

RENE C. DAGUMAN, PLAINTIFF-APPELLANT-APPELLEE, VS. PEDRO S. LIM, DEFENDANT-APPELLEE-APPELLANT.

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is an appeal from the Decision[1] dated April 24, 2009 rendered by the Regional Trial Court of Malolos City, Bulacan, Branch 14, in Civil Case No. 426-M-2002 for Declaration of Nullity and/or Annulment of Real Estate Mortgage, the fallo of which reads, as follows:

x x x

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered dismissing the plaintiff's complaint.

"No costs.

"SO ORDERED."

x x x

THE ANTECEDENTS

This case originated from a complaint for Declaration of Nullity and/or Annulment of Real Estate Mortgage filed by Rene C. Daguman against Pedro S. Lim with the Regional Trial Court (RTC) of Malolos, Bulacan. It was docketed as Civil Case No. 426-M-2002 and raffled to Branch 14.

Rene C. Daguman, as plaintiff, alleged in his Complaint that he was engaged in the business of selling garters. Among his customers was Josephine Santos Aquino (also referred to as Josephine Santos) who was then engaged in the business of manufacturing short pants. In 1999, Josephine Aquino owed him the amount of more or less P7,000,000.00 Philippine Currency representing loans and garter purchases. Plaintiff has been trying to collect the amount from Josephine Aquino but the latter was short of funds at that time. The only way she could pay him would be for her to continue her business of manufacturing short pants but to do so, she needed to open a bigger credit line from her suppliers. Having no properties of her own to use as collateral, Josephine Aquino sought the help of plaintiff who reluctantly agreed for Josephine Aquino to use his property in Bocaue, Bulacan, covered by Transfer Certificate of Title (TCT) No. T-299356 (M) of the Registry of Deeds of Meycauayan, Bulacan as collateral. Plaintiff's understanding and agreement with Josephine Aquino was that the said property would just be put up "for show" as collateral to one of Josephine Aquino's suppliers of fabrics. Plaintiff's property was not actually to serve as collateral for he would not receive any material or monetary consideration for the encumbrance of his property.

Plaintiff consequently executed a Deed of Real Estate Mortgage dated February 15, 1999 in favor of Defendant

Pedro S. Lim, who is a supplier of fabrics to Josephine Aquino. The maximum amount covered by the credit line is P2,500,000.00 and its coverage is only from February 8, 1999 to February 7, 2001. Plaintiff was to be furnished copies of all documents relating to the purchase and delivery of the fabrics to Josephine Aquino by Pedro S. Lim. Plaintiff never had at any time purchased and received from Pedro S. Lim any fabrics, nor was he furnished any documents relating to the delivery of fabrics by Pedro S. Lim to Josephine Santos Aquino, leading plaintiff to believe that the Deed of Real Estate Mortgage he executed for show was already disregarded having served its purpose and the two-year period having expired already. He was then surprised when he received a demand letter from Pedro S. Lim's counsel demanding that he pay the amount of P6,823,765.00 for fabrics plaintiff allegedly purchased from Pedro S. Lim and threatening to foreclose the real estate mortgage over his property. Plaintiff replied through a letter to Pedro S. Lim asking for documents surrounding the transactions but he was never furnished of the requested documents.

Pedro S. Lim, as defendant, filed his Answer alleging that plaintiff is a business partner of Josephine Aquino in her garment business named "Twin Star Fashion" and not as a mere creditor as the plaintiff claims to be. Sometime during the first week of February 1999, plaintiff and Josephine Aquino came to defendant's store in Divisoria, Manila and proposed to open a credit line of up to P2,500,000.00 to augment their capital in their garment business. Considering the credit line being asked for is too big and unsecured, defendant initially turned down the proposal of plaintiff. He later on agreed to the proposal when the latter offered as collateral his property in Bocaue, Bulacan covered by TCT No. 299356 (M) of the Registry of Deeds in Bulacan.

On February 15, 1999, plaintiff and defendant finalized their agreement and they executed and signed the Deed of Real Estate Mortgage on the subject property at the office of defendant's lawyer. Plaintiff delivered the title to the property subject of the mortgage. The credit line was extended to plaintiff and not to his business partner because it was plaintiff who applied for the same. The condition in the Deed of Real Estate Mortgage that the credit facility will be for the specific use and availment of Josephine Aquino was included there upon request of plaintiff for convenience purposes since his business partner Josephine Aquino is the one managing the business. The defendant had no knowledge of plaintiff's intention to use his property as a collateral for show only and if that is really his intention, then he is up to defraud the defendant. The Deed of Real Estate Mortgage executed by plaintiff in favor of the defendant did not contain any condition that in order for the Deed to become valid, defendant must furnish plaintiff copies of all documents relating to the purchase by and delivery of textile fabrics to Josephine Santos Aquino.

By way of permissive counterclaim, defendant asserted that from February 1999 to February 2001, Twin Star Fashion, through one of its partners, was able to acquire on credit textile fabrics amounting to P6,812,765.00 from the defendant. Since Twin Star Fashion is owned by plaintiff and his business partner Josephine Aquino, the liability of the firm is the liability of the owners thereof, and that such liability is joint and several. He also prayed that he be awarded P500,000.00 as moral damages, P200,000.00 as exemplary damages and P100,000.00 as attorney's fees.

By way of Reply, plaintiff denied the allegations of defendant contained in his permissive counterclaim.

During the pre-trial of the case, counsels for both parties admitted the existence of a real estate mortgage executed by the plaintiff in favor of the defendant as well as the identity of the parcel of land involved in the case.

They also limited the issues to the following, to wit:

- Whether or not the real estate mortgage is null and void insofar as plaintiff is concerned for lack of any valuable consideration;

- Whether or not plaintiff in executing the real estate mortgage received any valuable consideration from defendant;

- Whether or not plaintiff is entitled to the reliefs prayed for in the complaint.

- Whether or not plaintiff has an obligation to the defendant in the amount of P6,812,765.00 representing the unpaid obligation of his garment business to defendant.

For the plaintiff's evidence, the testimony of plaintiff himself was offered. For the most part of his testimony, he confirmed and reiterated the allegations in his complaint. He testified that Josephine Aquino is a customer in his garter business and also a tenant in one of his properties in Bulacan but he is not a business partner in the latter's garment business "Twin Star Fashion". He presented several documents such as a Certificate of Registration of Business Name under Twin Star Fashion, BIR Value Added Tax (VAT) Certificate, BIR VAT Registration, Barangay Certification, Business Permits, and other documents tending to prove that "Twin Star Fashion" is a sole proprietorship owned by Josephine Aquino.[2] In negotiating the terms and conditions of the mortgage contract, plaintiff alleged that aside from fixing the maximum amount of fabric materials to be supplied to Josephine Aquino to P2,500,000.00,[3] he told defendant that the latter should furnish him all the documents for the delivery and purchase by Josephine Aquino so he could monitor the amount of deliveries.[4] Despite the obligation of Josephine Aquino to him in the amount of P7,000,000.00, he never filed a case against her because there is no way she could pay him. That is why when she sought for his help, he agreed to lend her his property but only to show the same as collateral to her suppliers so that she could get a credit line from them.[5] That agreement between him and Josephine Aquino was not put into writing and he did not also inform defendant of their agreement because Josephine Aquino told him that she would be the one to talk to defendant.[6] He signed the Real Estate Mortgage in the presence of Josephine Aquino, Pedro Lim and his wife and he understood the contents and agreed to the terms and conditions therein.[7]

Defendant on the other hand testified that it was plaintiff along with his business partner Josephine Santos Aquino who requested defendant for a bigger credit line for their garment business. Plaintiff represented himself to be the new business partner of Josephine Santos Aquino and that the plaintiff was the one who offered his title to the subject property as a collateral to guarantee the payment of the credit line being opened. They agreed to a fixed amount of P2,500,000.00 on the property, the duration of the mortgage and that the credit line would be utilized by Josephine Aquino who manages the shop[8]. From the third week of February 1999 up to April or first week of May, 1999, he made deliveries of textile materials on credit to Twin Star Fashion pursuant to the agreement which reached to the amount of P6,800,000.00.[9] These purchases were covered by order receipts.[10] He demanded payment from plaintiff through a demand letter dated July 13, 2001.[11] He did not demand payment from Josephine Aquino because it was plaintiff who mortgaged the property.[12] He denied being aware that plaintiff merely intended for his property to be a collateral for show so he would continue supplying textile to Josephine Aquino. He would not have accepted if the property was only for show.[13] By reason of the unpaid obligation to him coupled with the complaint for annulment of mortgage, defendant became depressed and very much worried.[14] He had not foreclosed the property of plaintiff yet because the mortgage was for two (2) years and at that time, the period had not yet expired. Instead, he filed the present permissive counterclaim against plaintiff. Prior to the execution of the subject Real Estate Mortgage, defendant had previous transactions with Josephine Aquino in which two (2) checks each in the amount of P500,000.00 issued by the latter to him bounced.[15] Despite that, he still granted the credit line because Josephine Aquino brought in a new business partner in the

person of plaintiff. Defendant later on filed criminal cases against Josephine Aquino by reason of the bounced checks.[16]

Defendant admitted that he participated in the proceedings in the Petition for Insolvency filed by Josephine Santos before the Regional Trial Court of Malolos, Branch 80, docketed as Special Proceeding No. 04-M-2001.[17]

Defendant also offered the testimony of Ma. Luisa Prietos to prove that she was the one who typewrote the real estate mortgage subject matter of the action and that the same was prepared at the instance of the plaintiff and the defendant, that the terms and conditions were supplied by both the plaintiff and defendant and that the same was notarized in Divisoria, Manila.

In addition to the testimonial evidence, defendant also offered the Certificate of Live Birth of Kim Santos Daguman and Kenneth Santos Daguman to show that Josephine Aquino is the wife of plaintiff.[18]

Plaintiff presented their rebuttal witness Iluminada dela Cruz to rebut the testimony of the defendant regarding the ownership of Twin Star Fashion and the delivery of the textile materials under Exhibits “4” to “35”. She testified that she worked as a cutter in Twin Star Fashion from 1995 to 2002. A certain Joel Verances is the only person authorized to receive, and who therefore receives, all the deliveries to Twin Star Fashion. She declared that she is familiar with the signature of Joel Verances because he is the one who signs their payroll.^{xix} Although the cutting area where she works is only two (2) meters away from the receiving area, she denied having seen the deliveries covered by Exhibits “4” to “35”.^[20] When asked where the textile materials came from, she stated that they ordered from Pedro Lim, the defendant in this case,^[21] based on the information given to her by Jose Vernaces. Witness however denied that she cut the fabrics covered by Exhibits “4” to “35” and she was the only cutter in the shop.^[22]

Plaintiff also offered the Decision dated June 1, 2007 rendered by RTC of Pasig City, Branch 160, in Sp. No. 1168 to prove that plaintiff is not married to Josephine Santos. He also offered the revised birth certificates of Kim Verances Santos and Kenneth Verances Santos for the same purpose.

After both parties had presented their respective evidence, the RTC rendered its Decision dated April 24, 2009 dismissing plaintiff's complaint. The RTC stated that plaintiff failed to substantiate his claim that the Real Estate Mortgage is void, viz.:

x x x

“From a reading of the contract, there arises a presumption that there was a sufficient and valuable consideration for the mortgage. The transaction appears to be fair and regular on its face. The burden of proof that the contract is void is upon the person asserting its voidability which the plaintiff, in this case, failed to substantiate.

“Verily, the consideration for the mortgage was the credit facility extended for the use and availment of Josephine Santos Aquino which the defendant had dutifully obliged by supplying assorted textile fabrics to Twin Star Fashion as evidenced by voluminous delivery receipts (Exhs. 4 to 35) addressed to Josie and/or Rene Daguman. The plaintiff cannot put up the lame excuse that he did not at all benefited (sic) from the mortgage transaction when in fact what prompted him to enter into a mortgage contract is to be able to rehabilitate Twin Star Fashion and eventually, be able to collect credits due him. Common business practice dictates that plaintiff should be mindful of the transactions of Twin Star Fashion because the mortgage secured by his property relies on it. Plaintiff cannot put the blame to the defendant for the latter's alleged failure to apprise him of the deliveries made to Josephine S. Aquino and/or Twin Star Fashion when such was not among the stipulations in the contract. On its face, the contract is valid and no evidence would prove that it is void or inexistent or even voidable under the provisions of Arts. 1390 and 1409 of the Civil Code.”

x x x

Both plaintiff and defendant filed their respective Notice of Appeal, which were both given due course by the RTC. Hence, this appeal.

THE ASSIGNED ERRORS

Defendant raised the following errors in his appellant's brief, to wit:

I

THE LOWER COURT GRIEVOUSLY ERRED IN NOT HOLDING THE PLAINTIFF-APPELLANT LIABLE ON THE PERMISSIVE COUNTERCLAIM (AN INDEPENDENT ACTION ASSERTED IN THE ANSWER) OF DEFENDANT-APPELLANT DESPITE ITS FINDINGS THAT THE COLLATERAL AND/OR SECURITY FOR THE CREDIT FACILITY IS VALID AND PLAINTIFF-APPELLANT BENEFITED FROM THE TRANSACTION.

II

THE LOWER COURT ERRED IN NOT HOLDING PLAINTIFF-APPELLANT LIABLE TO DEFENDANT-APPELLEE FOR MORAL AND EXEMPLARY DAMAGES INCLUDING ATTORNEY'S FEES DESPITE THE ATTENDING CIRCUMSTANCE OF FRAUD AND EVIDENT BAD FAITH ON THE PART OF PLAINTIFF-APPELLANT IN SECURING THE CREDIT FACILITY IN FAVOR OF HIS BUSINESS PARTNER/WIFE JOSEPHINE S. AQUINO.

For his part, plaintiff raised the following errors in his appellant's brief, to wit:

A.

THE TRIAL COURT SERIOUSLY ERRED AS A MATTER OF FACT AND LAW AND COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING THAT THE REAL ESTATE MORTGAGE (EXH. B) IS NOT NULL AND VOID FOR LACK OF VALUABLE CONSIDERATION INsofar AS PLAINTIFF IS CONCERNED AND FOR VIOLATION BY DEFENDANT OF HIS CONTRACTUAL AGREEMENT WITH PLAINTIFF TO PROVIDE THE LATTER WITH THE NECESSARY DOCUMENTS RE: THE PURCHASES OF FABRICS BY JOSEPHINE SANTOS AKA JOSEPHINE S. AQUINO.

B.

THE TRIAL COURT SERIOUSLY ERRED AS A MATTER OF FACT AND LAW IN NOT AWARDING TO PLAINTIFF ATTORNEY'S FEES.

Distilled to its juice, the issues to be disposed of in seriatim are as follows:

- Whether or not the real estate mortgage is null and void for lack of consideration and for violation by the mortgagee of the terms and conditions of the mortgage;
- Whether or not plaintiff is entitled to attorney's fees;
- Whether or not defendant is entitled to his permissive counterclaim in the amount of P6,812,765.00;

- Whether or not defendant is entitled to moral and exemplary damages.

OUR RULING

Validity of the Real Estate Mortgage

While plaintiff, as appellant-appellee, is assailing the validity of the said subject real estate mortgage for lack of consideration alleging that he never received for himself any consideration therefor, yet he does not deny voluntarily signing the subject real estate mortgage.[23]

A mortgage is but an accessory contract which cannot exist as an independent contract without a principal contract. A principal obligation is an indispensable condition for the existence of an accessory contract.[24]

The consideration of an accessory contract is the same consideration of the principal contract.[25] For the debtor, the consideration of his obligation to pay is the existence of a debt. Thus, in the accessory contract of real estate mortgage, the consideration of the debtor in furnishing the mortgage is the existence of a valid, voidable, or unenforceable debt.[26]

In this case, the principal contract is the delivery of textile materials to Josephine Aquino for credit. To guaranty payment of the textile materials, the real estate mortgage over the subject property was constituted. Its consideration is the same consideration as that of the principal contract, which is the delivery of textile materials, as explicit from the following provision in the real estate mortgage, to wit:

x x x

“WHEREAS, the MORTGAGOR, for and in consideration of said textile materials delivered and to be delivered to the MORTGAGOR through Josephine Santos Aquino, under the above-mentioned credit facilities, have undertaken to provide the aforementioned security requirement of the MORTGAGEE and embraced under T.C.T. No. T-299356 (M), issued by the Register of Deeds for Meycauayan, Bulacan, as collateral for the above-mentioned credit facilities, x x x”

x x x

Whether or not there has been such deliveries had been one of the contentions in this case. While plaintiff admitted in his direct testimony that there were deliveries after the execution of the real estate mortgage, to quote:

x x x

Atty. Leynes

Q :

Then, what happened afterwards?

Rene Daguman

A :

Well, the defendant did not give me or furnish me any documents at all.

Court

Q :

But he supply?

Rene Daguman

A :

Yes, your Honor.”[27]

x x x

but later on alleged that there were no deliveries made. To prove this, he presented as rebuttal witness the cutter of Twin Star Fashion who testified that all the deliveries which she saw Joel Verances receive on behalf of Twin Star Fashion all came from Pedro Lim[28] except those covered by the order receipts marked as Exhibits “4” to “35”. [29]

On the other hand, defendant, as appellee-appellant, presented the aforementioned Exhibits “4” to “35” which are order receipts showing that textile materials were indeed delivered to Josephine Aquino/Twin Star Fashion after the execution of the real estate mortgage.

Plaintiff-appellant-appellee however questioned the admissibility of the said order receipts as evidence for being mere photocopies, in violation of the best evidence rule. On this procedural nicety, We find the best evidence rule to be inapplicable in this case.

In general, the best evidence rule requires that the highest available degree of proof must be produced. Accordingly, for documentary evidence, the contents of a document are best proved by the production of the document itself,[30] to the exclusion of any secondary or substitutionary evidence.[31]

Rule 130, Section 3 of the Rules of Court embodies the best evidence rule which reads -

x x x

“SEC. 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.”

x x x

As the afore-quoted provision states, the best evidence rule applies only when the subject of the inquiry is the contents of the document. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. Any other substitutionary evidence is likewise admissible without need for accounting for the original.[32]

When a document is presented to prove its existence or condition it is offered not as documentary, but as real, evidence. Parol evidence of the fact of execution of the documents is allowed.[33]

It is true that, despite demands from plaintiff-appellant-appellee for defendant-appellee-appellant to produce the originals of the delivery/order receipts and the latter's failure to present the same, We cannot set aside Exhibits “4” to “35” by reason of the best evidence rule. It is not the contents thereof that is disputed by the plaintiff-appellant-appellee but the fact that fabrics were delivered to Josephine Aquino by virtue of the credit facilities obtained from defendant-appellee-appellant. Photocopies are admissible as evidence in this instance.

It bears noting that plaintiff-appellant-appellee himself offered as evidence the Petition for Involuntary Insolvency filed by Josephine Santos before the RTC of Malolos to prove that the latter admitted that she personally owed defendant-appellee-appellant the amount of P6,812,765.00.[34] The said amount exactly corresponds to the total amount reflected in the order receipts, thereby confirming that Josephine Aquino acknowledged that such deliveries were indeed made to her. Undeniably, there was a valid consideration under the principal contract, and corollarily, under the accessory contract of mortgage.

Plaintiff-appellant-appellee insists that he was but a third party to the principal obligation which was between defendant-appellee-appellant and Josephine Aquino and for that matter, he received nothing for the transaction, hence no consideration to him as the mortgagor.

A third-party who is not a party to the principal obligation may be a mortgagor. This undertaking is properly that of a third-party mortgagor or an accommodation mortgagor, whereby one mortgages one's property to stand as security for the indebtedness of another.[35]

The validity of an accommodation mortgage is allowed under Article 2085 of the Civil Code which provides that “[t]hird persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.” An accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such.[36] An accommodation mortgage is not necessarily void simply because the accommodation mortgagor did not benefit from the same.[37] To reiterate, the consideration of the mortgage is the same consideration as the principal contract, regardless of whether the mortgagor is the debtor himself or a mere accommodation mortgagor.

Plaintiff-appellant-appellee also assails the validity of the real estate mortgage on the ground that defendant-appellee-appellant, as mortgagee, violated the terms and conditions of the real estate mortgage,

specifically their agreement that defendant-appellee-appellant would furnish plaintiff-appellant-appellee with the necessary documents in connection with the purchase of fabrics by Josephine Aquino.

A simple perusal of the real estate contract negates the existence of this alleged particular provision requiring defendant-appellee-appellant to furnish plaintiff-appellant-appellee documents pertaining to the deliveries of fabrics to Josephine Aquino.

The general rule is, when the terms of an agreement were reduced to writing, as in this case, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents thereof.[38] Spoken words could be notoriously unreliable unlike a written contract which speaks of a uniform language.[39] Whatever is not found in said instruments must have been waived and abandoned by the parties.[40]

The parol evidence rule forbids any addition to the terms of a written instrument by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties.”[41]

And even if there was actually a provision in the real estate mortgage to that effect, violation of the said provision would merely constitute a breach and would not invalidate the real estate mortgage. It is not one of the void or inexistent contracts contemplated under Article 1409 of the Civil Code.[42]

Plaintiff-appellant-appellee miserably failed to substantiate his claim that the real estate mortgage is void, and there is no cause to declare its nullity. There is likewise no reason for Us to award attorney's fees to plaintiff-appellant-appellee there being no justification to do so under Article 2208 of the Civil Code.

Permissive Counterclaim

We now treat defendant-appellee-appellant's appeal in connection with his permissive counterclaim of P6,812,765.00 Philippine Currency for the payment of the textile materials he delivered to Twin Star Fashion/Josephine Aquino.[43]

In the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both.[44] The remedies available to the mortgage creditor are deemed alternative and not cumulative. An election of one remedy operates as a waiver of the other.[45] For this purpose, a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint for judicial foreclosure of mortgage or a petition for extrajudicial foreclosure.[46]

Instead of foreclosing the mortgage over the subject property, defendant-appellee-appellant opted to file a permissive counterclaim to collect from the plaintiff-appellant-appellee the total amount of P6,812,765.00 for the textile materials he delivered to Twin Star Fashion.

Plaintiff-appellant-appellee maintains that it is Josephine Aquino who owes defendant-appellee-appellant the amount of P6,812,765.00, as she so admitted in her Petition for Voluntary Insolvency. His only involvement in the transaction was he allowed Josephine Aquino to use his property as a collateral for show and he had no intention at all to be bound even as a mortgagor.

We agree with the RTC's observation that:

x x x

“If plaintiff has no intention to bind his property to the Deed of Mortgage, why then did he execute the mortgage deed in the first place? If plaintiff's reason in executing the mortgage on his property is merely to use

it as a 'collateral for show' and just to accommodate his alleged debtor, Josephine Santos Aquino, without the least intention of binding his property in the mortgage, then it stands to reason that the purpose of plaintiff is to mislead the defendant in extending credit line ostensibly guaranteed by a title to real property not intended to be bound. With this in plaintiff's mind, fraud is not far behind."

X X X

He cannot escape liability under the real estate mortgage which he voluntarily signed, the contents of which he fully understood and agreed to, as he declared in his cross-examination, to wit:

X X X

Atty. Hernandez

Q :

But you will agree Mr. Daguman that when you signed the real estate mortgage, you signed it voluntarily?

Rene Daguman

A :

Yes, sir.

Q :

And you understood the contents of it?

A :

Yes, sir.

Q :

In fact, you were in court or you agree with the terms and conditions therein?

A :

Yes, sir."[47]

x x x

Undeniably, plaintiff-appellant-appellee is bound by the real estate mortgage, but what is the extent of his liability under it?

It must be pointed out that there is no legal provision nor jurisprudence in our jurisdiction which makes a third person who secures the fulfillment of another's obligation by mortgaging his own property to be solidarily bound with the principal obligor. The signatory to the principal contract "loan" remains to be primarily bound. It is only upon default of the latter that the creditor may have recourse on the mortgagors by foreclosing the mortgaged properties in lieu of an action for the recovery of the amount of the loan.[48]

A judicious examination of the real estate mortgage contract however indicates that plaintiff-appellant-appellee was not merely an accommodation mortgagor. The words unequivocally pertain to him as a principal debtor, the one who obtained the credit facilities for the benefit of Josephine Santos Aquino, to wit:

x x x

“WHEREAS, the MORTGAGEE has granted the MORTGAGOR with credit facilities for the purchase of textile materials being distributed by the MORTGAGEE;

“WHEREAS, the MORTGAGEE has required the MORTGAGOR to submit and provide sufficient collateral to secure the aforesaid credit facilities extended to him by the MORTGAGEE;”

“WHEREAS, the MORTGAGOR, for and in consideration of said textile materials delivered and to be delivered to the MORTGAGOR through Josephine Santos Aquino, under the above-mentioned credit facilities, have under taken to provide (sic) the aforementioned security requirement of the MORTGAGEE and for this purpose has put up that property covered and embraced under T.C.T. No. T-299356 (M), issued by the Register of Deeds for Meycauayan, Bulacan, as collateral for the above-mentioned credit facilities, x x x (underscoring supplied)

x x x

If plaintiff-appellant-appellee did not mean to be bound not only as an accommodation mortgagor but as a principal debtor, he should have caused the amendment of the wordings of the real estate mortgage. It appears therefrom that plaintiff-appellant-appellee acted not only as a guarantor, but as a creditor, of Josephine Santos Aquino.

Nevertheless, it was apparent from the words of the real estate mortgage that the credit facilities obtained by plaintiff-appellant-appellee on behalf of Josephine Santos Aquino from defendant-appellee-appellant is limited to the amount of P2,500,000.00, to wit:

x x x

“NOW THEREFORE, for and in consideration of the above-premises the MORTGAGOR herein hereby CONVEYS, CEDES and TRANSFERS by way of mortgage to the extent of not more than TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000.00), Philippine Currency, unto and in favor of herein MORTGAGEE, his successor and/or assigns that parcel of land, covered and embraced under T.C.T. No. T-299356 (M) issued by the Register of Deeds of Meycauayan, Bulacan, as mentioned and described above together with all the improvements existing thereon, free from any liens and/or encumbrances, subject to the following terms and conditions:

- The period of the credit facilities extended to the mortgagor and of this mortgage is TWO (2) YEARS commencing on February 8, 1999 and to expire on February 7, 2001;

- The credit facilities shall not exceed TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000.00), Philippine Currency ay (sic) any given time during the effectivity of the MORTGAGE which will be for the specific use and availment of Ms. Josephine Santos Aquino, with postal address at No. 565 Bunducan, Bocaue, Bulacan;"

x x x

The amount agreed upon in the real estate contract to be the credit line granted to plaintiff-appellant-appellee, and in effect extended to Josephine Aquino, is the amount of P2,500,000.00. Defendant-appellee-appellant himself acknowledged that the contract was limited to the amount of P2,500,000.00, to wit:

x x x

"Court

Q :

What were the conditions that you imposed in accepting the collateral by way of support to the credit line that they were offering or asking rather?

Pedro Lim

A :

We made a fixed amount on that property. Second, there was a two years duration period. Third, it will be utilized by Jossie and her credit line in her shop.

Q :

You said that you fixed a certain amount on the value of the property that will be used as a collateral, how much was the amount paid by you on the value of the collateral being offered by Mr. Daguman?

A :

P2.5 million, sir.”[49]

x x x

Atty. Hernandez

Q : I noticed from the delivery receipts that the purchases from invariably made February to May, 1999 only, will you tell us why, when the date of your real estate mortgage or the credit facilities has a period of two years?

Pedro Lim

A :

Our credit line agreement was up to P2.5 million only and I noticed that it had exceeded that is when I stop.”[50]

x x x

Any deliveries made beyond that amount without the consent of plaintiff-appellant-appellee should not be included in the liabilities of plaintiff-appellant-appellee under the mortgage contract. Whatever excess deliveries was made by defendant-appellee-appellant to Josephine Aquino is the liability of Josephine Aquino or Twin Star Fashion alone.

We do not agree with defendant-appellee-appellant's argument that plaintiff-appellant-appellee is a business partner of Josephine Santos Aquino. Aside from the alleged declaration of Josephine Santos Aquino to the defendant-appellee-appellant that plaintiff-appellant-appellee is her new business partner when she and plaintiff-appellant-appellee approached defendant-appellee-appellant regarding the credit facilities, there was no other proof of such a relationship between plaintiff-appellant-appellee and Josephine Aquino. Plaintiff-appellant-appellee has presented numerous documentary evidence proving that Twin Star Fashion was a sole proprietorship owned by Josephine Santos Aquino.[51] By preponderance of evidence, plaintiff-appellant-appellee succeeded in negating the alleged partnership between him and Josephine Santos Aquino in her garment business Twin Star Fashion.

In order to constitute a partnership, it must be established that (1) two or more persons bound themselves to contribute money, property, or industry to a common fund, and (2) they intend to divide the profits among themselves.[52] There was no evidence presented to show that plaintiff-appellant-appellee participated in the profits of Twin Star Fashion. With no such participation in the profits, plaintiff-appellant-appellee cannot be deemed a partner since the essence of a partnership is that the partners share in the profits and losses.[53]

We likewise cannot give credence to the claim of defendant-appellee-appellant that plaintiff-appellant-appellee and Josephine Santos Aquino are husband and wife based only on the date of marriage entry in the birth certificates of their children. Birth certificates are not sufficient proof of marriage. The reporting physician merely attested that she attended to the birth of the child. Despite defendant-appellee-appellant's assertion, and without sufficient proof of marriage between plaintiff-appellant-appellee and Josephine Santos Aquino, plaintiff-appellant-appellee cannot be made liable for Josephine Santos Aquino's debts and obligations based on the Family Code provisions on absolute community of property or conjugal partnership of gains.

Moral and Exemplary Damages

To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive.[54] Under the provisions of this law,[55] in culpa contractual or breach of contract, moral damages may be recovered when the defendant-appellee-appellant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation and, exceptionally, when the act of breach of contract itself is constitutive of tort resulting in physical injuries.[56]

Moral damages may be awarded in breaches of contracts where the defendant-appellee-appellant acted fraudulently or in bad faith.[57] Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud.[58]

Plaintiff-appellant-appellee himself admitted that he did not intend to be bound by the real estate mortgage despite

the fact that he voluntarily signed the same because for him, it was merely a collateral for show, a circumstance he failed, or deliberately did not apprise defendant-appellee-appellant of. As correctly observed by the RTC, the purpose of the plaintiff-appellant-appellee was to mislead the defendant-appellee-appellant in extending the credit line ostensibly guaranteed by a title to real property not intended to be bound. With that in plaintiff-appellant-appellee's mind, fraud is not far behind. Plaintiff-appellant-appellee's bad faith was also evident when he lied under oath during his testimony in 2003 that the last time he saw Josephine Aquino was in the year 2000[59] and that the latter went into hiding when it was later on revealed that he had a child with Josephine Aquino in 2002 and another in 2004 during the pendency of this case, obviously to prevent defendant-appellee-appellant from recovering from both of them.

Exemplary damages may also be awarded when a wrongful act is accompanied by bad faith or when the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[60] Since the award of exemplary damages is proper in this case, attorney's fees may also be awarded under Article 2208 (1) of the Civil Code and under paragraph (5) thereof by reason of plaintiff-appellant-appellee's evident bad faith.

WHEREFORE, reasons above stated, the appeal of plaintiff-appellant is DISMISSED while the appeal of defendant-appellant is PARTLY GRANTED. The Decision dated April 24, 2009 of the Regional Trial Court of Malolos City, Bulacan, Branch 14, in Civil case No. 426-M-2002 is AFFIRMED with MODIFICATION as follows:

“With respect to defendant's permissive counterclaim, Plaintiff Rene C. Daguman is ordered to pay to Defendant Pedro S. Lim:

- the amount of P2,500,000.00, plus legal interest from June 21, 2002 until fully paid;
- the amount of P500,000.00 as moral damages;
- the amount of P200,000.00 as exemplary damages;
- the amount of P100,000.00 as attorney's fees; and
- cost of suit.”

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Barza, R.f., and Cruz, R.A., JJ., concur.

[1] Rollo, pp. 87-92.

[2] Exhibits “F”, “G” and series, “H”, “I” and series, “J” and series, “K” and series,”L” and series, “M” and series, “N” and series, “O” and series, “P” and “P’1”.

[3] TSN dated January 14, 2003, p. 40.

[4] Id., pp. 41-42.

[5] TSN dated May 13, 2003, p. 37.

[6] Id., pp. 38-40.

[7] Id., p. 44.

[8] TSN dated September 15, 2003, pp. 14-15.

[9] Id., p. 25.

[10] Exhibits 4-35.

[11] Exhibit 3.

[12] TSN dated September 15, 2003, p. 57.

[13] Id, p. 55.

[14] Id.

[15] TSN dated April 27, 2004, p. 11.

[16] Id., pp. 60-61; TSN dated January 15, 2004, pp. 11-14.

[17] Exhibit R.

[18] Exhibits “36” and “37”.

[19] TSN dated May 8, 2007, p. 18.

[20] Id., pp. 36-27.

[21] Id. p. 43.

[22] Id. pp. 51-52.

[23] TSN dated May 13, 2003, p. 44.

[24] Spouses Saguid v. Security Finance, Inc., G.R. No. 159467, December 09, 2005, citing Spouses Efren N. Rigor and Zosima D. Rigor v. Consolidated Orix Leasing and Finance Corporation, G.R. No. 136423, 20 August 2002, 387 SCRA 437.

[25] Philippine National Bank v. Court of Appeals, et al., G.R. No. 126908, January 16, 2003, citing Ganzon, et al. vs. Hon. Inserto, et al., 208 Phil. 630 (1983).

[26] Philippine National Bank v. RBL Enterprises, Inc. et al., G.R. No. 149569, May 28, 2004, citing Central Bank of the Philippines v. Court of Appeals, 139 SCRA 46, October 3, 1985.

[27] TSN dated January 14, 2003, p. 43.

[28] TSN dated May 8, 2007, p. 50.

[29] *Id.*, pp. 50-51.

[30] *Citibank, N.A. et al v. Sabeniano*, G.R. No. 156132, October 16, 2006, citing *J.A.R. Sibal and J.N. Salazar, Jr., Compendium on Evidence*, 31 (4th ed., 1995).

[31] *Citibank, N.A. et al v. Sabeniano*, *supra.*, citing *F.D. Regalado, Remedial Law Compendium*, Vol. II, p. 571 (8th ed., 2000).

[32] *Ibid.*, citing *5 Moran*, *op. cit.*, pp. 76-66; *4 Martin*, *op. cit.*, p. 78.

[33] *Ibid.*, citing *Hernaez, et al. vs. McGrath, etc., et al.*, 91 Phil 565.

[34] Exhibit “R” and series.

[35] *Situs Development Corp. v. Asiatrust Bank*, G.R. No. 180036, July 25, 2012, citing *See New Sampaguita Builders Construction v. Philippine National Bank*, 479 Phil. 483 (2004).

[36] *Spouses Ramos v. Obispo*, G.R. No. 193804, February 27, 2013, citing *Sps. Belo v. Philippine National Bank*, 405 Phil. 851, 870 (2001).

[37] *Spouses Belo v. PNB*, G.R. No. 134330, March 1, 2001.

[38] Section 9 of Rule 130 of the Rules of Court; *See Ortañez v. Court of Appeals, et al.*, G.R. No. 107372, January 23, 1997, citing *Siasat v. IAC*, 139 SCRA 238; *Enriquez vs. Ramos*, 116 Phil. 525.

[39] *Ortañez v. Court of Appeals, et al.*, G.R. No. 107372, January 23, 1997, citing *De Leon vs. CA*, 204 SCRA 612.

[40] *Ortañez v. Court of Appeals, et al.*, *supra.*, citing *Cu vs. CA*, 195 SCRA 647, citing *Moran, Comments on the Rules of Court*, Vol. V, 1980 ed., p. 101.

[41] *Ortañez v. Court of Appeals, et al.*, *supra.*, citing *Heirs of del Rosario vs. Santos*, 194 Phil. 671; 108 SCRA 43.

[42] Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[43] Exhibits 4-35.

[44] Bank of America, NT and SA, G.R. No. 133876, December 29, 1999, citing Bachrach Motor Co., Inc. vs. Esteban Icarangal, 68 Phil. 287.

[45] Bank of America, NT and SA, supra.

[46] Id.

[47] TSN dated May 13, 2003, p. 44.

[48] Bank of America, NT and SA, supra., citing Cerna vs. Court of Appeals 220 SCRA 517.

[49] TSN dated September 30, 2003, pp. 14-15.

[50] Id., p. 49.

[51] Exhibits “F”, “G” and series, “H”, “I” and series, “J” and series, “K” and series, “L” and series, “M” and series, “N” and series, “O” and series, “P” and “P’1”.

[52] Heirs of Tan Eng Kee v. Court of Appeals, G.R. No. 126881, October 3, 2000 citing Yulo v. Yang Chiao Seng, 106 Phil. 110, 116 (1959).

[53] Tocaio and Belo v. Court of Appeals, G.R. No. 127405, September 20, 2001, citing Heirs of Tan Eng Kee v. Court of Appeals, G.R. No. 126881, October 3, 2000.

[54] Francisco, etc. et al. v. Ferrer, Jr. et al., G.R. No. 142029, February 28, 2001, citing Magat v. Court of Appeals, G.R. No. 124221, August 4, 2000; Far East Bank & Trust Company v. Court of Appeals, 311 Phil. 783 [1995].

[55] Article 2219, Civil Code.

[56] Francisco, etc. et al. v. Ferrer, Jr. et al., G.R. No. 142029, February 28, 2001, citing Expertravel & Tours, Inc. v. Court of Appeals, 309 SCRA 141, 145-146 [1999].

[57] Francisco, etc. et al. v. Ferrer, Jr. et al., G.R. No. 142029, February 28, 2001, citing American Home Assurance Company v. Chua, 309 SCRA 250, 263 [1999].

[58] Francisco, etc. et al. v. Ferrer, Jr. et al., supra., citing Tan v. Northwest Airlines, Inc., G.R. No. 135802, March 3, 2000, citing Ford Philippines, Inc. v. Court of Appeals, 335 Phil. 1 [1997]; Llorente, Jr. v. Sandiganbayan, 287 SCRA 382 [1998].

[59] TSN dated January 14, 2003, p. 30.

[60] Spouses Castro v. Palenzuela, G.R. No. 184698, January 21, 2013.

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