

**SPOUSES MAXIMO S. DIRIGE AND VIRGINIA F. DIRIGE,
PLAINTIFFS-APPELLEES, VS. EQUITABLE-PHILIPPINE COMMERCIAL
AND INTERNATIONAL BANK (NOW BANCO DE ORO),
DEFENDANTS-APPELLEES.**

Ponente: SADANG, J.

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SADANG, J.:

This is an ordinary appeal from the Decision[1] dated August 2, 2010 of the Regional Trial Court of Santiago City, Isabela, Branch 35 in Civil Case No. 35-2891.

Antecedents of the Appeal

On June 27, 2000, plaintiffs-appellees spouses Maximo and Virginia Dirige (hereafter, appellees) filed a complaint for breach of contract and specific performance, with prayer for temporary restraining order (TRO) and damages against defendant-appellant Equitable-Philippine Commercial and International Bank (hereafter, appellant) averring that: they applied for and obtained several loans from appellant which granted the following amounts: P10 million on December 22, 1993, P13 million on June 28, 1994, P13.5 million on January 10, 1995, P19.5 million on May 19, 1995, and an additional loan of P10 million on April 4, 1997; they also applied for and obtained an additional P6 million loan on November 4, 1997; of the P6 million loan, only P2.7 million was released, thereby leaving a balance of P3.3 million; the amount released was a term loan for seven (7) years to be amortized quarterly; the loans obtained by them were collateralized by various real estate registered in their name with an appraised value of P70 million; after the partial release of the additional loan, they applied for the release of the balance of P3.3 million but appellant refused; appellant has no reason to hold the remaining loan proceeds because the contract of loan and real estate mortgage were already perfected; due to the refusal of appellant to release the P3.3 million balance which was supposed to be used by appellees as additional working capital, appellees suffered business reversals because their working capital was drained; appellant further pressured appellees by resorting to foreclosure of the real estate properties. Appellees prayed for the release of the loan balance and the award of moral, exemplary and actual damages and attorney's fees and the issuance of a TRO to enjoin the foreclosure of their properties.[2]

In its Answer with Counterclaim, appellant alleged that appellees are their borrowers-mortgagors whose loans in the amount of P32,982,680.00 have long become past due and outstanding; upon realizing their inability to settle their liabilities, appellees proposed a dation in payment which was favorably acted upon and accepted by appellant but it never materialized because appellees unjustly abandoned it; thus, appellees filed the complaint as a ploy to hide their deteriorating credit account with the bank; the P2.7 million loan proceeds was released as evidenced by a promissory note but the bank had no obligation to release the balance of P3.3 million by way of additional loan; appellees could no longer avail themselves of additional loan releases because they no longer have a good credit standing; appellant is entitled to foreclosure proceedings on the mortgaged properties due to the failure of appellees to pay the principal amount plus interests and penalties. Due to the filing of the unwarranted complaint, appellant prayed for moral damages and attorney's fees[3].

On August 20, 2001, the lower court issued an Order[4] denying the issuance of a TRO. Thereafter, trial ensued.

Testifying for appellees, Remigio Bayaua, an employee of appellant from 1979 to 2002,[5] testified: that the P6M loan of appellees was approved as shown by internal bank documents but which, per bank policy, cannot be disclosed to the client-borrower, however, it is the bank practice that if a loan is approved the additional collateral would be registered, which is what they did with appellees' additional real estate mortgage (REM) in the amount of P6M;[6] the amount of P2.7M was merely an availment or partial release of the total approved loan line of P6M.[7] Bayaua admitted that he is not a witness to the November 4, 1997 REM for the principal amount of P6M.[8] He also admitted that appellant may refuse the release of an availment from a loan line in case of violation of the terms and conditions of the loan by the borrower.[9]

Appellee Maximo Dirige testified that: he and his wife applied for and were approved for an additional loan of P6M from appellant but only P2.7M was released despite his updated credit line and interest payments; the loan is evidenced by the REM which secured the principal amount of P6M and the REM was annotated on the titles. Maximo presented the promissory note and addendum to the promissory note to show that the bank released only P2.7M of his approved loan.[10]

Appellant offered the testimonies of Ma. Henrieta Aviera, Henry Matute, Tito Mueca and Jerry Cureg. Maximo was also called as a hostile witness.

Ma. Henrietta Aviera, Head of the Post Foreclosure Unit of Banco De Oro (BDO), the surviving corporation in the merger of appellant and BDO,[11] testified that: appellees have loans amounting to P30M as of April 4, 1997 as evidenced by promissory notes (Exh. "1" to "4");[12] appellees applied for a P6M loan but only P2.7M was approved[13] as shown by the offering tickets[14] and the credit application;[15] Entry No. 11718 on the titles represents an additional mortgage, not an additional loan, and it covered only a prospective loan which was still being evaluated by the bank as part of its requirements when a client applies for a loan, thus, there was no approved loan yet when the November 4, 1997 REM was executed.[16]

Tito Mueca, loans clerk who had personal knowledge of the loan transactions of appellees[17] testified that: he facilitated the annotation of the additional REM in the amount of P6M on the eleven titles used as collaterals for the loans of the appellees;[18] the Offering Ticket dated November 7, 1997 (Exh. 18), issued after the registration of the REM on November 4, 1997,[19] Call Report dated August 22, 1997 (Exh. 22) and Offering Ticket dated May 21, 1997 all showed that the loan was still under process[20] when the additional P6M REM was annotated on appellees' titles;[21] when only P2.7M of the loan application was approved, the remaining P3.3M was used to secure the previously unsecured domestic bills purchase line (DBP) instead of reducing the REM;[22] the DBP was already approved but unsecured.[23]

Henry Matute, a former member of the credit committee and Area Head, Regions I to III, averred that: he is familiar with appellees' account; appellees' credit facility was P36M composed of a term loan of P2.7M, a P30M shorter loan and a P3.3M secured bills purchase line;[24] the bills purchase line was originally in the unsecured amount of P5M but it was reduced to the secured loan of P3.3M.[25] Matute averred that the P6M indicated in the REM was to secure the P2.7M additional term loan and the P3.3M bills purchase facility.[26]

Finally, Jerry Cureg, area head of the loan department of BDO, Region II, testified on the internal processes of the bank as a lending institution.[27] He testified that: the best evidence of a loan is a promissory note; a REM is a support document and it is possible that the REM is annotated without the release of the loan but doing so does not create any effect; the REM is usually annotated upon approval of the loan; and the bank is not obliged to release any amount of credit line even if the same is already approved.[28]

On August 2, 2010, the RTC promulgated the assailed Decision,[29] the decretal portion of which states:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant bank as follows:

- 1) ORDERING the defendant bank to pay to the plaintiffs the amount of P3.3 Million representing the unreleased portion of their additional loan of P6 Million, with interest of 6% per annum from the filing of this case, and 12% per annum from finality of this decision until fully paid;
- 2) ORDERING the defendant bank to pay the plaintiffs the amount of Php500,000.00 as damages; and
- 3) ORDERING the defendant bank to pay the amount of Php200,000.00 as and for attorney's fees.

SO ORDERED.

Appellant's motion for reconsideration was denied; hence, this appeal with the following assignment of errors:[30]

- THE LOWER COURT GRAVELY ERRED IN RULING THAT THERE WAS AN ADDITIONAL APPROVED LOAN OF P6M OF THE SPOUSES DIRIGE.
- THE LOWER COURT GRAVELY ERRED IN RULING THAT THERE WAS A P6M LOAN RELYING ON THE ADDITIONAL REAL ESTATE MORTGAGE (REM) SHOWING THAT THE PRINCIPAL AMOUNT BEING SECURED IS P6M.
- THE LOWER COURT GRAVELY ERRED IN RULING THAT THERE WAS AN ADDITIONAL APPROVED P6M LOAN SINCE THE BILLS PURCHASE LINE SHOWS THE AMOUNT OF P3.3M.
- THE LOWER COURT GRAVELY ERRED IN RULING THAT DEFENDANT BANK HAS MISERABLY AND DELIBERATELY FAILED TO PERFORM ITS OBLIGATION TO DELIVER THE ENTIRE PROCEEDS OF THE LOAN OF THE PLAINTIFFS AS THE AMOUNT OF P3.3M BELONGS TO PLAINTIFFS DIRIGE.
- THE LOWER COURT GRAVELY ERRED IN RULING THAT DEFENDANT BANK IS UNDER OBLIGATION TO RELEASE AND TO DELIVER THE P3.3M LOAN BECAUSE THE SAID AMOUNT WAS USED FOR ANOTHER PURPOSE – TO SECURE THE BILLS PURCHASE LINE OF THE PLAINTIFFS.
- THE LOWER COURT GRAVELY ERRED IN AWARDING DAMAGES AND ATTORNEY'S FEES TO PLAINTIFFS-APPELLEES DIRIGE.

Arguments

Appellant insists that after April 22, 1998 there was no approved P6M loan and only the P2.7M loan application was approved. Appellant contends that the RTC mistakenly relied on the November 4, 1997 REM because said document only shows how much loan the collaterals offered can secure and not the actual loan itself. Appellant further argues that the P3.3M appearing on the credit application pertains only to the amount which appellees can still avail of by way of their bills purchase credit facility and does not prove the existence of a P6M loan; hence, appellant was never under obligation to release the amount of P3.3M. Appellant also challenges the award of damages and attorney's fees for want of legal and factual basis.

Appellees maintain that there was an additional approved loan of P6M as shown by the November 4, 1997 REM and the February 12, 1998 credit application. They argue that appellant deliberately failed to perform its obligation to deliver the entire proceeds of the loan and used the remaining balance to secure previously unsecured bills purchase line.

RULING

Citing *Bonnevie v. Court of Appeals*,^[31] the RTC held that the contract of loan is consensual, thus, upon its perfection appellees acquired ownership of the entire loan. It ruled that the approval of the P6M loan was evidenced by the November 4, 1997 REM and its annotation on the titles of appellees and such constituted perfection of the loan, making appellant liable to deliver the balance thereof to appellees.

The RTC sustained the position of appellees that the P2.7M loan is merely a portion of a P6M loan, hence, appellant is under obligation to release the balance of P3.3M. It found that there was no promissory note for the amount of P6M precisely because only P2.7M was delivered and the balance was yet to be released. The RTC cited Entry No. 11718 annotated on the titles of the real properties which states that the November 4, 1997 REM is an “additional mortgage for the sum of Php6,000,000.00,” as well as the Credit Application dated February 12, 1998 as proof of the P6M loan.

We disagree.

In essence, the issue in this appeal is whether there was a perfected contract of loan for P6M and therefore appellant is obliged to release the loan balance of P3.3M.

According to perfection, contracts are classified into: consensual and real. A consensual contract is perfected by mere consent of the parties upon the terms of the contract.^[32] On the other hand, real contracts are perfected not by mere consent but by the delivery of the object of the obligation.^[33] A simple loan or commodatum is a real contract. Thus, Article 1934 of the Civil Code provides:

Art. 1934. An accepted promise to deliver something by way of commodatum or simple loan is binding upon the parties, but the commodatum or simple loan shall not be perfected until the delivery of the object of the contract. (underscoring supplied)

In *BPI Investments Corp. v. Court of Appeals*^[34] the Supreme Court had occasion to clarify *Bonnevie* thus: “The contract in *Bonnevie* declared by this Court as a perfected consensual contract falls under the first clause of Article 1934 of the Civil Code. It is an accepted promise to deliver something by way of simple loan.” Professor Arturo Tolentino, acknowledged authority in Civil Law, further distinguished between the first clause and second clause of Article 1934 thus: “The accepted promise mentioned in this article becomes a consensual contract; its non-fulfilment will give rise to an action for damages, but it does not constitute the real contract of loan, which requires the delivery of the thing for its perfection, and which gives rise to obligations only on the part of the borrower.”^[35] Clearly, it is the delivery of the amount subject of the contract that perfects the contract of loan. Before such delivery, there is yet no contract of loan and the aggrieved party may only file an action for damages for the non-release of the loan. In this case, there is no dispute that the amount of P3.3 M which allegedly represents the balance of a P6M loan was not yet delivered, hence, the loan, to the extent of P3.3M, was not perfected. What took effect was only the perfected consensual contract that falls under the first clause of Article 1934 of the Civil Code - an accepted promise to deliver something by way of simple loan, for which appellant is only liable for damages. Put otherwise, the contract to extend the loan of P6M was perfected when the parties consented thereto but the contract of loan itself was not perfected with respect to the P3.3M because appellant never delivered said amount. That appellant had consented to extend a P6M loan is shown by its act of registering the REM executed by appellees for said amount. Further, considering that there is no perfected contract of loan with respect to the P3.3M, the REM is valid only with respect to the P2.7M loan. A real estate mortgage is only an accessory contract which cannot validly arise in the absence of a principal obligation.^[36]

Appellant's liability under Article 1934, if the evidence so warrant, is only for damages for the non-release of the loan. Unfortunately, the cause of action of the appellees in this case is clearly for specific performance of a contract of loan. They alleged that appellant breached the contract of loan by not releasing the balance of P3.3M;

hence, appellant should be ordered to do so. Such relief cannot be granted for the simple reason that, as discussed above, there was no perfected contract of loan with respect to the P3.3M.

WHEREFORE, the appeal is GRANTED. The Decision, dated August 10, 2010, of the Regional Trial Court of Santiago City, Isabela, Branch 35 in Civil Case No. 35-2891 is REVERSED and SET ASIDE. The Complaint is DISMISSED without prejudice to the filing of an appropriate action for damages by plaintiffs-appellees spouses Maximo and Virginia Dirige.

SO ORDERED.

Dimaampao, J., Chairperson, and Diamante, JJ., concur.

[1] Record, Vol. II, pp. 421-433.

[2] Record, Vol. I, pp. 1-9.

[3] Id. at 68-75.

[4] Id. at 168.

[5] TSN, June 28, 2005, p. 6.

[6] Id. at 24-25.

[7] Id. at 51-53.

[8] TSN, June 29, 2005, pp. 11-13.

[9] Id. at 8.

[10] TSN, November 22, 2005, pp. 8-36.

[11] TSN, January 28, 2008, pp. 4-5.

[12] Id. at 12.

[13] Id. at 15.

[14] Id. at 30.

[15] Id. at 23-32.

[16] Id. at 64-80.

[17] TSN, September 18, 2008, p. 5.

[18] Id. at 14.

[19] Id. at 17-18.

[20] Id. at 19-24.

[21] TSN, June 4, 2009, p. 7.

[22] TSN, August 20, 2009, p. 8.

[23] Id. at 14.

[24] TSN, April 22, 2008, p. 6-8.

[25] Id. at 23.

[26] Id. at 18-21.

[27] TSN, January 25, 2010, p. 6, 10.

[28] Id. at 22-24.

[29] RTC-Decision, supra note 1 at 433.

[30] Rollo, pp. 36-37.

[31] 125 SCRA 122.

[32] Article 1315, Civil Code.

[33] Article 1316, Id.

[34] BPI Investment Corporation v. Court Of Appeals and ALS Management & Development Corporation, G.R. No. 133632, February 15, 2002.

[35] Arturo M. Tolentino, Civil Code of the Philippines, Vol. V, 1995 reprinted ed., p. 443; also see BPI Investment Corporation v. CA, supra note 35

[36] See Ilagan-Mendoza v. Court of Appeals, et al., G.R. No. 171374, April 8, 2008.

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