# PRUDENTIAL BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. LIWAYWAY ABASOLO, RESPONDENT.

*G.R. No. 186738. September 27, 2010*

Ponente: CARPIO MORALES, J.

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**CARPIO MORALES, J.:**

Leonor Valenzuela-Rosales inherited two parcels of land situated in Palanan, Sta. Cruz, Laguna (the properties), registered as Original Certificates of Title Nos. RO-527 and RO-528. After she passed away, her heirs executed on June 14, 1993 a Special Power of Attorney (SPA) in favor of Liwayway Abasolo (respondent) empowering her to sell the properties.[2]

Sometime in 1995, Corazon Marasigan (Corazon) wanted to buy the properties which were being sold for P2,448,960, but as she had no available cash, she broached the idea of first mortgaging the properties to petitioner Prudential Bank and Trust Company (PBTC), the proceeds of which would be paid directly to respondent. Respondent agreed to the proposal.

On Corazon and respondent's consultation with PBTC's Head Office, its employee, Norberto Mendiola (Mendiola), allegedly advised respondent to issue an authorization for Corazon to mortgage the properties, and for her (respondent) to act as one of the co-makers so that the proceeds could be released to both of them.

To guarantee the payment of the property, Corazon executed on August 25, 1995 a Promissory Note for P2,448,960 in favor of respondent.

By respondent's claim, in October 1995, Mendiola advised her to transfer the properties first to Corazon for the immediate processing of Corazon's loan application with assurance that the proceeds thereof would be paid directly to her (respondent), and the obligation would be reflected in a bank guarantee.

Heeding Mendiola's advice, respondent executed a Deed of Absolute Sale over the properties in favor of Corazon following which or on December 4, 1995, Transfer Certificates of Title Nos. 164159 and 164160 were issued in the name of Corazon.

Corazon's application for a loan with PBTC's Tondo Branch was approved on December 1995. She thereupon executed a real estate mortgage covering the properties to secure the payment of the loan. In the absence of a written request for a bank guarantee, the PBTC released the proceeds of the loan to Corazon.

Respondent later got wind of the approval of Corazon's loan application and the release of its proceeds to Corazon who, despite repeated demands, failed to pay the purchase price of the properties.

Respondent eventually accepted from Corazon partial payment in kind consisting of one owner type jeepney and four passenger jeepneys,[3] plus installment payments, which, by the trial court's computation, totaled P665,000.

In view of Corazon's failure to fully pay the purchase price, respondent filed a complaint for collection of sum of

money and annulment of sale and mortgage with damages, against Corazon and PBTC (hereafter petitioner), before the Regional Trial Court (RTC) of Sta. Cruz, Laguna.[4]

In her Answer,[5] Corazon denied that there was an agreement that the proceeds of the loan would be paid directly to respondent. And she claimed that the vehicles represented full payment of the properties, and had in fact overpaid P76,040.

Petitioner also denied that there was any arrangement between it and respondent that the proceeds of the loan would be released to her.[6] It claimed that it "may process a loan application of the registered owner of the real property who requests that proceeds of the loan or part thereof be payable directly to a third party [but] the applicant must submit a letter request to the Bank."[7]

On pre-trial, the parties stipulated that petitioner was not a party to the contract of sale between respondent and Corazon; that there was no written request that the proceeds of the loan should be paid to respondent; and that respondent received five vehicles as partial payment of the properties.[8]

Despite notice, Corazon failed to appear during the trial to substantiate her claims.

By Decision of March 12, 2004,[9] Branch 91 of the Sta. Cruz, Laguna RTC rendered judgment in favor of respondent and against Corazon who was made directly liable to respondent, and against petitioner who was made subsidiarily liable in the event that Corazon fails to pay. Thus the trial court disposed:

> WHEREFORE, premises considered, finding the plaintiff has established her claim against the defendants, Corazon Marasigan and Prudential Bank and Trust Company, judgment is hereby rendered in favor of the plaintiff ordering:
>
> Defendant Corazon Marasigan to pay the plaintiff the amount of P1,783,960.00 plus three percent (3%) monthly interest per month from August 25, 1995 until fully paid. Further, to pay the plaintiff the sum equivalent to twenty percent five [sic] (25%) of P1,783,960.00 as attorney's fees.
>
> Defendant Prudential Bank and Trust Company to pay the plaintiff the amount of P1,783,960.00 or a portion thereof plus the legal rate of interest per annum until fully paid in the event that Defendant Corazon Marasigan fails to pay the said amount or a portion thereof.
>
> Other damages claimed not duly proved are hereby dismissed.
>
> So Ordered.[10] (emphasis in the original; underscoring partly in the original, partly supplied)

In finding petitioner subsidiarily liable, the trial court held that petitioner breached its understanding to release the proceeds of the loan to respondent:

> Liwayway claims that the bank should also be held responsible for breach of its obligation to directly release to her the proceeds of the loan or part thereof as payment for the subject lots. The evidence shows that her claim is valid. The Bank had such an obligation as proven by evidence. It failed to rebut the credible testimony of Liwayway which was given in a frank, spontaneous, and straightforward manner and withstood the test of rigorous cross-examination conducted by the counsel of the Bank. Her credibility is further strengthened by the corroborative testimony of Miguela delos Reyes who testified that she went with Liwayway to the bank for several times. In her presence, Norberto Mendiola, the head of the loan department, instructed Liwayway to transfer the title over the subject lots to Corazon to facilitate the release of the loan with the guarantee that Liwayway will be paid upon the release of the proceeds.
>
> Further, Liwayway would not have executed the deed of sale in favor of Corazon had Norberto Mendiola did not promise and guarantee that the proceeds of the loan would be directly paid to her. Based on ordinary human experience, she would not have readily transferred the title over the subject lots had there been no


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> strong and reliable guarantee. In this case, what caused her to transfer title is the promise and guarantee made by Norberto Mendiola that the proceeds of the loan would be directly paid to her. [11] (emphasis underscoring supplied)

On appeal, the Court of Appeals¸ by Decision of January 14, 2008[12], affirmed the trial court's decision with modification on the amount of the balance of the purchase price which was reduced from P1,783,960 to P1,753,960. It disposed:

> WHEREFORE, premises considered, the assailed Decision dated March 12, 2004 of the Regional Trial Court of Sta. Cruz, Laguna, Branch 91, is AFFIRMED WITH MODIFICATION as to the amount to be paid which is P1,753,960.00.
>
> SO ORDERED.[13] (emphasis in the original; underscoring supplied)

Petitioner's motion for reconsideration having been denied by the appellate court by Resolution of February 23, 2009, the present petition for review was filed.

The only issue petitioner raises is whether it is subsidiarily liable.

The petition is meritorious.

In the absence of a lender-borrower relationship between petitioner and Liwayway, there is no inherent obligation of petitioner to release the proceeds of the loan to her.

To a banking institution, well-defined lending policies and sound lending practices are essential to perform its lending function effectively and minimize the risk inherent in any extension of credit.

Thus, Section X302 of the Manual of Regulations for Banks provides:

> X-302. To ensure that timely and adequate management action is taken to maintain the quality of the loan portfolio and other risk assets and that adequate loss reserves are set up and maintained at a level sufficient to absorb the loss inherent in the loan portfolio and other risk assets, each bank shall establish a system of identifying and monitoring existing or potential problem loans and other risk assets and of evaluating credit policies vis-à-vis prevailing circumstances and emerging portfolio trends. Management must also recognize that loss reserve is a stabilizing factor and that failure to account appropriately for losses or make adequate provisions for estimated future losses may result in misrepresentation of the bank's financial condition.

In order to identify and monitor loans that a bank has extended, a system of documentation is necessary. Under this fold falls the issuance by a bank of a guarantee which is essentially a promise to repay the liabilities of a debtor, in this case Corazon. It would be contrary to established banking practice if Mendiola issued a bank guarantee, even if no request to that effect was made.

The principle of relativity of contracts in Article 1311 of the Civil Code supports petitioner's cause:

> Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.
>
> If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. (underscoring supplied)

For Liwayway to prove her claim against petitioner, a clear and deliberate act of conferring a favor upon her must be present. A written request would have sufficed to prove this, given the nature of a banking business, not to


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mention the amount involved.

Since it has not been established that petitioner had an obligation to Liwayway, there is no breach to speak of. Liwayway's claim should only be directed against Corazon. Petitioner cannot thus be held subisidiarily liable.

To the Court, Liwayway did not rely on Mendiola's representations, even if he indeed made them. The contract for Liwayway to sell to Corazon was perfected from the moment there was a meeting of minds upon the properties-object of the contract and upon the price. Only the source of the funds to pay the purchase price was yet to be resolved at the time the two inquired from Mendiola. Consider Liwayway's testimony:

> Q:
>
> We are referring to the promissory note which you aforementioned a while ago, why did this promissory note come about?
>
> A:
>
> Because the negotiation was already completed, sir, and the deed of sale will have to be executed, I asked the defendant (Corazon) to execute the promissory note first before I could execute a deed of absolute sale, for assurance that she really pay me, sir.[14] (emphasis and underscoring supplied)

That it was on Corazon's execution of a promissory note that prompted Liwayway to finally execute the Deed of Sale is thus clear.

The trial Court's reliance on the doctrine of apparent authority - that the principal, in this case petitioner, is liable for the obligations contracted by its agent, in this case Mendiola, - does not lie. Prudential Bank v. Court of Appeals[15] instructs:

> [A] banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetuate fraud upon his principal or some person, for his own ultimate benefit.[16] (underscoring supplied)

The onus probandi that attempt to commit fraud attended petitioner's employee Mendiola's acts and that he abused his authority lies on Liwayway. She, however, failed to discharge the onus. It bears noting that Mendiola was not privy to the approval or disallowance of Corazon's application for a loan nor that he would benefit by the approval thereof.

Aside from Liwayway's bare allegations, evidence is wanting to show that there was collusion between Corazon and Mendiola to defraud her. Even in Liwayway's Complaint, the allegation of fraud is specifically directed against Corazon.[17]

IN FINE, Liwayway's cause of action lies against only Corazon.

WHEREFORE, the Decision of January 14, 2008 of the Court of Appeals, in so far as it holds petitioner, Prudential Bank and Trust Company (now Bank of the Philippine Islands), subsidiary liable in case its co-defendant Corazon Marasigan, who did not appeal the trial court's decision, fails to pay the judgment debt, is REVERSED and SET ASIDE. The complaint against petitioner is accordingly DISMISSED.

**SO ORDERED.**

Peralta,[*] Bersamin, Villarama, Jr., and Sereno, JJ., concur.

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[1] Prudential Bank and Trust Company was acquired by the Bank of Philippine Islands (BPI) on September 2005.

[*] Additional member per Special Order No. 885 dated September 1, 2010.

[2] Vide SPA executed by the heirs of Leonor Valenzuela-Rosales also authorizing Liwayway to institute and represent them in any court litigation that may arise out of the transaction, records, p. 9.

[3] The value of the vehicles as shown in the Acknowledgment Receipts and Delivery Receipts are as follows: (1) Owner-type Jeepney - P200,000.00, (2) Passenger Jeep A - P255,000.00, (3) Passenger Jeep B - P340,000.00, (4) Passenger Jeep C - P325,000.00 (mortgaged to Plaza Lending, Co.) and (5) Passenger Jeep D - P300,000.00.

[4] The complaint, Civil Case No. SC-3643, was entitled "Liwayway Abasolo v. Corazon Marasigan, Prudential Bank and Trust Company and the Register of Deeds of Laguna." The title of the complaint does not indicate that Liwayway was prosecuting the case as attorney-in-fact of the Heirs of Leonor Valenzuela-Rosales, which is not in accordance with Section 3, Rule 3 of the Rules of Court reading:

> Sec. 3. Representatives as parties. - Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. (underscoring supplied)

The defendants never questioned the matter, however.

[5] Records, pp. 29-35.

[6] Bank's Answer With Counterclaim, id. at 36-41.

[7] Id. at 38.

[8] Pre-Trial Order, id. at 98.

[9] Id. at 221-226.

[10] Id. at 226.

[11] Id. at 224.

[12] Penned by Associate Justice Aurora Santiago-Lagman with the concurrence of Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., rollo, pp. 31-43.

[13] CA rollo, p. 117.

[14] TSN, September 21, 1999, p. 23

[15] G.R. No. 108957, June 14, 1993, 223 SCRA 350

[16] Id. at 357, quoting McIntosh v. Dakota Trust Co., 52 ND 752, 204 NW 818, 40 ALR 1021.

[17] Records, p. 6.


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