, et. seq.). Being the plaintiffs, it is their burden to

prove by evidence their allegation in this regard. They should have presented Mr. Edward Carlos himself as hostile witness, or even documentary evidence from Equicore Credit Corporation, or even some written admissions through interrogatories served on the defendant bank in this respect. In the absence of such evidence, the Court cannot just take any evidentiary worth from plaintiffs' witness' bare allegations. "Bare allegations, unsubstantiated by evidence, are not equivalent to proof." (Real vs. Belo, 513 SCRA 111). Although there is documentary evidence introduced by the defendant bank (Exhibit "9"), a "Deed of Assignment" purportedly executed between the plaintiffs spouses and Equicore Credit & Loans Corporation, this piece of evidence, however, is worthless as it is hearsay since it was not testified to by a competent witness.

A loan is a real contract, not consensual, and as such is perfected only upon the delivery of the object of the contract (Garcia vs. Thio, 518 SCRA 433). Real contracts are not perfected until the delivery of the object of the obligation. (Art. 1316, Civil Code). Upon delivery of the object of the contract, the debtor acquires ownership of such money or loan proceeds and is bound to pay the creditor an equal amount. (Garcia vs. Thio, supra.)

In the case at bench, the contract of loan between the plaintiffs and the defendant as manifested in the Promissory Note dated February 4, 1997 and in the Real Estate Mortgage executed on February 18, 1997, for the amount of P500,000.00 was valid since the proceeds of the loan were admittedly received by plaintiff Jose Alarilla on February 4, 1997.

The same case is true with the contract of loan between the plaintiffs and the defendant as manifested in Promissory Note dated July 22, 1997 for the amount of P2,000,000.00, Promissory Note dated September 3, 1997 for another amount of P2,000,000.00, the two (2) Promissory Notes being embodied in the Real Estate Mortgage executed by the plaintiffs spouses on July 10, 1997, the loan or loans therein agreed are found by this Court to be valid since the proceeds thereof were delivered to and received by plaintiff Jose D. Alarilla.

Being valid, the contract of loan(s) was and is therefore perfected and binding upon the parties (Art. 1308, Civil Code). From the moment of perfection of the contract, and so Art. 1315 of the Civil Code provides, "the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law."

Thus, the aforesaid Promissory Notes being found to be valid and in order, and the Real Estate Mortgage dated February 18, 1997 involving TCT No. 60024, and the Real Estate Mortgage dated July 10, 1997 involving TCT No. 63177 also valid and in order, the default by plaintiffs spouses in paying their loan obligation necessarily gave rise to the foreclosure of mortgage.

WHEREFORE, all the foregoing duly considered, judgment is hereby rendered against the plaintiffs and for the defendant as the present Complaint is ordered DISMISSED. No pronouncement as to costs.

SO ORDERED.

Under Order[9] dated August 17, 2012, the trial court denied appellants' motion for reconsideration.[10]

Appellants now fault the trial court for having allegedly overlooked the following matters:

- (1) Appellee, through insidious words and machinations, induced them to avail of a loan with the end in view of acquiring their prime commercial properties valued at P35 Million.
- (2) The mortgages were void and must therefore be annulled because they were left at the mercy of appellees who had the mortgages immediately annotated on their titles, leaving them unable to back out from the transaction.
- (3) The 30% interest rate was highly unconscionable and contrary to the 18% interest rate indicated in the letterhead signed by appellee.

(4) The evidence they presented, i.e., the letterhead signed by appellee through Jose Carlos gave rise to all other subsequent documents, thus, appellee could not have released P2 Million to Edward Carlos out of the P7.5 Million loan considering that the “letterhead” itself did not even include the P2 Million loan. Not even the deed of assignment could be made the basis for releasing part of the loan proceeds to Edward Carlos as no one attested to the existence of such deed of assignment, let alone, its validity. Indeed, appellee's inducement and fraud resulted in appellant's business setbacks which caused Jose Alarilla's depression, leading to his heart attack and eventual death, for which, appellee must be held liable for damages.

In its Brief[11] dated July 21, 2013, appellee ripostes:

(1) Appellants cannot and should not be allowed to question the validity of the promissory notes and real estate mortgages because (a) they admittedly received the proceeds of the loan; and (b) they themselves used the questioned documents as part of their documentary evidence.

(2) Their transaction was not attended by fraud or inducement because (a) they freely and voluntarily signed the “Disclosure Statement of Loan/Credit Transaction” in question; (b) the application of part of the loan proceeds to appellants' loan with Premiere Development Bank was with the latter's express or tacit consent, also known as legal subrogation, under Article 1302 of the Civil Code; (c) payment, on the other hand, of the loan with Equicore Credit & Loans, from the proceeds of appellants' loan with appellee, was never preponderantly proved by appellants; at any rate, if the payment indeed took place, the same was with appellants' conformity pursuant to the Deed of Assignment they executed with Equicore; and (d) the transaction with appellee was not a single deal; the loan proceeds were obtained through a series of loans giving appellants several opportunities to object to, or refute, any or all the transactions, if indeed, the same were attended by fraud; as it was, however, appellants never objected to the transactions, and only raised issues on the alleged illegality thereof after a writ of possession had issued.

(3) Appellants' failure to pay their obligation gave rise to the foreclosure and subsequent sale of the mortgaged properties at public auction. There was nothing irregular or fraudulent about it.

(4) Appellants raised an issue on the alleged excessive interest rate only for the first time on appeal. They never questioned it in either their complaint or amended complaint. In any event, the interest rate imposed on appellant's loans was not excessive and within the bounds set by the Bangko Sentral ng Pilipinas.

(5) Appellants filed the case in bad faith, thus, making them liable for moral and exemplary damages, and attorney's fees.

The appeal must fail.

The appeal hinges on appellee's alleged fraudulent act of inducing appellants to obtain a loan from it, to be secured by their properties valued at approximately P35 Million. Appellants presented as lone witness Judith Alarilla who claimed that she, as secretary/treasurer of the corporation, knew all the transactions entered into by her parents. She testified how Jose Carlos would frequent their house in Parañaque City to offer a P7.5 Million credit line to her parents, setting terms that would be difficult for her parents to resist, such as the immediate release of P500,000.00 to them without need of any loan document. Thus, after much prodding, Judith's father, Jose, agreed to take the offered credit line. Judith further testified that Jose Carlos even wrote a note on a paper which bore appellee's letterhead stating that they qualified for a P7.5 Million loan. In truth, however, they never received the supposed P7.5 Million loan, because it was applied to their outstanding loan obligation with Premiere Bank and Equicore Lending Corporation.

We are not persuaded.

Under Article 1338 of the Civil Code, there is fraud when, through insidious words or machinations employed by one of the contracting parties, the other is induced to enter into a contract with the former such that, without this fraud, the former would not have agreed to do so. In order that fraud may vitiate consent, it must be the causal (dolo causante), not merely the incidental (dolo incidente), inducement to the making of the contract. Additionally, the fraud must be serious.[12]

Here, appellants failed to prove by preponderant evidence that appellee bank deliberately used fraud to entice them to apply for a loan with the latter. Consider:

FIRST. The handwritten note of Jose Carlos reads:

Based on table estimates, GRB is inclined to give Mr. Jose Alarilla a credit line of P7.5M against two lots along DS, BLS, to wit:

1. TCT No. ____ 264 m2

2. TCT No. ____ 320 m2*

PRINCIPAL -----

P7,500,000.00

Less: Int. -----

P 112, 500.00

O/S Balance -----

P1,700,000.00

Reg'n, et al.-----

P 80,000.00

P1,892,000.00

NET PROCEEDS

P5,607,500.00

*Mortgaged w/ Premiere Bk for P1.7M[13]

Notably, the handwritten note included appellants' existing loan with Premiere Bank. This loan was relevant to appellants' transaction with appellee because the same properties already mortgaged with Premiere Bank were being offered again for mortgage with appellee bank. By Carlos' own handwritten note, neither Jose Alarilla nor his heirs, could feign ignorance of the release of TCT No. 63177 in appellee's favor, in exchange for the latter's payment of Jose's indebtedness with Premiere Bank. Article 1370 of the Civil Code provides that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.[14] The computation appearing on Jose Carlos's handwritten note indicates that appellant's loan with Premiere Bank amounting to 1.7 million, secured by TCT No. 63177, shall be deducted from appellants' loanable amount with appellee. Appellants, thus, could not have expected the release to them of the entire 7.5 million precisely because their outstanding loan with Premiere Bank would be deducted from said amount. The full settlement of their loan with Premiere Bank was a condition sine qua non to the release of TCT No. 63177 which appellants intended to mortgage anew with appellee.

As for appellants' Equicore loan, appellee acted pursuant to the deed of assignment executed in its favor by appellants and Equicore itself. The fact that the deed was not notarized does not render it invalid. As held in *Ricardo Bangayan vs. RCBC*,[15] notarization of a private documents converts the document into a public one, renders it admissible in court without further proof of its authenticity, and is entitled to full faith and credit upon its face. However, lack of notarization does not necessarily affect the validity of the contract reflected in the document.

SECOND. Appellants never raised the issue of fraud during the foreclosure proceedings below. They only managed to raise it after a writ of possession had already been issued, ordering them to vacate the property and surrender the same to appellee. Their protest came too late in the day. As held in *Toledo vs. Hyden*: [16] "xxx a party to a contract cannot deny the validity thereof after enjoying its benefits without outrage to one's sense of justice and fairness. It is a long established doctrine that the law does not relieve a party from the effects of an unwise, foolish, or disastrous contract, entered into with all the required formalities, and with full awareness of what she was doing. Courts have no power to relieve parties from obligations voluntarily assumed, simply because their contracts turned out to be disastrous or unwise investments". So must it be.

THIRD. Appellants assert that Jose Alarilla was made to sign blank forms of Promissory Note and Real Estate Mortgage by appellee. On this score, however, except for Judith Alarilla's bare allegation, no other evidence, documentary or otherwise, was adduced to prove this accusation. At any rate, appellee's employee Angel Aguilar (Credit and Loan Department), explained how appellants themselves obtained from it the blank forms of real estate mortgage and promissory note, viz:

ATTY. DIMALANTA

Q:

Also, Mr. Witness, as an employee of Guagua Rural Bank since 1972 continuously up to the present, will you please tell this Honorable Court how can one obtain blank forms of Promissory Note and Real Estate Mortgage from Guagua Rural Bank?

WITNESS A. AGUILAR:

A:

Lahat po ng umuutang sa bangko lalo na at dati ng nangungutang, puwede pong makahingi ng extra na Promissory Note saka Real Estate Mortgage.

ATTY. DIMALANTA:

Q:

And when Judith Alarilla testified, she identified certain documents and marked the same as Exhibits “S”, “T”, and “U”. Will you please tell us what relation, if any, are these blank Promissory Notes to the Promissory Notes you mentioned that are placed in the table of the loan clerk?

WITNESS A. AGUILAR:

Q:

Ito nga po 'yong mga dokumento.

ATTY. DIMALANTA:

Q:

And will you please tell us, Mr. Witness, do you know how Judith Alarilla or Jose Alarilla for that matter able to get those blank copies of the Promissory Notes marked in evidence as Exhibit “S”, “T”, and “U”?

xxx

WITNESS A. AGUILAR:

Q:

Noon pong minsan nagpunta doon si Mr. Jose Alarilla sa opisina ng Guagua Rural Bank, humingi po siya ng blangkong Promissory Note saka Real Estate Mortgage kay Mr. Jose Carlos.

ATTY. DIMALANTA:

Q:

And who actually gave those blank Promissory Notes to Mr. Jose Alarilla?

WITNESS A. AGUILAR:

A:

Ako po mismo.[17]

Appellants themselves did not refute Aguilar's foregoing testimony. Although Judith Alarilla was recalled to the witness stand, the questions propounded to her did not delve on the blank forms which she claimed, on direct examination, to have been given to her parents by Jose Carlos for their signatures.

Be that as it may, appellants could not be considered neophytes in bank transactions. Appellants had been in and out of loan transactions with appellee and other banking and lending institutions. As prudent borrowers exercising ordinary diligence in their bank transactions, appellants should have immediately questioned why appellee was making them sign blank forms, if indeed it was true.

It is well-settled that in a civil case, the burden of proof is on the plaintiff to establish his case through preponderance of evidence. If he claims a right granted by law, he must prove his claim by competent evidence.[18] As stated, appellants here failed to sufficiently establish their cause of action against appellee.

All told, the trial court did not commit reversible error in dismissing appellants' complaint and granting appellee's counterclaim. It was preponderantly established that appellants validly constituted mortgage on their property to secure the loans they obtained from appellee. In turn, appellee validly foreclosed the mortgage, upon appellants' failure to pay their obligation.

As aptly held in *Philippine National Bank vs. Spouses Alejandro and Myrna Reblando*[19]: The practice of obtaining loans, defaulting in payment, and thereafter contesting the validity of the mortgage after the collateral has been foreclosed without any meritorious ground should be deterred. Actions of this kind, bearing a hint of fraud on the part of mortgagors, should not be tolerated, for they go against the basic principle that no person shall unjustly enrich himself or herself at the expense of another and that parties in a juridical relation must act with justice, honesty, and good faith in dealing with one another.

ACCORDINGLY, the appeal is DENIED and the Decision dated March 12, 2012, AFFIRMED.

SO ORDERED.

Castillo, (Chairperson) and Galapate-Laguilles, JJ., concur.

[1] Record, Vol. II, pp. 1006-1022.

[2] Record, Vol II, Exh. "C", pp. 639-640.

[3] Record, Vol. II, Exh. "E", pp. 643-644.

[4] Record, Vol. II, Exh. "F", pp. 645-646.

[5] Record, Vol. II, Exh. "G", pp. 647-648.

[6] Id., pp. 76-81.

[7] Record, Vol. I, pp. 456-458.

[8] Record, Vol II, pp. 1006-1022.

[9] Record, Vol. II, p. 1039.

[10]Id., pp. 1023-1028.

[11] Rollo, pp. 106-124.

[12] Spouses Carmen Tongson and Jose Tongson substituted by his children namely: Jose Tongson, Jr., Raul Tongson, Tita Tongson, Gloria Tongson Alma Tongson, vs. Emergency Pawnshop Bula, Inc. G.R. No. 167874, January 15, 2010.

[13] Record, Vol II. Exhibit “J” p. 655.

[14] Riser Airconditioning Services Corp. vs. Confield Construction Development Corp. G.R. No. 143273, September 20, 2004.

[15] G.R. NO. 149193, April 4, 2011.

[16] G.R. NO. 172139, December 8, 2010.

[17] TSN, March 18, 2009, pp. 6-8.

[18] Gloria Ocampo and Teresita Tan vs. Land Bank of the Philippines, G.R. No. 164968, July 3, 2009.

[19] G.R No. 194014, September 12, 2012.

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