

SPOUSES EDUARDO B. EVANGELISTA AND EPIFANIA C. EVANGELISTA, PETITIONERS, VS. MERCATOR FINANCE CORP., LYDIA P. SALAZAR, LAMECS REALTY AND DEVELOPMENT CORP. AND THE REGISTER OF D...

G.R. No. 148864. August 21, 2003

Ponente: PUNO, J.

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PUNO, J.:

Petitioners, Spouses Evangelista ("Petitioners"), are before this Court on a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, assailing the decision of the Court of Appeals dismissing their petition.

Petitioners filed a complaint[1] for annulment of titles against respondents, Mercator Finance Corporation, Lydia P. Salazar, Lamecs Realty and Development Corporation, and the Register of Deeds of Bulacan. Petitioners claimed being the registered owners of five (5) parcels of land[2] contained in the Real Estate Mortgage[3] executed by them and Embassy Farms, Inc. ("Embassy Farms"). They alleged that they executed the Real Estate Mortgage in favor of Mercator Financing Corporation ("Mercator") only as officers of Embassy Farms. They did not receive the proceeds of the loan evidenced by a promissory note, as all of it went to Embassy Farms. Thus, they contended that the mortgage was without any consideration as to them since they did not personally obtain any loan or credit accommodations. There being no principal obligation on which the mortgage rests, the real estate mortgage is void.[4] With the void mortgage, they assailed the validity of the foreclosure proceedings conducted by Mercator, the sale to it as the highest bidder in the public auction, the issuance of the transfer certificates of title to it, the subsequent sale of the same parcels of land to respondent Lydia P. Salazar ("Salazar"), and the transfer of the titles to her name, and lastly, the sale and transfer of the properties to respondent Lamecs Realty Development Corporation ("Lamecs").

Mercator admitted that petitioners were the owners of the subject parcels of land. It, however, contended that "on February 16, 1982, plaintiffs executed a Mortgage in favor of defendant Mercator Finance Corporation `for and in consideration of certain loans, and/or other forms of credit accommodations obtained from the Mortgagee (defendant Mercator Finance Corporation) amounting to EIGHT HUNDRED FORTY-FOUR THOUSAND SIX HUNDRED TWENTY-FIVE 78/100 (P844,625.78) PESOS, Philippine Currency and to secure the payment of the same and those others that the MORTGAGEE may extend to the MORTGAGOR (plaintiffs) x x x.'"[5] It contended that since petitioners and Embassy Farms signed the promissory note[6] as co-makers, aside from the Continuing Suretyship Agreement[7] subsequently executed to guarantee the indebtedness of Embassy Farms, and the succeeding promissory notes[8] restructuring the loan, then petitioners are jointly and severally liable with Embassy Farms. Due to their failure to pay the obligation, the foreclosure and subsequent sale of the mortgaged properties are valid.

Respondents Salazar and Lamecs asserted that they are innocent purchasers for value and in good faith, relying on the validity of the title of Mercator. Lamecs admitted the prior ownership of petitioners of the subject parcels of

land, but alleged that they are the present registered owner. Both respondents likewise assailed the long silence and inaction by petitioners as it was only after a lapse of almost ten (10) years from the foreclosure of the property and the subsequent sales that they made their claim. Thus, Salazar and Lamecs averred that petitioners are in estoppel and guilty of laches.[9]

During pre-trial, the parties agreed on the following issues:

- Whether or not the Real Estate Mortgage executed by the plaintiffs in favor of defendant Mercator Finance Corp. is null and void;
- Whether or not the extra-judicial foreclosure proceedings undertaken on subject parcels of land to satisfy the indebtedness of Embassy Farms, Inc. is (sic) null and void;
- Whether or not the sale made by defendant Mercator Finance Corp. in favor of Lydia Salazar and that executed by the latter in favor of defendant Lamecs Realty and Development Corp. are null and void;
- Whether or not the parties are entitled to damages.[10]

After pre-trial, Mercator moved for summary judgment on the ground that except as to the amount of damages, there is no factual issue to be litigated. Mercator argued that petitioners had admitted in their pre-trial brief the existence of the promissory note, the continuing suretyship agreement and the subsequent promissory notes restructuring the loan, hence, there is no genuine issue regarding their liability. The mortgage, foreclosure proceedings and the subsequent sales are valid and the complaint must be dismissed.[11]

Petitioners opposed the motion for summary judgment claiming that because their personal liability to Mercator is at issue, there is a need for a full-blown trial.[12]

The RTC granted the motion for summary judgment and dismissed the complaint. It held:

A reading of the promissory notes show (sic) that the liability of the signatories thereto are solidary in view of the phrase "jointly and severally." On the promissory note appears (sic) the signatures of Eduardo B. Evangelista, Epifania C. Evangelista and another signature of Eduardo B. Evangelista below the words Embassy Farms, Inc. It is crystal clear then that the plaintiffs-spouses signed the promissory note not only as officers of Embassy Farms, Inc. but in their personal capacity as well(.) Plaintiffs(.) by affixing their signatures thereon in a dual capacity have bound themselves as solidary debtor(s) with Embassy Farms, Inc. to pay defendant Mercator Finance Corporation the amount of indebtedness. That the principal contract of loan is void for lack of consideration, in the light of the foregoing is untenable.[13]

Petitioners' motion for reconsideration was denied for lack of merit.[14] Thus, petitioners went up to the Court of Appeals, but again were unsuccessful. The appellate court held:

The appellants' insistence that the loans secured by the mortgage they executed were not personally theirs but those of Embassy Farms, Inc. is clearly self-serving and misplaced. The fact that they signed the subject promissory notes in the(ir) personal capacities and as officers of the said debtor corporation is manifest on the very face of the said documents of indebtedness (pp. 118, 128-131, Orig. Rec.). Even assuming arguendo that they did not, the appellants lose sight of the fact that third persons who are not parties to a loan may secure the latter by pledging or mortgaging their own property (*Lustan vs. Court of Appeals*, 266 SCRA 663, 675). x x x. In constituting a mortgage over their own property in order to secure the purported corporate debt of Embassy Farms, Inc., the appellants undeniably assumed the personality of persons interested in the fulfillment of the principal obligation who, to save the subject realities from foreclosure and with a view towards being subrogated to the rights of the creditor, were free to discharge the same by payment (Articles 1302 [3] and 1303, Civil Code of the Philippines).[15] (emphases in the original)

The appellate court also observed that "if the appellants really felt aggrieved by the foreclosure of the subject mortgage and the subsequent sales of the realties to other parties, why then did they commence the suit only on August 12, 1997 (when the certificate of sale was issued on January 12, 1987, and the certificates of title in the name of Mercator on September 27, 1988)?" Petitioners' "procrastination for about nine (9) years is difficult to understand. On so flimsy a ground as lack of consideration, (w)e may even venture to say that the complaint was not worth the time of the courts." [16]

A motion for reconsideration by petitioners was likewise denied for lack of merit. [17] Thus, this petition where they allege that:

THE COURT A QUO ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING IN TOTO THE MAY 4, 1998 ORDER OF THE TRIAL COURT GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT DESPITE THE EXISTENCE OF GENUINE ISSUES AS TO MATERIAL FACTS AND ITS NON-ENTITLEMENT TO A JUDGMENT AS A MATTER OF LAW, THEREBY DECIDING THE CASE IN A WAY PROBABLY NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT. [18]

we affirm.

Summary judgment "is a procedural technique aimed at weeding out sham claims or defenses at an early stage of the litigation." [19] The crucial question in a motion for summary judgment is whether the issues raised in the pleadings are genuine or fictitious, as shown by affidavits, depositions or admissions accompanying the motion. A genuine issue means "an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived so as not to constitute a genuine issue for trial." [20] To forestall summary judgment, it is essential for the non-moving party to confirm the existence of genuine issues where he has substantial, plausible and fairly arguable defense, i.e., issues of fact calling for the presentation of evidence upon which a reasonable finding of fact could return a verdict for the non-moving party. The proper inquiry would therefore be whether the affirmative defenses offered by petitioners constitute genuine issue of fact requiring a full-blown trial. [21]

In the case at bar, there are no genuine issues raised by petitioners. Petitioners do not deny that they obtained a loan from Mercator. They merely claim that they got the loan as officers of Embassy Farms without intending to personally bind themselves or their property. However, a simple perusal of the promissory note and the continuing suretyship agreement shows otherwise. These documentary evidence prove that petitioners are solidary obligors with Embassy Farms.

The promissory note [22] states:

For value received, I/We jointly and severally promise to pay to the order of MERCATOR FINANCE CORPORATION at its office, the principal sum of EIGHT HUNDRED FORTY-FOUR THOUSAND SIX HUNDRED TWENTY-FIVE PESOS 78/100 (P 844,625.78), Philippine currency, x x x, in installments as follows:

September 16, 1982

-

P154,267.87

October 16, 1982

-

P154,267.87

November 16, 1982

-

P154,267.87

December 16, 1982

-

P154,267.87

January 16, 1983

-

P154,267.87

February 16, 1983

-

P154,267.87

x x x x x x x x.

The note was signed at the bottom by petitioners Eduardo B. Evangelista and Epifania C. Evangelista, and Embassy Farms, Inc. with the signature of Eduardo B. Evangelista below it.

The Continuing Suretyship Agreement[23] also proves the solidary obligation of petitioners, viz:

(Embassy Farms, Inc.)
Principal

(Eduardo B. Evangelista)
Surety

(Epifania C. Evangelista)
Surety

(Mercator Finance Corporation)
Creditor

To: MERCATOR FINANCE COPORATION

(1) For valuable and/or other consideration, EDUARDO B. EVANGELISTA and EPIFANIA C. EVANGELISTA (hereinafter called Surety), jointly and severally unconditionally guarantees (sic) to MERCATOR FINANCE COPORATION (hereinafter called Creditor), the full, faithful and prompt payment and discharge of any and all indebtedness of EMBASSY FARMS, INC. (hereinafter called Principal) to the Creditor.

x x x x x x x x

(3) The obligations hereunder are joint and several and independent of the obligations of the Principal. A separate action or actions may be brought and prosecuted against the Surety whether or not the action is also brought and prosecuted against the Principal and whether or not the Principal be joined in any such action or actions.

x x x x x x x x.

The agreement was signed by petitioners on February 16, 1982. The promissory notes^[24] subsequently executed by petitioners and Embassy Farms, restructuring their loan, likewise prove that petitioners are solidarily liable with Embassy Farms.

Petitioners further allege that there is an ambiguity in the wording of the promissory note and claim that since it was Mercator who provided the form, then the ambiguity should be resolved against it.

Courts can interpret a contract only if there is doubt in its letter.^[25] But, an examination of the promissory note shows no such ambiguity. Besides, assuming *arguendo* that there is an ambiguity, Section 17 of the Negotiable Instruments Law states, *viz*:

SECTION 17. Construction where instrument is ambiguous. - Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

x x x x x x x x

(g) Where an instrument containing the word "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Petitioners also insist that the promissory note does not convey their true intent in executing the document. The defense is unavailing. Even if petitioners intended to sign the note merely as officers of Embassy Farms, still this does not erase the fact that they subsequently executed a continuing suretyship agreement. A surety is one who is solidarily liable with the principal.^[26] Petitioners cannot claim that they did not personally receive any consideration for the contract for well-entrenched is the rule that the consideration necessary to support a surety obligation need not pass directly to the surety, a consideration moving to the principal alone being sufficient. A surety is bound by the same consideration that makes the contract effective between the principal parties thereto.^[27] Having executed the suretyship agreement, there can be no dispute on the personal liability of petitioners.

Lastly, the *parol evidence* rule does not apply in this case.^[28] We held in *Tarnate v. Court of Appeals*,^[29] that where the parties admitted the existence of the loans and the mortgage deeds and the fact of default on the due repayments but raised the contention that they were misled by respondent bank to believe that the loans were long-term accommodations, then the parties could not be allowed to introduce evidence of conditions allegedly agreed upon by them other than those stipulated in the loan documents because when they reduced their agreement in writing, it is presumed that they have made the writing the only repository and memorial of truth, and whatever is not found in the writing must be understood to have been waived and abandoned.

IN VIEW WHEREOF, the petition is dismissed. Treble costs against the petitioners.

SO ORDERED.

Panganiban, and Sandoval-Gutierrez, JJ., concur.
Corona, and Carpio-Morales, JJ., on official leave.

** Sometimes spelled as *Lamecs*.

[1] RTC of Malolos, Bulacan, Br. 85, Rollo, pp. 23-29.

[2] With Transfer Certificates of Title Nos. T-193458, T-192133, T-193136, T-193137 and T-193138; *Id.* at 30-39.

[3] Id. at 40.

[4] Id. at 26.

[5] Id. at 63.

[6] Id. at 71.

[7] Id. at 72-73.

[8] Id. at 80-83.

[9] Id. at 85-97.

[10] Id. at 118.

[11] Id. at 119-123.

[12] Id. at 128-131.

[13] Id. at 134, dated May 4, 1998.

[14] Id. at 159, dated July 17, 1998.

[15] Id. at 222-223, Decision dated May 12, 2000.

[16] Id. at 223.

[17] Id. at 234, dated May 14, 2001.

[18] Id. at 12.

[19] Evadel Realty and Development Corporation v. Soriano, 357 SCRA 395 (2001).

[20] Manufacturers Hanover Trust Co. and/or Chemical Bank v. Rafael Ma. Guerrero, G.R. No. 136804, February 19, 2003.

[21] Spouses Guillermo Agbada Maxima Agbada v. Inter-urban Developers, et al., G.R. No. 144029, September 19, 2002.

[22] Rollo, p. 71.

[23] Id. at 72-73.

[24] Id. at 80-83.

[25] Article 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. (Civil Code of the Philippines); Ong Yong, et al., v. David S. Tiu, et al., G.R. Nos. 144476 144629, February 1, 2002.

[26] Goldenrod, Incorporated v. Court of Appeals, 366 SCRA 217 (2001).

[27] Charles Lee v. Court of Appeals, et al., G.R. Nos. 117913-14, February 1, 2002.

[28] SEC. 9. Evidence of written agreements - When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts

in issue in his pleading:

- (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

[29] 241 SCRA 254 (1995).

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