

ALLIED BANKING CORPORATION, PETITIONER, VS. CHENG YONG AND LILIA GAW, RESPONDENTS.

G.R. NO. 151040. October 05, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

Before us are these two (2) petitions for review on certiorari under Rule 45 of the Rules of Court to nullify and set aside the following issuances of the Court of Appeals (CA) in CA-G.R. CV 41280, to wit:

- Decision dated 11 December 2001,[1] partially reversing and setting aside an earlier decision of the Regional Trial Court at Makati, Branch 145, in its Civil Case No. 10947; and
- Resolution dated 01 July 2002,[2] denying Cheng Yong and Lilia Gaw's motion for reconsideration.

The material facts:

Sometime before 1981, Philippine Pacific Fishing Company, Inc. (Philippine Pacific), through its then Vice-Chairman of the Board and concurrent President Marilyn Javier, obtained from Allied Banking Corporation (Allied Bank), a packing credit accommodation amounting to One Million Seven Hundred Fifty Two Thousand Pesos (P1,752,000.00).

To secure the obligation, Marilyn Javier and the spouses Cheng Yong and Lilia Gaw (spouses Cheng, for short), executed a Continuing Guaranty/Comprehensive Surety bearing date 27 March 1981.[3]

Later, Philippine Pacific, due to business reverses and alleged misuse of corporate funds by its operating officers, defaulted in the payment of said obligation.

An intra-corporate dispute among its stockholders followed, prompting the filing against Philippine Pacific of a petition for receivership before the Securities and Exchange Commission (SEC), which petition was docketed as SEC Case No. 2042. Likewise, a criminal case for Estafa was filed against Marilyn Javier.

Thereafter, the corporation was reorganized, following which the spouses Cheng Yong and Lilia Gaw were elected as its president and treasurer, respectively. The spouses Cheng also hold similar positions in another company, the Glee Chemicals Phils., Inc. (GCPI), which, incidentally, also had a credit line with Allied Bank.

Meanwhile, on 27 July 1981, the parties in SEC Case No. 2042 agreed to create and constitute a management committee, instead of placing Philippine Pacific under receivership. Hence, in an order dated 14 August 1981, the SEC formally created a management committee whose functions, include, among others, the following:

1. To take custody and possession of all assets, funds, properties and records of the corporation and to prepare an inventory thereof;
2. To administer, manage and preserve such assets, funds and records;

xxx xxx xxx

7. To acquire, lease, sell, mortgage or otherwise encumber such assets with the prior approval of the Commission.[4]

It appears, however, that two (2) days prior to the constitution of the management committee, Allied Bank and Philippine Pacific agreed to restructure and convert the packing credit accommodation into a simple loan. Accordingly, Philippine Pacific executed in favor of Allied Bank a promissory note dated 12 August 1981[5] in the same amount as the packing credit accommodation. Aside from affixing their signatures on the same promissory note in their capacity as officers of Philippine Pacific, the spouses Cheng also signed the note in their personal capacities and as co-makers thereof.

As it turned out, Philippine Pacific failed to pay according to the schedule of payments set out in the promissory note of 12 August 1981, prompting the spouses Cheng to secure the note with substantial collateral by executing a deed of chattel mortgage in favor of Allied Bank over a fishing vessel, "Jean III", a Japanese- manufactured vessel with refrigerated hatches and glass freezers, owned by the spouses and registered in their names.

Philippine Pacific again defaulted payment. Hence, on 18 September 1984, Allied Bank filed with the sheriff of Navotas an application for extra-judicial foreclosure of the chattel mortgage constituted on "Jean III".

Pursuant thereto, notices of extra-judicial sale dated 21 September 1981 were served on the concerned parties by the Ex-Officio sheriff of Malabon while the vessel was moored at the Navotas Fishing Port Complex and under a charter contract with Lig Marine Products, Inc.

On 27 September 1984, the spouses Cheng, to prevent the auction sale of the vessel, filed with the Regional Trial Court at Quezon City an action for declaratory relief with prayer for injunctive remedies. Initially, that court issued a writ of preliminary injunction restraining the sale but later lifted it upon dismissal of the main case for declaratory relief on 29 March 1985.

In the meantime, the vessel sank at the port of Navotas on 22 June 1985, resulting to its total loss. As per certification of the Harbor Master of the Philippine Fisheries Development Authority, the vessel sank due to unnoticed defects caused by its prolonged stay in the fish port and the abandonment thereof. Shortly before the loss, charterer Lig Marine Products, Inc. offered to purchase the vessel for Four Million Pesos (P4,000,000.00).

On 26 June 1985, the spouses Cheng filed with the Regional Trial Court at Makati a complaint for Injunction, Annulment of Contracts and Damages with the provisional remedy of Preliminary Injunction, against Allied Bank and the Ex-Officio Sheriff of Malabon, therein praying, inter alia, that the promissory note dated 12 August 1981 be declared void and unenforceable because it was executed without the prior approval or ratification of the SEC-created management committee in SEC Case No. 2042, and to declare invalid the deed of chattel mortgage over the vessel "Jean III" for having been constituted to secure a void or unenforceable obligation. The complaint was docketed as Civil Case No. 10947 and raffled to Branch 145 of the court.

Meanwhile, on 02 August 1985, Allied Bank filed with the Ex-Officio Sheriff of Pasig an application for extrajudicial foreclosure of the real estate mortgage[6] constituted by the Cheng spouses over their parcel of land covered by TCT No. (222143) 23843, located in San Juan, Metro Manila (hereinafter referred to as the San Juan property), together with the improvement thereon, consisting of a two-storey building belonging to GCPI. It appears that said property was mortgaged by the spouses in favor of Allied Bank on 31 May 1983 to partially secure the payment of the time loan granted by the Bank to GCPI. Despite GCPI's full payment of said loan, Allied Bank refused to release the mortgage on the San Juan property, theorizing that it also secured the obligation of the spouses Cheng as Philippine Pacific's co-makers of the promissory note dated 12 August 1981, in accordance with the stipulation in the deed of mortgage extending coverage of the guaranty to "any other obligation owing to the mortgagee".

On 22 August 1985, the spouses Cheng filed in Civil Case No. 10947 an amended complaint praying, among others, that: (a) the promissory note of 12 August 1981 be declared void and unenforceable; (b) the vessel be declared a total loss; and (c) Allied Bank be ordered to pay them the value of the loss. And, in order to prevent Allied Bank and the Ex-Officio Sheriff of Pasig from foreclosing the real estate mortgage over their San Juan property, the spouses Cheng filed a supplemental complaint with an application for a writ of preliminary injunction. A writ of preliminary injunction was, thereafter, issued by the trial court.

On 17 October 1985, Allied Bank filed a motion to dismiss the amended as well as the supplemental complaints.

In its order of 12 March 1986, the trial court denied the motion with respect to the amended complaint, for lack of merit, while deferring the resolution thereof as regards the supplemental complaint until after trial because the ground alleged did not appear to be indubitable.

Eventually, in a decision dated 08 February 1989,[7] the trial court declared both the promissory note dated 12 August 1981 and the deed of chattel mortgage over the vessel "Jean III" invalid and unenforceable. Dispositively, the decision reads:

WHEREFORE, premises considered, the Court renders judgment declaring both the promissory Note (Exh. "M") and the Deed of Chattel Mortgage (Exh. "5") not valid and unenforceable; permanently enjoining defendants Allied Banking Corporation and the ex-officio sheriff of Malabon and his deputies, agents and representatives from proceeding with the foreclosure and auction sale of the fishing vessel "JEAN III"; permanently enjoining the defendants-bank and ex-officio sheriff of Pasig from proceeding with the foreclosure and auction sale of the plaintiffs' real property covered by TCT No. (222143) 23843 including the building thereon owned by Glee Chemicals Philippines, Inc.; ordering defendant bank to pay plaintiffs the sum of Four Million Pesos (P4,000,000.00), Philippine Currency, for the loss of the aforementioned vessel, the sum of Thirty Thousand Pesos (P30,000.00), Philippine Currency as moral and exemplary damages, the further sum of Thirty Thousand Pesos (P30,000.00), Philippine Currency, as attorney's fees; and the costs of the suit.

The motion to dismiss the supplemental complaint filed by defendant is denied for lack of merit.

Finally, within three (3) days from the finality of this decision, defendant bank is hereby compelled to execute the necessary release or cancellation of mortgage covering the aforesaid parcels of land, and deliver the two torrens titles in its possession to herein plaintiffs.

SO ORDERED.

Therefrom, Allied Bank went to the Court of Appeals (CA) via ordinary appeal under Rule 41 of the Rules of Court, which appellate recourse was docketed as CA-G.R. CV No. 41280.

As stated at the outset hereof, the Court of Appeals, in its Decision dated 11 December 2001, partially reversed and set aside the appealed decision of the trial court insofar as it (a) declared the promissory note as not valid and unenforceable and (b) ordered Allied Bank to pay the spouses Cheng the amount of Four Million Pesos (P4,000,000.00) for the loss of the fishing vessel and the sum of Thirty Thousand Pesos (P30,000.00) as moral and exemplary damages. In all other respects, the appellate court affirmed the trial court, thus:

WHEREFORE, the foregoing considered, the appealed decision is REVERSED and SET ASIDE insofar as it (1) DECLARED the Promissory Note dated 12 August 1981 as NOT VALID and unenforceable, and (2) ORDERED appellant Bank to pay to appellee-spouses Cheng the amount of Four Million Pesos (P4,000,000.00) for the loss of the fishing vessel "JEAN III" and the amount of Thirty Thousand Pesos (P30,000.00) for moral and exemplary damages. In all other respects, the decision is AFFIRMED.

SO ORDERED.

Dissatisfied, Allied Bank immediately filed with this Court its petition for review on certiorari in G.R. No. 151040, seeking to set aside and reverse only that portion of the appellate court's decision which affirmed certain aspects of the trial court's decision, i.e., (a) enjoining Allied Bank and the Ex-Officio Sheriff of Pasig from proceeding with the foreclosure of the Real Estate Mortgage over the San Juan property; (b) ordering Allied Bank to execute a release of the same mortgage in favor of the spouses Cheng; (c) ordering Allied Bank to deliver the two (2) torrens titles in favor of the spouses; and (d) ordering Allied Bank to pay attorney's fees and costs. In short, Allied Bank faults the Court of Appeals for not reversing the trial court's decision in its entirety. More specifically, it submits:

In General, THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT DID NOT REVERSE AND SET ASIDE THE DECISION OF THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 145 IN ITS ENTIRETY.

In Particular, THE HONORABLE COURT OF APPEALS PATENTLY ERRED WHEN IT UPHELD RESPONDENTS' ASSERTION THAT THE REAL ESTATE MORTGAGE DATED MAY 31, 1983 CANNOT BE FORECLOSED WITH RESPECT TO THE OBLIGATION OF PHILIPPINE PACIFIC TO PETITIONER.

For their part, the spouses Cheng filed with the Court of Appeals a motion for reconsideration, disputing the appellate court's pronouncement that the August 12, 1981 promissory note and the deed of chattel mortgage over the fishing vessel "Jean III" are valid and enforceable and that the loss of said vessel must be borne by them. In its resolution of 1 July 2002, the appellate court denied the motion.

Hence, the spouses Cheng's own petition for review on certiorari in G.R. No. 154109, seeking the reversal and setting aside of both the appellate court's decision of 11 December 2001 and resolution of 01 July 2002, it being their submission that said court committed a grave and serious reversible error in not holding that:

1. the subject Promissory Note is not valid and enforceable for non-fulfillment of a suspensive condition and consequently, the Deed of Chattel Mortgage, being a mere accessory agreement, is likewise not valid and enforceable in the absence of a valid principal contract; and
2. the Loss of the mortgaged Fishing Vessel "Jean III" must be borne by the respondent bank considering that the vessel was in its possession and control at the time of the loss.

Per this Court's Resolution dated 20 November 2002,[8] the two (2) separate petitions were ordered consolidated, involving, as they do, the same decision of the appellate court.

As we see it, the common issues to be resolved are:

- I. Whether or not the promissory note dated 12 August 1981 is valid;
- II. Whether or not the chattel mortgage over the fishing vessel "Jean III" can be foreclosed for Philippine Pacific's failure to comply with its obligation under the promissory note dated 12 August 1981; and
- III. Whether or not the real estate mortgage constituted over spouses Cheng's parcel of land covered by TCT No. (222143) 23843 [San Juan property] also secured the spouses' obligation as co-makers of the promissory note dated 12 August 1981.

In justifying its reversal of the trial court's finding that the validity and effectivity of the promissory note dated 12 August 1981 were conditioned upon the ratification thereof by the SEC-created management committee in SEC Case No. 2042, the appellate court explained that the terms of the subject promissory note are clear and leave no doubt upon the intention of the parties. On this score, it ruled that the parole evidence introduced by the Cheng spouses to the effect that the validity and enforceability of the note are conditioned upon its approval and

ratification by the management committee should have been discarded by the trial court, consistent with the parole evidence rule embodied in Rule 130, Section 9 of the Rules of Court.[9] Says the appellate court in its challenged decision:

Instead, We agree with [Allied Bank] that there is no evidence to support the court a quo's finding that the effectivity of the promissory note was dependent upon the prior ratification or confirmation of the management committee formed by the SEC in SEC Case No. 2042.

To begin with, there is nothing on the face of the promissory note requiring said prior ratification for it to become valid. Basic is the rule that if the terms of the contract are clear and leave no doubt upon the intention of the parties, the literal meaning of its stipulations shall control (Article 1370, Civil Code; Honrado, Jr. vs. CA, 198 SCRA 326).

This basic rule notwithstanding, the court a quo admitted in evidence the alleged verbal stipulation made by [the spouses Cheng] to the effect that the validity of the promissory note was dependent upon its ratification by the management committee. Such parole evidence should not have been allowed as it had the effect of altering the provisions of the promissory note which are in clear and unequivocal terms.

Under the parole evidence rule, the terms of a contract are conclusive upon the parties and evidence which shall vary a complete and enforceable agreement embodied in a document is inadmissible (Magellan Manufacturing Corporation vs. CA, 201 SCRA 106).[10] (Words in bracket ours).

We agree.

The appellate court is correct in declaring that under the parole evidence rule, when the parties have reduced their agreement into writing, they are deemed to have intended such written agreement to be the sole repository and memorial of everything that they have agreed upon. All their prior and contemporaneous agreements are deemed to be merged in the written document so that, as between them and their successors-in-interest, such writing becomes exclusive evidence of the terms thereof and any verbal agreement which tends to vary, alter or modify the same is not admissible.[11]

Here, the terms of the subject promissory note and the deed of chattel mortgage are clear and explicit and devoid of any conditionality upon which its validity depends. To be sure, Allied Bank was not a party to SEC Case No. 2042 where the management committee was ordered created; hence, it would not be correct to presume that it had notice of the existence of the management committee which, incidentally, was still to be created when the subject promissory note was executed on 12 August 1981. Notably, while the parties in SEC Case No. 2042 agreed to form the management committee on 27 July 1981, it was only on 14 August 1981 when the committee was actually created and its members appointed. Clearly then, the subject promissory note was outside the realm of authority of the management committee. Corollarily, the chattel mortgage accessory to it is likewise valid.

We thus declare and so hold that Allied Bank's foreclosure of the chattel mortgage constituted over the vessel "Jean III" was justified. On this score, we also rule that the loss of the mortgaged chattel brought about by its sinking must be borne not by Allied Bank but by the spouses Cheng. As owners of the fishing vessel, it was incumbent upon the spouses to insure it against loss. Thus, when the vessel sank before the chattel mortgage could be foreclosed, uninsured as it is, its loss must be borne by the spouses Cheng.

We proceed to the third issue. Both the trial court and the appellate court are unanimous in finding that the real estate mortgage executed by the spouses Cheng over their San Juan property to secure the loan of GCPI cannot be held to secure the spouses' obligation as co-makers of the promissory note dated 12 August 1981. We see no reason to depart from the findings of the two courts below.

Article 2126 of the Civil Code is explicit:

ART. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

The agreement between the Cheng spouses and Allied Bank as evidenced by the receipt signed by Allied Bank's representative is that the San Juan property shall collateralize the approved loan of GCPI, thus indicating the specific loan to be secured and nothing else. To be sure, the obligation of GCPI was already paid in full. Hence the real estate mortgage accessory to it was inevitably extinguished.

All told, we find no reversible error committed by the appellate court in rendering the assailed 11 December 2001 Decision and subsequent 01 July 2002 Resolution in CA-G.R. CV 41280.

WHEREFORE, the consolidated petitions are DENIED and the challenged decision and resolution of the Court of Appeals AFFIRMED in toto.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Penned by Associate Justice Wenceslao I. Aguir, Jr., (ret.) with Associate Justices B.A. Adefuin-De La Cruz (ret.) and Rebecca De Guia-Salvador, concurring; Rollo of G.R. No. 154109, pp. 36-51.

[2] Rollo of G.R. No. 154109, pp. 53 & 54.

[3] Rollo of G.R. No. 151040, pp. 44 & 45.

[4] See pp. 2 & 3 of the Court of Appeals' decision.

[5] Rollo of G.R. No. 151040, pp. 46 & 47.

[6] Rollo of G.R. No. 151040, pp. 48-50.

[7] Rollo of G.R. No. 151040, pp. 37-43.

[8] Rollo of G.R. No. 154109, p. 146.

[9] 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.

[10] Rollo of G.R. No. 154109, pp. 43-44.

[11] Cu vs. Court of Appeals, 195 SCRA 647 [1991]; De la Rama vs. Ledesma, 227 Phil. 1 [1986]; and Ortañez vs. Court of Appeals, 334 Phil. 514 [1997].

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