BANGKO SENTRAL NG PILIPINAS, PETITIONER, VS. AGUSTIN LIBO-ON, RESPONDENT.

G.R. No. 173864. November 23, 2015

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated March 21, 2006 and the Resolution[2] dated July 18, 2006 of the Court of Appeals-Cebu City in CA-G.R. CV No. 00098.

The facts of the case are as follows:

On August 29, 1997[3] and September 17, 1997,[4] respondent Agustin Libo-on, together with his wife, Mercedes Libo-on (Spouses Libo-on), secured loans from the Rural Bank of Hinigaran, Inc., in the amounts of P100,000.00 and P300,000.00, respectively. The Spouses Libo-on executed promissory notes payable to. the order of the Rural Bank for a period of 360 days or until August 24, 1998 and September 12, 1998, respectively. As security for the loan, the Spouses Libo-on likewise executed a Deed of Real Estate Mortgage[5] over a parcel of land with Transfer Certificate of Title No. T-67129 in favor of the Rural Bank of Hinigaran.

Meanwhile, on September 19, 1997[6] and October 17, 1997,[7] the Rural Bank of Hinigaran, in turn, secured a loan with now petitioner, Bangko Sentral ng Pilipinas (BSP) in the amount of P800,000.00 and P640,000.00, respectively. The Rural Bank of Hinigaran executed a document denominated as "promissory note with trust receipt agreement."[8] As a security for the loan, the Rural Bank of Hinigaran pledged and deposited to BSP promissory notes with supporting TCTs, including the promissory note and TCT of the Spouses Libo-ons mortgaged with the former.[9]

On May 3, 2000, BSP demanded from the Spouses Libo-on the payment of their outstanding loan with the Rural Bank of Hinigaran. Despite BSP's demand, the Spouses Libo-on failed to pay. The loan obligation of the Rural Bank of Hinigaran with BSP likewise fell due and demandable as the former failed to pay its loan from BSP. As a result, BSP filed an application for extrajudicial foreclosure against the mortgage security of the Spouses Libo-on with the Rural Bank of Hinigaran. However, before BSP could complete the auction sale, Agustin Libo-on filed an action against BSP for damages with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction before the RTC of the 6th Judicial Region in Negros Occidental. The case was docketed as Civil Case No. 724 and was raffled to Branch 51 of the same court.[10]

The Spouses Libo-on contested the extrajudicial foreclosure of their property and the notice of extrajudicial sale pursuant thereto. The Spouses Libo-on argued that there is no privity of contract between him and BSP as the latter was not authorized by the Rural Bank of Hinigaran to .act on its behalf nor was the mortgage assigned to it. They further claimed that the amount sought to be satisfied by the foreclosure is way beyond what they had contracted with Rural Bank.

BSP, however, denied the allegations in the complaint and prayed that the same be dismissed for lack of merit.

On October 25, 2000, the court a quo issued an Order[11] granting the Spouses Libo-on's application for issuance of a writ of preliminary injunction.

During pre-trial, both parties agreed that the only principal issue to be resolved by the court a quo is whether or not defendant-appellant BSP has the authority to foreclose the subject mortgage. On February 25, 2004, the court a quo rendered a Decision[12] in favor of the Spouses Libo-on, the dispositive portion of which reads as follows:

> WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered:
> a) Declaring the application/petition for an extrajudicial foreclosure of mortgage, dated July 31, 2000, constituted on [L]ot [No.] 21630-A-4-A-1 covered TCT No. T-67129, per amendment of a Real Estate Mortgage, dated October 28, 1997, filed by the defendant BSP, as well as the notice of sale of public auction dated September 30, 2000 by the Clerk of Court and Ex-Officio Provincial Sheriff, to be irregular and unlawful.
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> b) Making the preliminary injunction issued last October 25, 2000 in this case permanent.
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> c) "Since the plaintiff was forced to defend his rights, the defendant BSP is hereby ordered to pay the [plaintiff] attorney's fees in the amount of P40,000.00, and P1,000.00 per court appearance of counsel, and an additional litigation expenses in the amount of P10,000.00. Moral damages cannot be awarded to the plaintiff, there being no showing that the BSP acted in reckless, wanton and abusive manner, but in an honest belief, that it has the power to foreclose on the mortgage.[13]

Aggrieved, BSP filed an appeal before the Court of Appeals. On March 21, 2006, the appellate court denied the appeal and affirmed the February 25, 2004 Decision of the court a quo.

Thus, the instant appeal raising the following issues:

> I
>
> THE ERRONEOUS AND REVERSIBLE DECLARATION BY THE COURT OF APPEALS THAT THE PETITIONER HAS NO RIGHT TO FORECLOSE THE REAL ESTATE MORTGAGE CONSTITUTED-BY RESPONDENT AND HIS WIFE DUE TO THE ABSENCE OF A NOTARIZED DEED OF ASSIGNMENT. SPECIAL POWER OF ATTORNEY, OR ANY DOCUMENT OF TRANSFER OF RIGHTS, EXECUTED BY THE MORTGAGEE RURAL BANK OF HINIGARAN IN FAVOR OF THE PETITIONER
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> II
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> THE ERRONEOUS DECLARATION BY THE LOWER COURT AND THE COURT OF APPEALS THAT THERE WAS NO PRIVITY OF CONTRACT BETWEEN RESPONDENT AND HIS WIFE ON ONE HAND, AND PETITIONER BSP ON THE OTHER.
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> III
>
> THE ERRONEOUS AND UNWARRANTED ACT OF ORDERING PETITIONER TO'PAY THE RESPONDENT ATTORNEY'S FEES AND LITIGATION EXPENSES WITHOUT LEGAL BASIS."[14]

In a nutshell, the pivotal issue is whether the BSP has the authority to foreclose the subject mortgage.

BSP claimed that its authority to foreclose the subject mortgage was by virtue of an alleged assignment of credit, i.e., "Promissory Note with Trust Receipt Agreement" executed by the Rural Bank of Hinigaran in their favor where the latter assigned, deposited-and pledged the promissory notes executed by the Spouses Libo-on including the contract of real estate mortgage to it.

We are not convinced.

"An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, dation in payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor. It may be in the form of sale, but at times it may constitute a dation in payment, such as when a debtor, in order to obtain a release from his debt, assigns to his creditor a credit he has against a third person." As a dation in payment, the assignment of credit operates as a mode of extinguishing the obligation; the delivery and transmission of ownership of a thing (in this case, the credit due from a third person) by the debtor to the creditor is accepted as the equivalent of the performance of the obligation.[15]

BSP is persistent in claiming that there was a valid assignment of credit by virtue of the promissory note with trust receipt issued by the Rural Bank of Hinigaran in its favor. However, other than BSP's allegation of assignment of credit, there was no document denominated as deed of assignment of credit/mortgage ever presented to show that the Rural Bank of Hinigaran has indeed transferred its rights to BSP.[16] Even if we follow BSP's argument that the promissory note with trust receipt was actually an assignment of credit, the same will still not hold as BSP foiled to comply with the formalities required by law for a valid assignment of credit involving real property. Indeed, a mortgage credit is a real right,[17] thus, the formality required by law for its transfer or assignment, i.e., it must be in a public instrument and must be registered and should be complied with in order to bind third person.[18]

The mere pledge and deposit of the mortgage contract, transfer certificate of title and promissory note executed by the the Rural Bank of Hinigaran in favor o'f BSP, does not produce the effect of giving BSP the authority to intervene with the transaction between the Spouses Libo-on and the Rural Bank of Hinigaran, much less foreclose the mortgaged property of the Spouses Libo-on. In the absence of a notarized deed of assignment, BSP cannot be considered as an assignee who can proceed against the Spouses Libo-on's property.

Moreover, the Rural Bank of Hinigaran in fact has no authority to pledge the security documents to BSP during the term of the real estate mortgage contract between the Rural Bank of Hinigaran and the Spouses Libo-on because if it is within the term of the contract, the mortgaged property remains to be the property of the latter.

It must be stressed that for a contract of pledge to be valid, it is necessary that: (1) the pledge is constituted to secure the fulfillment of a principal obligation;. (2) the pledgor be the absolute owner of the thing pledged; and (3) the person constituting the pledge has the free disposal of his property, and in the absence thereof, that he be legally authorized for the purpose.[19]

Here, the Rural Bank of Hinigaran was neither the absolute owner of the subject property nor the security documents it had pledged to BSP, since again, at the time of the transaction between the Rural Bank of Hinigaran and BSP on September 19, 1997, there is still an existing real estate mortgage contract between the Spouses Libo-on and the Rural Bank of Hinigaran. The possession of the security documents was given to the Rural Bank of Hinigaran merely as security collateral in case of non-payment of the loan. Its only purpose is to guarantee the fulfillment of the Spouses Libo-on's obligation and, in case of default on the part of the latter, the Rural Bank of Hinigaran as credit-mortgagee may execute the obligation on the real property given as a mortgage by way of judicial or extrajudicial foreclosure. Thus, unless the subject property is foreclosed and there was subsequent consolidation of title, the Spouses Libo-on remains to be the owner of the subject property. Given these circumstances, the Rural Bank of Hinigaran could not have constituted a valid pledge on the subject property's TCT. That the pledgor be the absolute owner of the thing pledged is an essential requisite of a contract of

pledge.[20]

> He who is-not the owner or proprietor of the property pledged or mortgaged to guarantee the fulfillment of a principal obligation, cannot legally constitute such a guaranty as may validly bind the property in favor of his creditor, and the pledgee or mortgagee in such a case acquires no right whatsoever in the property pledged or mortgaged.[21]

Furthermore, a closer look at the subject promissory note with trust receipt agreement does not show in any aspect that the Rural Bank of Hinigaran intended to make an absolute conveyance of title over the securities it had deposited with BSP. What was given to BSP is lien for the payment of the note pledged. There is nothing in the promissory note with trust receipt agreement which partakes the nature of an assignment of credit. In fact, the provisions thereof was even categorical in its use of terms, thus, suggesting that what the Rural Bank of Hinigaran and BSP entered into was a contract of loan where the promissory note and the TCT of the Spouses Libo-on's property were pledged as collateral, to wit:

> PROMISSORY NOTE WITH TRUST RECEIPT AGREEMENT
> Within three hundred thirty (330) days after date, for value received, the undersigned promises to pay to the order of the Bangko Sentral ng Pilipinas xxx, having deposited with and pledged to the said Bangko Sentral as collateral security for the payment of this note and any other liability or liabilities, whether direct or contingent, of the undersigned to the said Bangko Sentral due or to become due or that may be hereafter contracted, the securities described in the schedule included in the application for loan dated October 13, 1997 accompanying this note. The said Bangko Sentral is hereby given a lien for the payment of this note and any of the said other liabilities upon all the property or securities now or hereafter in the possession of said Bangko Sentral. xxx
>
> The said Bangko Sentral has the right to require to require such additional security as it may deem proper, and, on failure to respond forthwith to such requirement or on nonpayment of this note or on the nonpayment of any other liability or liabilities of the undersigned, the Bangko Sentral or any holder hereof, is given full authority to sell, assign and deliver, or collect the whole or any part of the abovenamed collaterals, or any substitute therefor, or any addition thereto at any public or private sale at any time 'hereafter, without demand, advertisement or notice; and upon such sale, the Bangko Sentral or the holder thereof may become the purchaser of the whole or any part of such collaterals. x x x[22]

Equally telling is the provision on the said promissory note with trust receipt agreement which is inconsistent with the concept of assignment of credit, to wit:

> The undersigned acknowledges that the rediscounted notes and all amounts due thereon belong to the Bangko Sentral and, for this purpose, agrees to execute a trust receipt agreement over all amounts due on said notes, whereby the undersigned binds: (a) to collect all amounts due on the rediscounted notes and hold such collections in trust for the Bangko Sentral; and (b) to turn over and remit to the Bangko Sentral all amounts collected on such notes within ten (10) days from date of collection x x x[23]

Suffice it to say that in a trust receipt transaction, the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over to the owner of the merchandise sold, while, the second refers to the merchandise received under the obligation to "return" it to the owner. Clearly, this concept of trust receipt is inconsistent with that of an assignment of credit where there is an absolute conveyance of title that would have in effect given authority to BSP to foreclose the subject mortgage.[24] Without a valid assignment of credit, as in this case, BSF has no authority to foreclose the mortgaged property of the Spouses Libo-tin to the Rural Bank of Hinigaran. Moreso, BSP could not possibly sell the subject property without violating the prohibition against pactum

commissorium[25] since without a valid assignment of credit, BSP cannot ipso facto appropriate to itself the Spouses Libo-on's mortgaged property to the Rural Bank of Hinigaran.

It is true that the character of the transactions between the parties is not only determined by the language used in the document but by their intention. It must be stressed, however, that the intent of the parties to the transaction is to be determined in the first instance, by the very language which they used. A deed of assignment usually contains language which suggests that the parties intended to effect a complete alienation of title to and rights over the receivables which are the subject of the assignment. This language is comprised of works like "remise," "release and quitclaim" and clauses like "the title and right of possession to said accounts receivable is to remain in said assignee" who "shall have the right to collect directly from the debtor." The same intent is also suggested by the use of the words "agent and representative of the assignee" in referring to the assignor. This concept of complete alienation of title and rights in an assignment of credit is lacking. Thus, in the absence of such absolute conveyance of title to qualify as an assignment of credit, the subject promissory note with trust receipt agreement should be interpreted as it is denominated. The contract being that of a mere loan, and because there was no valid assignment of credit, BSP's authority to foreclose the subject property has no leg to stand on.

WHEREFORE, premises considered, the petition is DENIED. The Decision dated March 21, 2006 and Resolution dated July 18, 2006 of the Court of Appeals-Cebu City in CA-G.R. CV. No. 00098 are AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin,[*] Villarama, Jr., and Reyes, JJ., concur.

January 5, 2016

N O T I C E OF J U D G M E N T

Sirs/Mesdames:

Please take notice that on ___November 23, 2015___ a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 5, 2016 at 11:00 a.m.

Very truly yours,
(SGD) WILFREDO V. LAPITAN
Division Clerk of Court

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[*] Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 2289 dated November 16, 2015.

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring; rollo, pp. 32-40.

[2] Rollo, pp. 43-44.

[3] Id at 46.

[4] Id at 47.

[5] Id. at 48-49.

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[6] Id. at 56.

[7] Id. at 57.

[8] Id. at 56-57.

[9] Id. at 58-59.

[10] Id. at 69-73.

[11] Id at83-85.

[12] Id. at 98-111.

[13] Id. at 111.

[14] Id. at 11, 18 and 25.

[15] Serfino v. Far East Bank and Trust Company, Inc., G.R. No. 171845 October 10, 2012, 683 SCRA 380, 388.

[16] Rollo, p. 83.

[17] Garcia v. Villar, 680 Phil. 363. 375 (2012).

[18] Article 1625 of the Civil Code provides that [a]n assignment of a credit, right or action shall produce no effect as against third person, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property.

[19] Atty. Calihn, Jr. v. Court of Appeals, 403 Phil. 340, 344 (2001).

[20] Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

x x x x

(2) That the pledgor or mortagagor be the absolute owner of the thing pledged or mortgaged

[21] Atty. Calibo, Jr. v. Court of Appeals, supra note 19, at 345.

[22] Rollo, pp. 56 and 57. (Emphasis ours)

[23] Id.

[24] Id.

[25] The prohibition on pactum commissorium stipulations is provided for by Article 2088 of the Civil Code: Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgagee, or dispose of the same. Any stipulation to the contrary is null and void.

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