

AJAX MARKETING & DEVELOPMENT CORPORATION, ANTONIO TAN, ELISA TAN, TAN YEE, AND SPS. MARCIAL SEE AND LILIAN TAN, PETITIONERS, VS. HON. COURT OF APPEALS, METRO-POLITAN BANK AND TR...

G.R. No. 118585. September 14, 1995

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

In its March 30, 1994 decision, public respondent Court of Appeals affirmed the trial court's judgment upholding the validity of the extra-judicial foreclosure of the real estate property of petitioners--spouses Marcial See and Lilian Tan, located at Paco District, Manila covered by TCT 105233, by private respondent Metropolitan Bank and Trust Company (Metrobank).[1] Petitioners' motion for reconsideration was denied; hence, this petition for review on certiorari raising the following assignments of errors:

"FIRST: The Honorable Court of Appeals erred in holding that the consolidation of the three (3) loans granted separately to three entities into a single loan of P1.0 Million was a mere restructuring and did not effect a novation of the loan as to extinguish the accessory mortgage contracts.

SECOND: The Honorable Court of Appeals erred in not holding that the consolidated loan of P1.0 Million was not accompanied by the execution of a new REM, as was done by the Bank in the earlier three (3) loans, and hence, was, to all legal intents/purposes, unsecured.

THIRD: The Honorable Court of Appeals erred in holding that the inclusion in the extra-judicial foreclosure of the admittedly unsecured loan of P970,000.00 is a mere error that does not invalidated said foreclosure, contrary to the pronouncement in C & C Commercial Corp. vs. PNB, 175 SCRA 1.

FOURTH: The Honorable Court of Appeals erred in not declaring as null and void the extra-judicial foreclosure undertaken by Metrobank on the property of Sps. Marcial See and Lilian Tan."[2]

The facts as found by public respondent Court of Appeals are as follows:

"It is not disputed that Ylang-Ylang Merchandising Company, a partnership between Angelita Rodriguez and Antonio Tan, obtained a loan in the amount of P250,000.00 from the Metropolitan Bank and Trust Company, and to secure payment of the same, spouses Marcial See and Lilian Tan constituted a real estate mortgage in favor of said bank over their property in the District of Paco, Manila, covered by TCT No. 105233 of the Registry of Deeds of Manila. The mortgage was annotated at the back of the title.

"Subsequently, after the partnership had changed its name to Ajax Marketing Company albeit without changing its composition, it obtained a loan in the sum of P150,000.00 from Metropolitan Bank and Trust Company. Again to secure the loan, spouses Marcial See and Lilian Tan executed in favor of said bank a second real estate mortgage over the same property. As in the first instance, the mortgage was duly annotated at the back of TCT No. 105233.

"On February 19, 1979, the partnership (Ajax Marketing Company) was converted into a corporation denominated as Ajax Marketing and Development Corporation, with the original partners (Angelita Rodriguez and Antonio Tan) as incorporators and three (3) additional incorporators, namely, Elisa Tan, the wife of Antonio Tan, and Jose San Diego and Tessie San Diego. Ajax Marketing and Development Corporation obtained from Metropolitan Bank and Trust Company a loan of P600,000.00, the payment of which was secured by another real estate mortgage executed by spouses Marcial See and Lilian Tan in favor of said bank over the same realty located in the District of Paco, Manila. Again, the third real estate mortgage was annotated at the back of TCT No. 105233.

"In December 1980, the three (3) loans with an aggregate amount of P1,000,000.00 were re-structured and consolidated into one (1) loan and Ajax Marketing and Development Corporation, represented by Antonio Tan as Board Chairman/President and in his personal capacity as solidary co-obligor, and Elisa Tan as Vice--President/Treasurer and in her personal capacity as solidary co-obligor, executed a Promissory Note (PN) No. BDS-3605." [3]

In their interrelated first and second assignment of errors, petitioners argue that a novation occurred when their three (3) loans which are all secured by the same real estate property covered by TCT No. 105233 were consolidated into a single loan of P1 million under Promissory Note No. BDS-3605, thereby extinguishing their monetary obligations and releasing the mortgaged property from liability.

Basic principles on novation need to be stressed at the outset. Novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which extinguishes or modifies the first, either by changing the object or principal conditions, or by substituting another in place of the debtor, or by subrogating a third person in the rights of the creditor.[4] Novation, unlike other modes of extinction of obligations, is a juridical act with a dual function, namely, it extinguishes an obligation and creates a new one in lieu of the old. It can be objective, subjective, or mixed. Objective novation occurs when there is a change of the object or principal conditions of an existing obligation while subjective novation occurs when there is a change of either the person of the debtor, or of the creditor in an existing obligation.[5] When the change of the object or principal conditions of an obligation occurs at the same time with the change of either in the person of the debtor or creditor a mixed novation occurs.[6]

The well settled rule is that novation is never presumed.[7] Novation will not be allowed unless it is clearly shown by express agreement, or by acts of equal import. Thus, to effect an objective novation it is imperative that the new obligation expressly declare that the old obligation is thereby extinguished, or that the new obligation be on every point incompatible with the new one.[8] In the same vein, to effect a subjective novation by a change in the person of the debtor it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation.[9] There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety.[10]

The attendant facts herein do not make a case of novation. There is nothing in the records to show the unequivocal intent of the parties to novate the three loan agreements through the execution of PN No. BDS-3065. The provisions of PN No. BDS-3065 yield no indication of the extinguishment of, or an incompatibility with, the three loan agreements secured by the real estate mortgages over TCT No. 105233. On its face, PN No. BDS-3065 has these words typewritten: "secured by REM" and "9. COLLATERAL. This is wholly/partly secured by: (x) real estate"[11], which strongly negate petitioners' asseveration that the consolidation of the three loans effected the discharge of the mortgaged real estate property. Otherwise, there would be no sense placing these material provisions. Moreover, the real estate mortgages contained this common provision, to wit:

"That for and in consideration of credit accommodations obtained from the MORTGAGEE (Metropolitan Bank and Trust Company), by the MORTGAGOR and/or AJAX MKTG. & DEV. CORP./AJAX

MARKETING COMPANY/YLANG-YLANG MERCHANDISING COMPANY detailed as follows:

Nature

Date Granted

Due Date

Amount or Line

Loans and/or

P600,000.00

Advances in

150,000.00

current account

250,000.00

and to secure the payment of the same and those that may hereafter be obtained including the renewals or extension thereof.

x x x x x x x x

"the principal of all of which is hereby fixed at (P600,000.00/P150,000.00/P250,000.00)...as well as those that the MORTGAGEE may have previously extended or may later extend to the MORTGAGOR, including interest and expenses or any other obligation owing to the MORTGAGEE, whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the MORTGAGEE, the MORTGAGOR hereby transfer and convey by way of mortgage unto the MORTGAGEE, its successors or assigns, the parcels of land which are described in the list inserted on page three of this document and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the MORTGAGOR declares that he/it is the absolute owner free from all liens and encumbrances. However, if the MORTGAGOR shall pay to the MORTGAGEE, its successors or assigns, the obligation secured by this mortgage when due, together with interest, and shall keep and perform all and singular the covenants and agreements herein contained for the MORTGAGOR to keep and perform, then the mortgage shall be void; otherwise, it shall remain in full force and effect." [12]

The foregoing shows that petitioners agreed to apply the real estate property to secure obligations that they may thereafter obtain including their renewals or extensions with the principals fixed at P600,000.00, P150,000.00, and P250,000.00 which when added have an aggregate sum of P1.0 million. PN No. BDS-3605 merely restructured and renewed the three previous loans to expediently make the loans current. There was no change in the object of the prior obligations. The consolidation of the three loans, contrary to petitioners' contention, did not release the mortgaged real estate property from any liability because the mortgage annotations at the back of TCT No. 105233, in fact, all remained uncanceled, thus indicating the continuing subsistence of the real estate mortgages.

Neither can it be validly contended that there was a change or substitution in the persons of either the creditor (Metrobank) or more specifically the debtors (petitioners) upon the consolidation of the loans in PN No. BDS 3605. The bare fact of petitioners' conversion from a partnership to a corporation, without sufficient evidence, either testimonial or documentary, that they were expressly released from their obligations, did not make

petitioner AJAX, with its new corporate personality, a third person or new debtor within the context of a subjective novation. If at all, petitioner AJAX only became a co-debtor or surety. Without express release of the debtor from the obligation, any third party who may thereafter assume the obligation shall be considered merely as co-debtor or surety. Novation arising from a purported change in the person of the debtor must be clear and express because, to repeat, it is never presumed. Clearly then, from the aforesaid points, neither objective nor subjective novation occurred here.

Anent the third assigned error, petitioners posit that the extra-judicial foreclosure is invalid as it included two unsecured loans: one, the consolidated loan of P1.0 million under PN BDS No. 3605, and two, the P970,000.00 loan under PN BDS No. 3583 subsequently extended by Metrobank.

An action to foreclose a mortgage is usually limited to the amount mentioned in the mortgage, but where on the four corners of the mortgage contracts, as in this case, the intent of the contracting parties is manifest that the mortgaged property shall also answer for future loans or advancements then the same is not improper as it is valid and binding between the parties.[13] For merely consolidating and expediently making current the three previous loans, the loan of P1.0 million under PN BDS No. 3605, secured by the real estate property, was correctly included in the foreclosure's bid price. The inclusion of the unsecured loan of P970,000.00 under PN BDS NO. 3583, however, was found to be improper by public respondent which ruling we shall not disturb for Metrobank's failure to appeal therefrom. Nonetheless, the inclusion of PN BDS No. 3583 in the bid price did not invalidate the foreclosure proceedings. As correctly pointed out by the Court of Appeals, the proceeds of the auction sale should be applied to the obligation pertaining to PN BDS No. 3605 only, plus interests, expenses and other charges accruing thereto. It is Metrobank's duty as mortgagee to return the surplus in the selling price to the mortgagors.[14]

Lastly, petitioners cite as supporting authority *C & C Commercial Corp. v. Philippine National Bank*[15] where this Court enjoined the foreclosure proceedings for including unsecured obligations. Petitioners' reliance on the *C & C Commercial Corp. v. Phil. National Bank* case is misplaced. In that case, the foreclosure sale included previously incurred unsecured obligations in favor of PNB which were not in the contemplation of the mortgage contract, whereas in the instant case, the mortgages were one in providing that the mortgaged real estate property shall also secure future advancements or loans, as well as renewals or extensions of the same.

Prescinding from the above discussions, the fourth assignment of error obviously needs no further discussion.

WHEREFORE, the decision appealed from is hereby AFFIRMED in toto.

Narvasa, C.J., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

[1] Twelfth Division, Martin, J., Ponente, Elbinias, Guerrero, JJ., Concurring.

[2] Petition, pp. 6-7; rollo pp. 13-14.

[3] Decision pp. 6-7; rollo pp. 32-33.

[4] FRANCISCO, V. J. Civil Code of the Philippines Annotated and Commented, Bk IV Part 1, p. 676, citing 8 Manresa 417; *De Cortes v. Venturanza*, 79 SCRA 709, 722-723 (1977).

[5] *Cochingyan, Jr. v. R & B Surety and Insurance Co., Inc.*, 151 SCRA 339, 349 (1987).

[6] *Id.*

[7] *Martinez v. Cavives*, 25 Phil. 581, 586-587 (1913); *Tiu Suico v. Habana*, 45 Phil. 707, 713 (1924); *Goni v.*

Court of Appeals, 144 SCRA 222, 232 (1986).

[8] Article 1292, Civil Code; Zapanta v. Rotaeche, 21 Phil. 154, 159 (1912); Cochingyan, Jr. *supra*.

[9] Lopez v. Court of Appeals, 114 SCRA 671, 688 (1982); Mercantile Insurance Co., Inc. v. Court of Appeals, 196 SCRA 197, 204 (1991).

[10] Dungo v. Lopeña, 116 Phil. 1305 (1962); Lopez v. Court of Appeals, *supra*.

[11] Annex E, Records.

[12] Decision of the Court of Appeals dated March 30, 1994, pp. 7-8; rollo pp. 33-34.

[13] Tady-Y v. Philippine National Bank, 12 SCRA 19 (1964); Julian v. Lutero, 49 Phil. 703 (1926).

[14] Gorospe and Sebastian v. Gochangco, 106 Phil. 425, 431 (1959); Caparas v. Yatco, et. al., 89 Phil. 10, 12 (1951).

[15] 175 SCRA 1 (1989).

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