

JOSE C. GO, GOTESCO PROPERTIES, INC., GO TONG ELECTRICAL SUPPLY, INC., EVER EMPORIUM, INC., EVER GOTESCO RESOURCES AND HOLDINGS, INC., GOTESCO TYAN MING DEVELOPMENT, INC., EVERC...

G.R. No. 202262. July 08, 2015

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

By this appeal, the petitioners businessman Jose C. Go and eight corporations connected with him, namely: Gotesco Properties, Inc., Go Tong Electrical Supply, Inc., Ever Emporium, Inc., Ever Gotesco Resources and Holdings, Inc., Gotesco Tyan Ming Development, Inc., Evercrest Cebu Golf Club, Nasugbu Resorts, Inc., GMCC United Development Corporation and Gulod Resort, Inc. - challenge the decision promulgated on December 20, 2011,[1] whereby the Court of Appeals (CA) dismissed their petition for certiorari for being moot and academic, and upheld the orders issued on June 4, 2009[2] and August 6, 2009[3] by the Regional Trial Court, Branch 39, in Manila (RTC) allowing respondent Bangko Sentral ng Pilipinas (Bangko Sentral) to levy on execution the properties indicated in the parties' court approved compromise agreement.

Antecedents

The genesis of this case is traced to the decision of the Court promulgated on June 29, 2011 in G.R. No. 148483 entitled *Bangko Sentral ng Pilipinas v. Orient Commercial Banking Corporation, et. al.*[4] The facts relevant to our adjudication are reported therein, as follows:

On February 13, 1998, herein respondent Orient Commercial Banking Corporation (OCBC) declared a bank holiday on account of its inability to pay all its obligations to depositors, creditors and petitioner Bangko Sentral ng Pilipinas (BSP).

On March 17, 1998, OCBC filed a petition for rehabilitation with the Monetary Board. The bank was placed under receivership and the Philippine Deposit Insurance Corporation (PDIC) was designated as Receiver. Pursuant to the Monetary Board's Resolution No. 1427, PDIC took over all the assets, properties, obligations and operations of OCBC. Respondent Jose C. Go, the principal and biggest stockholder of OCBC, with his affiliates companies (respondent corporations), challenged the said action of the PDIC before the RTC of Manila, Branch 44 (Civil Case No. 98-91265). Said case was dismissed and the dismissal was appealed to the CA.

During the pendency of Civil Case No. 98-91265, the Monetary Board adopted Resolution No. 602 dated May 1999 directing the Receiver to proceed with the liquidation of OCBC. In June, 1999, the PDIC instituted Special Proceeding No. 99-94328 before the RTC of Manila, Branch 51 entitled "In Re: Petition for Assistance in the Liquidation of Orient Commercial Banking Corporation, Philippine Deposit Insurance Corporation, Petitioner."

On December 17, 1999, petitioner filed in the RTC of Manila (Branch 12) a complaint for sum of money with

preliminary attachment (Civil Case No. 99-95993) against the respondents seeking to recover deficiency obligation owed by OCBC which then stood at P1,273,959,042.97 with interest at 8.894% per annum, overdraft obligation at P1,028,000,000.00, attorney's fees and cost of suit.

On January 14, 2000, the RTC of Manila, Branch 12 issued an Order in Civil Case No. 99-95993 granting petitioner's motion for preliminary attachment. On January 19, 2000, following the posting of P50 million attachment bond issued by the Government Service Insurance System (GSIS), the corresponding writ was issued ordering the Deputy Sheriffs to attach the real and personal properties of respondents to the value of petitioner's demand in the amount of P2,301,951,042.97, exclusive of interest and costs, as security for the said claim.[5] (citations omitted)

Eventually, the controversy reached the Court and during the pendency of the appeal, the parties entered into a compromise agreement, the pertinent provisions of which were as follows:

I. AMOUNT TO BE SETTLED

In consideration of this Compromise Agreement and subject to faithful compliance by the defendants of the terms hereof, the parties herein have agreed that the total amount of Deficiency Claim and Overdraft payable by defendants to plaintiff shall be equivalent to PESOS: TWO BILLION NINE HUNDRED SEVENTY-FOUR MILLION NINE HUNDRED THREE THOUSAND (PhP2,974,903.00) (sic) which amount shall be paid by the defendants in the following manner:

- A down payment shall be made by the defendants through the DACION of certain real estate properties more particularly described in Annex "B" hereof.

- a ii) The parties shall execute separate DEEDS OF DACION over the real estate properties described in Annex "B" upon the execution of the Agreement;

- a ii) All Capital Gains Tax on the properties for DACION shall be payable by the defendants but Documentary Stamp Tax, Transfer Tax and all registration fees on the DACION shall for the account of plaintiff.

- The balance remaining after the DACION of the real estate properties shall be paid by the defendants within a period of ten (10) years but extendible for another five (5) years provided that the defendants shall religiously comply with the amortization schedule (Annex "C" hereof) for a continuous period of two (2) years from date of first amortization.

- b i) The foregoing outstanding balance shall be charged interest at 91-day T-Bill rate upon execution of this Compromise Agreement repriced every three (3) months for a period of 10 years and payable monthly in arrears.

- Additional Properties for Execution

- c i) To ensure payment of the monthly amortizations due under this Compromise Agreement, defendants Ever Crest Golf Club Resort, Inc., and Mega Heights, Inc., have agreed to have its real properties with improvements covered by TCT Nos. T-68963, T-6890, T-68966 and TD ARPN-AA-1702 00582 and AA-17023-005 shall be subject of existing writ of attachment to secure the faithful payment of the outstanding obligation herein mentioned, until such obligation shall have been fully paid by defendants to plaintiff.

- c ii) That all the corporate approvals for the execution of this Compromise agreement by Ever Crest Golf Club Resort, Inc., and Mega Heights, Inc., consisting of stockholders resolution and Board of Directors approval have already been obtained at the time of the execution of this Agreement.

- c iii) Failure on the part of the defendants to fully settle their outstanding obligations and to comply with any of the terms of this Compromise Agreement shall entitle the plaintiff to immediately ask for a Writ of Execution against all assets of the Ever Crest Golf Club Resort, Inc., and Mega Heights, Inc., now or hereafter arising

upon the signing of this Compromise Agreement.

I. DISMISSAL OF ALL PENDING CASES

x x x x x x x x

II. FUNDS UNDER GARNISHMENT

x x x x x x x x

III. REPRESENTATION AND WARRANTIES

The signatories to this Compromise Agreement represent and pursuant to Bangko Sentral as follows:

- x x x

- It has obtained the respective Board of Directors approval and other corporate authorizations for its execution, signing and delivery of this Compromise Agreement and its attachments.

- The execution and delivery of this Compromise agreement and all other documents and deeds related thereto and the performance and observance by the parties of the respective terms and conditions thereof, shall not contravene or violate any provision of term of any contract or agreement entered into by the parties with any third party, nor contravene any provision or term of its Articles of Incorporation and By-Laws.

- It shall defend the title and peaceful possession by Bangko Sentral of the Properties against all claims of third persons, and shall indemnify and hold Bangko Sentral free and harmless from any and all losses, claims, damages, liabilities and expenses which it might suffer or incur as a result of this Compromise Agreement or any document or agreement entered into in connection therewith.

- It shall not execute or enter into any agreement or contract with any third party involving the properties which in any way, diminish, impair, prejudice or affect the rights, title and interest of Bangko Sentral over the properties acquired by or vested in Bangko Sentral pursuant to Compromise Agreement and all other documents executed between the parties in connection therewith.

- x x x[6] (Emphasis Supplied)

The RTC eventually approved the compromise agreement on December 29, 2003,[7] and the approval resulted in the denial of the petition in G.R. No. 148483.

But the controversy was not laid to rest by the execution of the compromise agreement because Go did not comply with its provisions. This prompted Bangko Sentral to move for the execution of the compromise agreement[8] against the properties of Ever Crest Golf Club Resort, Inc. (Ever Crest) and Mega Heights, Inc. (Mega Heights) which were levied upon by the sheriff. Initially, the RTC denied Bangko Sentral's motion to execute on December 12, 2008,[9] but on Bangko Sentral's motion for reconsideration, the RTC relented and granted the motion. The writ of execution was issued on July 6, 2009.

The petitioners and Ever Crest then brought a petition for certiorari in the CA, imputing grave abuse of discretion amounting to lack or excess of jurisdiction to the RTC for issuing the writ of execution against Ever Crest despite its not having been a party to the compromise agreement, and for ruling that Go had violated the terms of the compromise agreement (C.A.- G.R. No. SP 109927).[10] They further challenged the following issuances of the sheriff, namely: (a) the notice of levy upon realty pursuant to the writ of execution dated July 6, 2009; and (b) the notice of sale on execution of real property dated July 15, 2009.

The CA issued a 60-day temporary restraining order (TRO) in C.A.- G.R. No. SP 109927, but did not ultimately issue a writ of preliminary injunction. Upon the lapse of the period of 60 days, however, the public auction pushed

through, and the properties of Ever Crest were sold to Bangko Sentral as the highest bidder. The transfer certificates of title (TCTs) in the name of Ever Crest were cancelled, and new TCTs were then issued to Bangko Sentral as the new owner.

Eventually, the CA dismissed C.A.-G.R. No. SP 109927 through the assailed judgment promulgated on December 20, 2011,[11] disposing thusly:

WHEREFORE, premises considered, the instant petition is DISMISSED for being moot and academic.

No pronouncement as to costs.

SO ORDERED.[12]

The CA later denied the petitioners' motion for reconsideration filed on January 6, 2012[13] through the resolution promulgated on June 14, 2012.[14]

Issue

Hence, this appeal by the petitioners,[15] in which they pose the sole issue of whether or not the CA correctly dismissed the petition for certiorari for being moot and academic.

Ruling of the Court

The appeal lacks merit.

The petitioners argue that the issuance of the order of execution was tainted with grave abuse of discretion because the execution was directed against the properties of Ever Crest despite Ever Crest being neither a defendant in the cases between Bangko Sentral and Go, nor a signatory to the compromise agreement.

The argument is bereft of substance.

First of all, the petitioners and Ever Crest themselves firmly committed in the compromise agreement, *supra*, to have their properties with their improvements be made subject to the writ of attachment in order "to secure the faithful payment of the outstanding obligation herein mentioned, until such obligation shall have been fully paid by defendants to plaintiff," and expressly assured Bangko Sentral in the same compromise agreement that "all the corporate approvals for the execution of this Compromise agreement by Ever Crest Golf Club Resort, Inc., and Mega Heights, Inc., consisting of stockholders resolution and Board of Directors approval have already been obtained at the time of the execution of this Agreement." They warranted in the compromise agreement that: "Failure on the part of the defendants to fully settle their outstanding obligations and to comply with any of the terms of this Compromise Agreement shall entitle the plaintiff to immediately ask for a Writ of Execution against all assets of the Ever Crest Golf Club Resort, Inc., and Mega Heights, Inc., now or hereafter arising upon the signing of this Compromise Agreement." [16] By such express commitments, the petitioners and Ever Crest were estopped from claiming that the properties of Ever Crest and Mega Heights could not be the subject of levy pursuant to the writ of execution issued by the RTC. In other words, they could not anymore assail the RTC for authorizing the enforcement of the judgment on the compromise agreement against the assets of Ever Crest.

There are three kinds of estoppels, to wit: (1) estoppel in pais; (2) estoppel by deed; and (3) estoppel by laches. Under the first kind, a person is considered in estoppel if by his conduct, representations, admissions or silence when he ought to speak out, whether intentionally or through culpable negligence, "causes another to believe certain facts to exist and such other rightfully relies and acts on such belief, as a consequence of which he would be prejudiced if the former is permitted to deny the existence of such facts." Under estoppel by deed, a party to a deed and his privies are precluded from denying any material fact stated in the deed as against the other party and

his privies. Under estoppel by laches, an equitable estoppel, a person who has failed or neglected to assert a right for an unreasonable and unexplained length of time is presumed to have abandoned or otherwise declined to assert such right and cannot later on seek to enforce the same, to the prejudice of the other party, who has no notice or knowledge that the former would assert such rights and whose condition has so changed that the latter cannot, without injury or prejudice, be restored to his former state.[17]

Here, the petitioners are estopped by deed by virtue of the execution of the compromise agreement. They were the ones who had offered the properties of Ever Crest to Bangko Sentral, and who had also assured that all the legalities and formalities for that purpose had been obtained. They should not now be allowed to escape or to evade their responsibilities under the compromise agreement just to prevent the levy on execution of Ever Crest's properties.

And, secondly, the petitioners as well as Ever Crest and Mega Heights were contractually prohibited from challenging the levy on the assets of Ever Crest. Through the compromise agreement, the petitioners warranted that they would defend Bangko Sentral's title and peaceful possession of such levied properties against all claims of third persons. Their warranty was expressly made applicable to the properties subject of the dacion as well as to the properties of Ever Crest and Mega Heights subject of the preliminary attachment. Considering that the petitioners asserted that Ever Crest was a third party or stranger to the compromise agreement, they were contractually mandated to resist the adverse claim of Ever Crest and to defend the validity and efficacy of the levy on execution. As such, they could not validly raise any issue that would defeat the rights of Bangko Sentral in such properties.

The term grave abuse of discretion connoted whimsical and capricious exercise of judgment as was equivalent to excess, or lack of jurisdiction.[18] The abuse must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power was exercised in an arbitrary and despotic manner by reason of passion or hostility.[19] In light of this understanding of the term grave abuse of discretion, the CA did not err in dismissing the petition for certiorari because the petitioners did not show how the RTC could have been guilty of gravely abusing its discretion amounting to lack or excess of jurisdiction for allowing the execution of the properties designated as security for an obligation contracted since 1998.

WHEREFORE, the Court DENIES the petition for review on certiorari; AFFIRMS the decision promulgated on December 20, 2011 in CA-G.R. No. SP 109927 by the Court of Appeals; and DIRECTS the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 55-67; penned by Associate Justice Antonio L. Villamor (retired), and concurred in by Associate Justice Jose C. Reyes, Jr., Associate Justice Fernanda Lampas Peralta, Associate Justice Sesinando E. Villion, with Associate Justice Romeo F. Barza dissenting.

[2] CA rollo, pp. 44-47.

[3] Id. at 223-228.

[4] 653 SCRA 1.

[5] Id. at 3-4.

[6] Rollo, pp. 135-139.

[7] Id. at 143-144.

[8] Id. at 145-164.

[9] Id. at 179-191.

[10] Entitled Jose C. Go, Gotesco Properties, Inc., Go Tong Electrical Supply, Inc., Ever Emporium, Inc., Ever Gotesco Resources and Holdings, Inc., Gotesco Tyan Ming Development, Inc., Evercrest Cebu Go Club, Nasugbu Resorts, Inc., GMCC United Development Corporation, Gulod Resort, Inc. and Evercrest Golf Club Resort, Inc. v. Hon. Noli C Diaz, in his official capacity as the Presiding Judge of RTC Manila, Branch 39, Crispin M. Dalangin, in his official capacity as the Sheriff IV of the RTC of Manila, Branch 39, Bangko Sentral ng Pilipinas, and the Register of Deeds of Nasugbu, Batangas.

[11] Supra note 1.

[12] Id. at 67.

[13] Rollo, pp. 391-429.

[14] Id. at 89-99.

[15] Ever Crest filed a separate petition for review docketed as G.R. No. 202227 entitled Evercrest Golf Club Resort, Inc. v. Bangko Sentral ng Pilipinas and Register of Deeds of Nasugbu, Batangas. On September 10, 2012, the Second Division promulgated its resolution in G.R. No. 202227 denying the petition for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise or the Court's discretionary appellate jurisdiction (see rollo, pp. 389-390).

[16] Rollo, p. 136.

[17] Co Chien v. Sta. Lucia Realty & Development, Inc., G.R. No. 162090, January 31, 2007, 513 SCRA 570, 581.

[18] Republic v. Sandiganbayan (Second Division), G.R. No. 129406, March 6, 2006, 484 SCRA 119, 127.

[19] Angara v. Fedman Development Corporation, G.R. No. 156822, October 18, 2004, 440 SCRA 478; Duero v. Court of Appeals, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17.

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