

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. GUARIÑA AGRICULTURAL AND REALTY DEVELOPMENT CORPORATION, RESPONDENT.

G.R. No. 160758. January 15, 2014

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The foreclosure of a mortgage prior to the mortgagor's default on the principal obligation is premature, and should be undone for being void and ineffectual. The mortgagee who has been meanwhile given possession of the mortgaged property by virtue of a writ of possession issued to it as the purchaser at the foreclosure sale may be required to restore the possession of the property to the mortgagor and to pay reasonable rent for the use of the property during the intervening period.

The Case

In this appeal, Development Bank of the Philippines (DBP) seeks the reversal of the adverse decision promulgated on March 26, 2003 in C.A.-G.R. CV No. 59491,[1] whereby the Court of Appeals (CA) upheld the judgment rendered on January 6, 1998[2] by the Regional Trial Court, Branch 25, in Iloilo City (RTC) annulling the extra-judicial foreclosure of the real estate and chattel mortgages at the instance of DBP because the debtor-mortgagor, Guariña Agricultural and Realty Development Corporation (Guariña Corporation), had not yet defaulted on its obligations in favor of DBP.

Antecedents

In July 1976, Guariña Corporation applied for a loan from DBP to finance the development of its resort complex situated in Trapiche, Oton, Iloilo. The loan, in the amount of P3,387,000.00, was approved on August 5, 1976.[3] Guariña Corporation executed a promissory note that would be due on November 3, 1988.[4] On October 5, 1976, Guariña Corporation executed a real estate mortgage over several real properties in favor of DBP as security for the repayment of the loan. On May 17, 1977, Guariña Corporation executed a chattel mortgage over the personal properties existing at the resort complex and those yet to be acquired out of the proceeds of the loan, also to secure the performance of the obligation.[5] Prior to the release of the loan, DBP required Guariña Corporation to put up a cash equity of P1,470,951.00 for the construction of the buildings and other improvements on the resort complex.

The loan was released in several instalments, and Guariña Corporation used the proceeds to defray the cost of additional improvements in the resort complex. In all, the amount released totalled P3,003,617.49, from which DBP withheld P148,102.98 as interest.[6]

Guariña Corporation demanded the release of the balance of the loan, but DBP refused. Instead, DBP directly paid some suppliers of Guariña Corporation over the latter's objection. DBP found upon inspection of the resort project, its developments and improvements that Guariña Corporation had not completed the construction

works.[7] In a letter dated February 27, 1978,[8] and a telegram dated June 9, 1978,[9] DBP thus demanded that Guariña Corporation expedite the completion of the project, and warned that it would initiate foreclosure proceedings should Guariña Corporation not do so.[10]

Unsatisfied with the non-action and objection of Guariña Corporation, DBP initiated extrajudicial foreclosure proceedings. A notice of foreclosure sale was sent to Guariña Corporation. The notice was eventually published, leading the clients and patrons of Guariña Corporation to think that its business operation had slowed down, and that its resort had already closed.[11]

On January 6, 1979, Guariña Corporation sued DBP in the RTC to demand specific performance of the latter's obligations under the loan agreement, and to stop the foreclosure of the mortgages (Civil Case No. 12707).[12] However, DBP moved for the dismissal of the complaint, stating that the mortgaged properties had already been sold to satisfy the obligation of Guariña Corporation at a public auction held on January 15, 1979 at the Costa Mario Resort Beach Resort in Oton, Iloilo.[13] Due to this, Guariña Corporation amended the complaint on February 6, 1979[14] to seek the nullification of the foreclosure proceedings and the cancellation of the certificate of sale. DBP filed its answer on December 17, 1979,[15] and trial followed upon the termination of the pre-trial without any agreement being reached by the parties.[16]

In the meantime, DBP applied for the issuance of a writ of possession by the RTC. At first, the RTC denied the application but later granted it upon DBP's motion for reconsideration. Aggrieved, Guariña Corporation assailed the granting of the application before the CA on certiorari (C.A.-G.R. No. 12670-SP entitled *Guariña Agricultural and Realty Development Corporation v. Development Bank of the Philippines*). After the CA dismissed the petition for certiorari, DBP sought the implementation of the order for the issuance of the writ of possession. Over Guariña Corporation's opposition, the RTC issued the writ of possession on June 16, 1982.[17]

Judgment of the RTC

On January 6, 1998, the RTC rendered its judgment in Civil Case No. 12707, disposing as follows:

WHEREFORE, premises considered, the court hereby resolves that the extra-judicial sales of the mortgaged properties of the plaintiff by the Office of the Provincial Sheriff of Iloilo on January 15, 1979 are null and void, so with the consequent issuance of certificates of sale to the defendant of said properties, the registration thereof with the Registry of Deeds and the issuance of the transfer certificates of title involving the real property in its name.

It is also resolved that defendant give back to the plaintiff or its representative the actual possession and enjoyment of all the properties foreclosed and possessed by it. To pay the plaintiff the reasonable rental for the use of its beach resort during the period starting from the time it (defendant) took over its occupation and use up to the time possession is actually restored to the plaintiff.

And, on the part of the plaintiff, to pay the defendant the loan it obtained as soon as it takes possession and management of the beach resort and resume its business operation.

Furthermore, defendant is ordered to pay plaintiff's attorney's fee of P50,000.00.

So ORDERED.[18]

Decision of the CA

On appeal (C.A.-G.R. CV No. 59491), DBP challenged the judgment of the RTC, and insisted that:

I

THE TRIAL COURT ERRED AND COMMITTED REVERSIBLE ERROR IN DECLARING DBP'S FORECLOSURE OF THE MORTGAGED PROPERTIES AS INVALID AND UNCALLED FOR.

II

THE TRIAL COURT GRIEVOUSLY ERRED IN HOLDING THE GROUNDS INVOKED BY DBP TO JUSTIFY FORECLOSURE AS "NOT SUFFICIENT." ON THE CONTRARY, THE MORTGAGE WAS FORECLOSED BY EXPRESS AUTHORITY OF PARAGRAPH NO. 4 OF THE MORTGAGE CONTRACT AND SECTION 2 OF P.D. 385 IN ADDITION TO THE QUESTIONED PAR. NO. 26 PRINTED AT THE BACK OF THE FIRST PAGE OF THE MORTGAGE CONTRACT.

III

THE TRIAL COURT ERRED IN HOLDING THE SALES OF THE MORTGAGED PROPERTIES TO DBP AS INVALID UNDER ARTICLES 2113 AND 2141 OF THE CIVIL CODE.

IV

THE TRIAL COURT GRAVELY ERRED AND COMMITTED [REVERSIBLE] ERROR IN ORDERING DBP TO RETURN TO PLAINTIFF THE ACTUAL POSSESSION AND ENJOYMENT OF ALL THE FORECLOSED PROPERTIES AND TO PAY PLAINTIFF REASONABLE RENTAL FOR THE USE OF THE FORECLOSED BEACH RESORT.

V

THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES AGAINST DBP WHICH MERELY EXERCISED ITS RIGHTS UNDER THE MORTGAGE CONTRACT.[19]

In its decision promulgated on March 26, 2003,[20] however, the CA sustained the RTC's judgment but deleted the award of attorney's fees, decreeing:

WHEREFORE, in view of the foregoing, the Decision dated January 6, 1998, rendered by the Regional Trial Court of Iloilo City, Branch 25 in Civil Case No. 12707 for Specific Performance with Preliminary Injunction is hereby AFFIRMED with MODIFICATION, in that the award for attorney's fees is deleted.

SO ORDERED.[21]

DBP timely filed a motion for reconsideration, but the CA denied its motion on October 9, 2003.

Hence, this appeal by DBP.

Issues

DBP submits the following issues for consideration, namely:

WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS DATED MARCH 26, 2003 AND ITS RESOLUTION DATED OCTOBER 9, DENYING PETITIONER'S MOTION FOR RECONSIDERATION WERE ISSUED IN ACCORDANCE WITH LAW, PREVAILING JURISPRUDENTIAL DECISION AND SUPPORTED BY EVIDENCE;

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ADHERED TO THE USUAL COURSE OF JUDICIAL PROCEEDINGS IN DECIDING C.A.-G.R. CV NO. 59491 AND THEREFORE IN ACCORDANCE WITH THE "LAW OF THE CASE DOCTRINE." [22]

Ruling

The appeal lacks merit.

1.

Findings of the CA were supported by the evidence as well as by law and jurisprudence

DBP submits that the loan had been granted under its supervised credit financing scheme for the development of a beach resort, and the releases of the proceeds would be subject to conditions that included the verification of the progress of works in the project to forestall diversion of the loan proceeds; and that under Stipulation No. 26 of the mortgage contract, further loan releases would be terminated and the account would be considered due and demandable in the event of a deviation from the purpose of the loan,[23] including the failure to put up the required equity and the diversion of the loan proceeds to other purposes.[24] It assails the declaration by the CA that Guariña Corporation had not yet been in default in its obligations despite violations of the terms of the mortgage contract securing the promissory note.

Guariña Corporation counters that it did not violate the terms of the promissory note and the mortgage contracts because DBP had fully collected the interest notwithstanding that the principal obligation did not yet fall due and become demandable.[25]

The submissions of DBP lack merit and substance.

The agreement between DBP and Guariña Corporation was a loan. Under the law, a loan requires the delivery of money or any other consumable object by one party to another who acquires ownership thereof, on the condition that the same amount or quality shall be paid.[26] Loan is a reciprocal obligation, as it arises from the same cause where one party is the creditor, and the other the debtor.[27] The obligation of one party in a reciprocal obligation is dependent upon the obligation of the other, and the performance should ideally be simultaneous. This means that in a loan, the creditor should release the full loan amount and the debtor repays it when it becomes due and demandable.[28]

In its assailed decision, the CA found and held thusly:

x x x x

x x x It is undisputed that appellee obtained a loan from appellant, and as security, executed real estate and chattel mortgages. However, it was never established that appellee was already in default. Appellant, in a telegram to the appellee reminded the latter to make good on its construction works, otherwise, it would foreclose the mortgage it executed. It did not mention that appellee was already in default. The records show that appellant did not make any demand for payment of the promissory note. It appears that the basis of the foreclosure was not a default on the loan but appellee's failure to complete the project in accordance with appellant's standards. In fact, appellant refused to release the remaining balance of the approved loan after it found that the improvements introduced by appellee were below appellant's expectations.

The loan agreement between the parties is a reciprocal obligation. Appellant in the instant case bound itself to grant appellee the loan amount of P3,387,000.00 condition on appellee's payment of the amount when it falls due. Furthermore, the loan was evidenced by the promissory note which was secured by real estate mortgage over several properties and additional chattel mortgage. Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other (*Areola vs. Court of Appeals*, 236 SCRA 643). They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfillment of the other (*Jaime Ong vs. Court of Appeals*, 310 SCRA 1). The promise of appellee to pay the loan upon due date as well as to execute sufficient security for said loan by way of mortgage gave rise to a reciprocal obligation on the part of appellant to release the entire approved loan amount. Thus, appellees are entitled to receive the total loan amount as agreed upon and not an incomplete amount.

The appellant did not release the total amount of the approved loan. Appellant therefore could not have made a demand for payment of the loan since it had yet to fulfil its own obligation. Moreover, the fact that appellee was not yet in default rendered the foreclosure proceedings premature and improper.

The properties which stood as security for the loan were foreclosed without any demand having been made on the principal obligation. For an obligation to become due, there must generally be a demand. Default generally begins from the moment the creditor demands the performance of the obligation. Without such demand, judicial or extrajudicial, the effects of default will not arise (*Namarco vs. Federation of United Namarco Distributors, Inc.*, 49 SCRA 238; *Borje vs. CFI of Misamis Occidental*, 88 SCRA 576).

x x x x

Appellant also admitted in its brief that it indeed failed to release the full amount of the approved loan. As a consequence, the real estate mortgage of appellee becomes unenforceable, as it cannot be entirely foreclosed to satisfy appellee's total debt to appellant (*Central Bank of the Philippines vs. Court of Appeals*, 139 SCRA 46).

Since the foreclosure proceedings were premature and unenforceable, it only follows that appellee is still entitled to possession of the foreclosed properties. However, appellant took possession of the same by virtue of a writ of possession issued in its favor during the pendency of the case. Thus, the trial court correctly ruled when it ordered appellant to return actual possession of the subject properties to appellee or its representative and to pay appellee reasonable rents.

However, the award for attorney's fees is deleted. As a rule, the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins a suit. Attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate (*Pimentel vs. Court of Appeals, et al.*, 307 SCRA 38).[29]

x x x x

We uphold the CA.

To start with, considering that the CA thereby affirmed the factual findings of the RTC, the Court is bound to uphold such findings, for it is axiomatic that the trial court's factual findings as affirmed by the CA are binding on appeal due to the Court not being a trier of facts.

Secondly, by its failure to release the proceeds of the loan in their entirety, DBP had no right yet to exact on Guariña Corporation the latter's compliance with its own obligation under the loan. Indeed, if a party in a reciprocal contract like a loan does not perform its obligation, the other party cannot be obliged to perform what is expected of it while the other's obligation remains unfulfilled.[30] In other words, the latter party does not incur delay.[31]

Still, DBP called upon Guariña Corporation to make good on the construction works pursuant to the acceleration clause written in the mortgage contract (i.e., Stipulation No. 26),[32] or else it would foreclose the mortgages.

DBP's actuations were legally unfounded. It is true that loans are often secured by a mortgage constituted on real or personal property to protect the creditor's interest in case of the default of the debtor. By its nature, however, a mortgage remains an accessory contract dependent on the principal obligation,[33] such that enforcement of the mortgage contract will depend on whether or not there has been a violation of the principal obligation. While a creditor and a debtor could regulate the order in which they should comply with their reciprocal obligations, it is presupposed that in a loan the lender should perform its obligation – the release of the full loan amount – before it could demand that the borrower repay the loaned amount. In other words, Guariña Corporation would not incur in delay before DBP fully performed its reciprocal obligation.[34]

Considering that it had yet to release the entire proceeds of the loan, DBP could not yet make an effective demand for payment upon Guarina Corporation to perform its obligation under the loan. According to *Development Bank of the Philippines v. Licuanan*,^[35] it would only be when a demand to pay had been made and was subsequently refused that a borrower could be considered in default, and the lender could obtain the right to collect the debt or to foreclose the mortgage. Hence, Guarina Corporation would not be in default without the demand.

Assuming that DBP could already exact from the latter its compliance with the loan agreement, the letter dated February 27, 1978 that DBP sent would still not be regarded as a demand to render Guarina Corporation in default under the principal contract because DBP was only thereby requesting the latter “to put up the deficiency in the value of improvements.”^[36]

Under the circumstances, DBP’s foreclosure of the mortgage and the sale of the mortgaged properties at its instance were premature, and, therefore, void and ineffectual.^[37]

Being a banking institution, DBP owed it to Guarina Corporation to exercise the highest degree of diligence, as well as to observe the high standards of integrity and performance in all its transactions because its business was imbued with public interest.^[38] The high standards were also necessary to ensure public confidence in the banking system, for, according to *Philippine National Bank v. Pike*:^[39] “The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks.” Thus, DBP had to act with great care in applying the stipulations of its agreement with Guarina Corporation, lest it erodes such public confidence. Yet, DBP failed in its duty to exercise the highest degree of diligence by prematurely foreclosing the mortgages and unwarrantedly causing the foreclosure sale of the mortgaged properties despite Guarina Corporation not being yet in default. DBP wrongly relied on Stipulation No. 26 as its basis to accelerate the obligation of Guarina Corporation, for the stipulation was relevant to an Omnibus Agricultural Loan, to Guarina Corporation’s loan which was intended for a project other than agricultural in nature.

Even so, Guarina Corporation did not elevate the actionability of DBP’s negligence to the CA, and did not also appeal the CA’s deletion of the award of attorney’s fees allowed by the RTC. With the decision of the CA consequently becoming final and immutable as to Guarina Corporation, we will not delve any further on DBP’s actionable actuations.

2.

The doctrine of law of the case did not apply herein

DBP insists that the decision of the CA in C.A.-G.R. No. 12670-SP already constituted the law of the case. Hence, the CA could not decide the appeal in C.A.-G.R. CV No. 59491 differently.

Guarina Corporation counters that the ruling in C.A.-G.R. No. 12670-SP did not constitute the law of the case because C.A.-G.R. No. 12670-SP concerned the issue of possession by DBP as the winning bidder in the foreclosure sale, and had no bearing whatsoever to the legal issues presented in C.A.-G.R. CV No. 59491.

Law of the case has been defined as the opinion delivered on a former appeal, and means, more specifically, that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.^[40]

The concept of law of the case is well explained in *Mangold v. Bacon*,^[41] an American case, thusly:

The general rule, nakedly and boldly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribe the duty and limit the power of the

trial court to strict obedience and conformity thereto, but they become and remain the law of the case in all other steps below or above on subsequent appeal. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, rearguing, reexamination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigants were allowed to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who pulled up his corn to see how it grew. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.

The doctrine of law of the case simply means, therefore, that when an appellate court has once declared the law in a case, its declaration continues to be the law of that case even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases.[42] For practical considerations, indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the law of the case and should not be reopened on remand of the case to determine other issues of the case, like damages.[43] But the law of the case, as the name implies, concerns only legal questions or issues thereby adjudicated in the former appeal.

The foregoing understanding of the concept of the law of the case exposes DBP's insistence to be unwarranted.

To start with, the ex parte proceeding on DBP's application for the issuance of the writ of possession was entirely independent from the judicial demand for specific performance herein. In fact, C.A.-G.R. No. 12670-SP, being the interlocutory appeal concerning the issuance of the writ of possession while the main case was pending, was not at all intertwined with any legal issue properly raised and litigated in C.A.-G.R. CV No. 59491, which was the appeal to determine whether or not DBP's foreclosure was valid and effectual. And, secondly, the ruling in C.A.-G.R. No. 12670-SP did not settle any question of law involved herein because this case for specific performance was not a continuation of C.A.-G.R. No. 12670-SP (which was limited to the propriety of the issuance of the writ of possession in favor of DBP), and vice versa.

3.

Guariña Corporation is legally entitled to the restoration of the possession of the resort complex and payment of reasonable rentals by DBP

Having found and pronounced that the extrajudicial foreclosure by DBP was premature, and that the ensuing foreclosure sale was void and ineffectual, the Court affirms the order for the restoration of possession to Guariña Corporation and the payment of reasonable rentals for the use of the resort. The CA properly held that the premature and invalid foreclosure had unjustly dispossessed Guariña Corporation of its properties. Consequently, the restoration of possession and the payment of reasonable rentals were in accordance with Article 561 of the Civil Code, which expressly states that one who recovers, according to law, possession unjustly lost shall be deemed for all purposes which may redound to his benefit to have enjoyed it without interruption.

WHEREFORE, the Court AFFIRMS the decision promulgated on March 26, 2003; and ORDERS the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Villarama, Jr., and Reyes, JJ., concur.

[1] Rollo, at 36-44; penned by Associate Justice Juan Q. Enriquez, Jr. (retired), and concurred in by Associate

Justice Rodrigo V. Cosico (retired) and Associate Justice Edgardo F. Sundiam (retired/deceased).

[2] CA rollo, at 23-34; penned by Judge Bartolome M. Fanuñal.

[3] Rollo, p. 37.

[4] Records, Vol. 1, p. 8.

[5] Id. at 9-10.

[6] Rollo, pp. 37-38.

[7] Id. at 38.

[8] Records, Vol. 1, pp. 23-24.

[9] Id. at 25.

[10] Rollo, p. 38.

[11] Id.

[12] Records pp. 1-7

[13] Id. at 30-31.

[14] Id. at 40-46.

[15] Id. at 55-57.

[16] Rollo, pp. 38-39.

[17] Id. at 39.

[18] CA rollo, p. 34.

[19] Id. at 49-51.

[20] Supra note 1.

[21] Rollo, p. 43.

[22] Id. at 23.

[23] Id. at 25.

[24] Id. at 28-29.

[25] Id. at 127-137.

[26] Article 1953, in relation to Article 1933, Civil Code.

[27] IV Tolentino, The Civil Code of the Philippines, p. 175 (1999).

[28] Subic Bay Metropolitan Authority v. Court of Appeals, G.R. No. 192885, July 4, 2012 675 SCRA 758, 766.

[29] Supra note 1, at 41-43.

[30] Cortes v. Court of Appeals, G.R. No. 126083, July 12, 2006, 494 SCRA 570, 576.

[31] Article 1169, Civil Code; IV Tolentino, op. cit., at 109.

[32] Records, Volume 2, at 646-a.

Stipulation No. 26 reads:

26. That the Mortgagee reserves the right to reduce or stop releases/advances if after inspection and verification the accomplishment of the financed project does not justify giving the full amount, or if the conditions of the project do not show improvement commensurate with the amount already advanced/released. In such an event or in the event of abandonment of the project, all advances/releases made shall automatically become due and demandable and the Mortgagee shall take such legal steps as are necessary to protect its interest.

[33] *Rigor v. Consolidated Orix Leasing and Financing Corporation*, 387 SCRA 437, 444.

[34] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138.

[35] G.R. No.150097, February 26, 2007, 516 SCRA 644.

[36] *Supra* note 8.

[37] *Development Bank of the Philippines v. Licuanan*, *supra*, note 35, at 654.

[38] *Comsavings Bank (now GSIS Family Savings Bank) v. Capistrano*, G.R. 170942, August 28, 2013; citing *Philippine National Bank v. Chea Chee Chong*, G.R. Nos. 170865 and 170892, April 25, 2012, 671 SCRA 49, 62-63; *Solidbank Corporation v. Arrieta*, G.R. No. 152720, February 17, 2005, 451 SCRA 711, 720; and *Philippine Commercial International Bank v. Court of Appeals*, G.R. Nos. 121413, 121479 and 128604, January 29, 2001, 350 SCRA 446, 472.

[39] G.R. No. 157845, September 20, 2005, 470 SCRA 328, 347.

[40] *Kilosbayan, Incorporated v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 559, citing *People v. Pinuila*, 103 Phil. 992, 999 (1958).

[41] 237 Mo. 496, cited and quoted in *Zarate v. Director of Lands*, 39 Phil. 747, 750 (1919).

[42] *Zarate v. Director of Lands*, 39 Phil. 747, 750 (1919).

[43] *Bachrach Motor Co.v. Esteva*, 67 Phil 16 (1938).

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