

SPOUSES EDUARDO AND MAYDA TANKIANG, PETITIONERS, VS. HON. SELMA P. ALARAZ, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT (RTC) OF MAKATI, BRANCH 62, SHERIFF...

G.R. No. 181675. June 22, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a Manifestation and/or Motion for Judgment Based on a Compromise Agreement[1] filed by petitioner spouses Eduardo Tankiang and Mayda Tankiang (petitioners).

Earlier, petitioners filed their Petition (With Application for Temporary Restraining Order)[2] under Rule 45 of the Rules of Court assailing the Decision[3] dated March 30, 2007 and the Resolution[4] dated February 8, 2008 of the Court of Appeals in CA-G.R. SP No. 89342. Respondent Metropolitan Bank & Trust Company, Inc. (Metrobank) timely filed its Comment.[5] Instead of filing their Reply, petitioners submitted for approval their Manifestation and/or Motion for Judgment with the attached Compromise Agreement[6] dated January 8, 2009 which reads -

COMPROMISE AGREEMENT

This Compromise Agreement ("Agreement") is entered into by and between:

SPS. EDUARDO TANKIANG AND MAYDA TANKIANG, both of legal age, Filipino, and with postal address at 1146 Tamarind Road, Dasmariñas Village, Makati City, hereinafter referred to as "Sps. Tankiang;"

- and -

LNC 3 ASSET MANAGEMENT INC., a corporation duly organized and existing under and, by virtue of the laws of the Philippines, with office at Karport Building, 32nd Street, Bonifacio Global City, Taguig, Metro Manila, represented herein by its authorized representatives Jose Romarx Salas and Adrian L. Apostol, herein referred to as "LNC."

(Spouses Tankiang and LNC shall be collectively referred to herein as the "Parties", and individually, a "Party.")

- with the conformity of -

METROPOLITAN BANK & TRUST COMPANY, a corporation duly organized and existing under and, by virtue of the laws of the Philippines, with office at Metrobank Plaza, Sen. Gil Puyat Ave., Makati City, represented herein by its authorized representative _____, hereinafter referred to as "Metrobank."

WITNESSETH THAT:

WHEREAS, Sps. Eduardo Tankiang and Mayda Tankiang (hereinafter "Sps. Tankiang") and Metropolitan Bank & Trust Company (hereinafter "Metrobank") has filed suits and countersuits now pending in various courts (hereinafter "Civil Cases") in connection with the loan transactions entered into by Sps. Tankiang, as borrower/mortgagor and Metrobank, as creditor/mortgagee.

WHEREAS, the Sps. Tankiang hereby acknowledge the existence of its loan, which was granted by the original creditor bank, Metrobank. Moreover, Sps. Tankiang also acknowledge the sale, transfer and conveyance of its loan account and the securities/collaterals they executed pursuant to such loan from Metrobank, subsequently to Asia Recovery Corporation and then finally to LNC.

WHEREAS, to buy peace and avoid further litigation, the Parties have agreed to settle their differences subject of the Civil Cases.

NOW, THEREFORE, for and in consideration of the foregoing premises, and subject to the mutual covenants and conditions hereinafter set forth, in the spirit of goodwill and understanding, and to avoid the uncertainties and additional costs of litigation, the Parties have agreed to amicably settle their misunderstandings, including the Civil Cases, and all other and future claims between the Parties arising out of the facts and circumstances alleged in the Civil Cases, and hereby agree as follows:

I. Terms of Settlement:**A. Manner**

In view of the mutual desire of the parties to liquidate the properties which are currently in the possession of Sps. Tankiang and Metrobank, the Parties expressly agree that the Sps. Tankiang shall:

- Buy back the residential property at 1146 Tamarind Road, Dasmariñas Village, Makati City covered by T[ransfer] Certificate of Title No. 219538 and commercial lots at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City, covered by Tranfer Certificate of Title Nos. 145175 and 145176.

It is understood by the Parties that all taxes, fees and expenses relative to the transfer and consolidation of the properties referred herein to Sps. Tankiang shall be borne exclusively by the latter including but not limited to the consolidation of the titles from Metrobank and any and all succeeding transfer of title as deemed necessary in their favor.

- Have a right to match any offer to sell the following properties:

- (i) residential property at 39 Banaba St., Forbes Park (South), Makati City; and
- (ii) residential property at 214 Recoletos St., Urdaneta Village, Makati City;

Sps. Tankiang shall have the right to match an offer for the purchase of the properties in item (b) above by other party on the same terms and conditions as may be set forth in any bona fide offer received by LNC from a third party, in writing. LNC, upon receipt of such offer to purchase, shall promptly transmit the offer to Sps. Tankiang who shall have a period of thirty (30) days to match the offer and all of its terms, covenants and conditions (the "Acceptance Period"). Sps. Tankiang shall send to LNC a written notice of acceptance of the offer within the Acceptance Period. The failure to accept the offer within the Acceptance Period containing the same terms and conditions as set forth in the offer shall be deemed a waiver of Sps. Tankiang's right to match and LNC may therefore sell the property upon all of the terms set forth in the offer. The right to match shall be for a period of eighteen (18) months from the date of signing of this settlement agreement and conditioned on the faithful compliance by Sps. Tankiang of all the terms and conditions stipulated therein. After the lapse of such period, LNC may offer for sale the property to any third party.

The Parties hereby agree that Sps. Tankiang shall inform the tenants of all subject properties, if any, as to the terms and conditions of this Compromise Agreement within thirty (30) days from the date of signing of this Agreement.

However, Metrobank and LNC shall be rendered free and harmless of all and any liability arising out of the sale and liquidation of the properties, provided that Metrobank and LNC comply in good faith with the manner of sale, as stated in this Agreement.

For and in consideration of this opportunity to match any offer to purchase the above-described properties, the Sps. Tankiang hereby unconditionally agree to surrender, within five (5) days from the signing of this Agreement, to LNC or its authorized agents or representatives the possession of the commercial vacant lots at National Hi-way corner Barrio San Isidro, Cabuyao, Laguna. Sps. Tankiang further confirm LNC's (or Metrobank) right of possession over residential property at 39 Banaba St., Forbes Park (South), Makati City; and residential property at 214 Recoletos St., Urdaneta Village, Makati City.

For the properties subject of buyback, particularly the Dasmariñas property, the real property taxes shall continuously be paid by the Sps. Tankiang. For the Roxas Boulevard property, Sps. Tankiang shall reimburse any taxes paid in advance by LNC3. For clarity, cut off date for the computation of the pro-rata reimbursement shall commence from the execution of this agreement.

The Parties hereby agree that the rights granted to Sps. Tankiang in relation to the right to match any offer to sell the subject properties are exclusive and shall not be assigned to any third party.

B. Consideration

The Parties and Metrobank agree to the dismissal, settlement and end to the Civil Cases upon the happening of the following:

- Payment of the aggregate amount of Pesos: Sixty Five Million (Php 65,000,000.00) to buy back the residential property at 1146 Tamarind Road, Dasmariñas Village, Makati City and commercial lot at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City; the said amount payable in three (3) years with upfront payment of Pesos: Eight Million Five Hundred Thousand (Php 8,500,000.00) payable on 11 November 2008 or the day after Sps. Tankiang's receipt of the Compromise Agreement signed by Metropolitan Bank & Trust Company Inc. (hereinafter "signed copy"), whichever is later. In case Sps. Tankiang receives the signed copy after 11 November 2008, the postdated check issued by the Tankiangs will be exchanged to reflect a later date. The balance of the contract price shall be payable in equal quarterly payments of Php 4,708,333.33 Million commencing on the sixth (6th) month from receipt of the first payment. A schedule of payment is hereto attached an Annex "A" hereof.

- Upon execution of the Compromise Agreement, the Sps. Tankiang, their assigns, heirs, successor-in-interest, shall fully and unconditionally forever release, waive, and discharge the Metrobank, ARC and LNC, as well as its assigns, successors-in-interest, agents, and employees for any and all causes of action, claims, counterclaims and demands they and their assigns, heirs and successors-in-interest may have at present or in the future whatsoever, pertaining, or having any relation, to the following cases:

1)

LRC Case No. M-4507, Regional Trial Court of Makati City, Branch 62;

2)

Civil Case No. 04-243, Regional Trial Court of Makati City, Branch 132;

3)

CA-GR SP No. 89372, Court of Appeals, 11[th] Division;

4)

GR No. 18322, Supreme Court;

5)

LRC Case No. B-3175, Regional Trial Court of Biñan, Laguna, Branch 24;

6)

LRC Case No. B-3185, Regional Trial Court of Biñan, Laguna, Branch 24;

7)

LRC Case No. B-6380, Regional Trial Court of Biñan, Laguna, Branch 25;

8)

CA G.R. SP No. 99236, Court of Appeals, 8[th] Division;

9)

G.R. No. 181675, Supreme Court, 3[rd] Division; and

10)

Civil Case No. 03-0376 CFM, Regional Trial Court of Pasay City, Branch 111;

11)

CA-G.R. CV No. 81889, Court of Appeals;

12)

CA-G.R. SP No. 83444, Court of Appeals;

13)

G.R. No. 166576, Supreme Court;

14)

All other cases pending before administrative and judicial bodies relating to the properties involving Metrobank, Asia Recovery Corp. and LNC3.

The Parties hereby agree that upon the signing of this agreement, Sps. Tankiang shall cause the immediate removal of the annotation of Lis Pendens on the subject properties and the dismissal of the certiorari cases filed in appellate courts. Sps. Tankiang can only cause the removal of the annotation of Lis Pendens and cause the dismissal for the cases in which they are parties. They cannot cause the dismissal of the case filed by the Heirs of Clarita Tankiang Sanchez or cause the removal of the notice of Lis Pendens annotated by the Heirs of Clarita Tankiang Sanchez. On the assumption that this applies to the Roxas Boulevard property only.

The Parties shall execute and/or cooperate in the execution of the necessary documents for the proper discharge and release of whatever claims against Metrobank, ARC, LNC, its assigns, successors-in-interest, agents, and employees for any and all causes of action, claims, counterclaims and demands that Sps. Tankiang, their assigns, heirs and successors-in-interest may have at present or in the future whatsoever, pertaining, or having any relation, to the above cases.

Subject to the terms and conditions hereof, each Party agrees to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the transactions contemplated by this settlement agreement as expeditiously as practicable, including, but without limitation to, performance of such further acts or the execution and delivery of any additional instruments or documents to obtain or required for effecting the purposes of this agreement.

A Contract to Sell evidencing the right to buy back the residential property at 1146 Tamarind Road, Dasmariñas Village, Makati City and commercial lots at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City shall be immediately executed by the Parties. The Parties hereby agree that the said contract to sell shall be governed by the terms and conditions of this compromise agreement and subject further to the faithful compliance by the Parties of the terms hereof.

II. Waiver/Release/Discharge;

The Parties agree that upon signing of this agreement, they shall submit this Compromise Agreement for judicial approval in the appropriate civil cases or courts, through a Joint Motion for Judgment Based on a Compromise Agreement.

The Parties agree that upon the occurrence of the events provided in I (B) paragraphs (a) and (b), and subject to the Court's approval, both parties and LNC's successor-in-interest, assigns, representatives, stockholders, officers, directors, agents or employees agree to absolutely and unconditionally release, quitclaim, discharge and hold free and harmless each other, from any and all claims, suits and actions of whatever nature and kind, disclosed and undisclosed, pending or potential, including but not limited to civil, criminal and/or administrative actions, claims for sums of money, or damages, which in the law or equity each party to this Agreement may have against the other, its successors-in-interest and assigns had, now have or may hereafter have by reason of any matter, cause or thing whatsoever, directly or indirectly arising out of, or related to the facts and circumstances mentioned or narrated in the Civil Cases.

The considerations stated in I (B) shall represent the full, final, unconditional and universal settlement of all claims, disclosed or undisclosed between the Parties and Metrobank.

The execution of this Compromise Agreement and/or the delivery and/or the receipt of the consideration stated in I (B), or any portion thereof, is not, and shall not be deemed to constitute an admission, express or implied, by any party of any liability whatsoever, it being understood that the parties have mutually and freely entered into and performed these acts in the spirit of goodwill and understanding and to avoid or terminate protracted and expensive litigation.

III. Representations and Warranties:

The Parties and Metrobank represent and warrant to each other that:

a)

Each Party has full power and authority to enter into and execute and deliver this Agreement, and to perform his/her/its obligations hereunder which shall constitute respectively as their valid and legally binding obligations in accordance with the terms hereof. Accordingly, prior to the execution hereof each party and Metrobank shall submit to the others their respective original/certified true copies of all pertinent resolutions, consents and authorizations necessary for the execution, delivery and performance by the parties of their respective covenants under this Compromise Agreement and other related documents, certified copies of the authorization and the specimen signature of the officers of each party who are authorized to execute this Compromise Agreement and other related documents.

b)

This Agreement constitutes each Party's legal, valid and binding obligation, enforceable in accordance with its

terms.

c)

All consents, approvals and authorizations required or necessary for the due execution, delivery and performance of this Agreement have been obtained or effected and remain in full force and effect as of the date hereof.

d)

Each party has read this Agreement and, before signing the same, has consulted legal counsel, and each has executed or signed this Agreement on their own free and voluntary will.

e)

Except as otherwise disclosed, in writing, prior to the execution of this Agreement, no other rights and interests were created by Sps. Tankiang, their heirs, agents and representatives on the properties subject of this Agreement in favor of any third party.

IV. Remedies in case of default:

The Parties herein hereby agree to pray for judgment based on the foregoing Compromise Agreement. In the event of a violation of any provision of this Agreement, the aggrieved party or its assignee, transferee and/or successor-in-interest shall have the right to pursue any and all legal actions it may have, under law and equity, as well as under this Compromise Agreement, including but not limited to the prayer for issuance of a writ of execution based on the Compromise Judgment, claim/s for damages, costs and expenses it may have, and may still incur, as a result of the violation, as well as to seek injunctive relief.

In the event that the Sps. Tankiang fails to pay LNC the Repurchase Price in accordance with the schedule of payment described in Annex "A" hereof or the Sps. Tankiang fails to comply with any provision of this Agreement and (i) in the case of non-compliance, they fail to correct the non-compliance within 30 days from receipt by the Sps. Tankiang of notice of non-compliance from the LNC (unless otherwise extended by the Creditor), the possession of the properties at 1146 Tamarind Road, Dasmariñas Village, Makati City and their rights over the commercial lots at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City shall be immediately surrendered to LNC. Moreover, in case of a default by Sps. Tankiang, any and all payments received by LNC from Sps. Tankiang as consideration for the repurchase of the properties shall be forfeited in favor of LNC as liquidated damages and to cover for other fees and expenses incurred by LNC to effect the terms and conditions of this agreement.

V. Separability and Superseding Clause:

If any of the provisions contained in this Compromise Agreement shall be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

VI. Further Acts and Assurances:

A. Transaction Expenses

Transaction expenses shall include, among others, legal fees, financial advisors fees and arranger's fees. Each party shall bear its own transaction expenses.

Taxes

Subject to Clause I (a) hereof, any value added tax or sales tax, documentary stamp tax, local tax and registration fees for the repurchase of the properties shall be borne solely by the Sps. Tankiang.

B. Confidentiality

The Parties, LNC's assignee, transferee and/or successor-in-interest agree to keep the terms of this Compromise Agreement confidential and shall not disclose any information contained herein to any third party, or the matters contained herein (including, without limiting, information provided by or on behalf of any of the parties, its assignee, transferee and/or successor-in interest in connection with or pursuant to this Compromise Agreement) without prior written consent of the other party, unless otherwise provided by law or required by competent authority.

C. Transferability

LNC may assign or transfer its rights under this Agreement to any third party without the prior written consent of the Sps. Tankiang.

D. Interpretation

To the extent that the terms and conditions of this Settlement Agreement is inconsistent with the terms and conditions of the loan documents covering the Loan, the terms of this agreement shall prevail.

E. Binding Effect

This Agreement (including the documents and instruments referred to herein) supersedes all prior representations, arrangements, understandings and agreements inconsistent herewith between the Parties relating to the subject matter hereof and sets forth the entire and complete and exclusive agreement and understanding between the Parties hereto relating to the subject matter hereof. No party has relied on any representation, agreement or understanding (whether written or oral) not expressly set out or referred to in this Agreement.

F. Binding Effect

This Agreement shall be effective upon the Sps. Tankiang's receipt of the Compromise Agreement signed by Metropolitan Bank and Trust Co., Inc.

IN WITNESS WHEREOF, the Parties have hereunto signed these presents on _____ at _____.

(Signed)

EDUARDO TANKIANG

(Signed)

MAYDA TANKIANG

LNC3 ASSET MANAGEMENT INC.

By:

(Signed)

ADRIAN L. APOSTOL

Authorized Representative

(Signed)

JOSE ROMARX SALAS

Authorized Representative

METROPOLITAN BANK & TRUST COMPANY

By:

(Signed)

ANGELICA H. LAVARES

Senior Vice President

In compliance with the directive of this Court, Metrobank filed its Comment^[7] on the Manifestation and/or Motion for Judgment, confirming the fact that the parties had indeed settled their differences subject of the Petition.

Under Article 1306 of the Civil Code of the Philippines, contracting parties may establish such stipulations, clauses, terms, and conditions, as they may deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy. A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences, thereby putting an end to litigation.^[8] Such means of dispute settlement is an accepted, even desirable and encouraged, practice in courts of law and administrative tribunals.^[9]

Finding the above Compromise Agreement to have been validly executed and not contrary to law, morals, good customs, public order, or public policy, we, therefore, approve the same.

WHEREFORE, in light of the foregoing, the Compromise Agreement dated January 8, 2009 is APPROVED, and judgment is hereby rendered in accordance therewith. The instant case is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Bersamin,^[*] JJ., concur.

* Additional Member per Raffle dated April 27, 2009, vice Associate Justice Diosdado M. Peralta, whose wife, CA Associate Justice Fernanda Lampas Peralta, together with Associate Justice Normandie B. Pizarro, concurred in the CA Decision, penned by Associate Justice Edgardo P. Cruz.

[1] Rollo, pp. 619-623.

[2]Id. at 26-80.

[3]Id. at 9-20.

[4]Id. at 21-22.

[5]Id. at 525-575.

[6] Id. at 624-634.

[7]Id. at 637

[8]Xavierville III Homeowners Association, Inc. v. Xavierville II Homeowners Association, Inc, G.R. No. 170092, December 6, 2006, 520 SCRA 619; Magbanua v. Uy, G.R. No. 161003, May 6, 2005, 458 SCRA 184; Alonzo v. San Juan, G.R. No. 137549, February 11, 2005, 451 SCRA 45; Rivero v. Court of Appeals, G.R. No. 141273, May 17, 2005, 458 SCRA 714.

[9]Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) v. Abella, G.R. No. 153904, January 17, 2005, 448 SCRA 549.

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