

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND LA CAMPANA FOOD PRODUCTS, INC., RESPONDENTS.

G.R. No. 65338. December 03, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This case is a controversy between petitioner (DBP), a creditor Bank, and the private respondent (LA CAMPANA), a corporation engaged in the food processing business. The controversy involves the determination of facts in the light of their perspectives, as well as the determination of a reasonable and equitable conclusion based on those facts.

As of December 31, 1967, LA CAMPANA was indebted to local banks (other than DBP) in the sum of P1,996,026.13, and had payables to other creditors of P4,500,189.10, or a total of P6,496,215.23 (Exhibits "8", "8-A", "8-B"). As of 1968, LA CAMPANA had three (3) accounts with DBP in the sums of P1,000,000.00, P881,500.00 and P630,000.00 or a total of P2,511,500.00 (Exhibits "35", "35-A" and "35-B"). The three DBP accounts were secured by mortgages. The picture showed that LA CAMPANA had financial problems, with debts of no less than P9,007,715.23.

Sometime in 1968, LA CAMPANA obtained a US\$1,400,000.00 loan from the Intercontinental Monetary Corporation of New York (IMC) which had to be guaranteed by DBP. The loan was to be paid through sixteen (16) negotiable promissory notes. [PN Nos. 1-14 aggregating \$1,400,000.00 (at \$100,000.00 each) and PN Nos. 15-16 aggregating \$140,000.00 (1st Year interest)], totalling \$1,540,000.00. The following procedural mechanics, in so far as pertinent to this case, were laid down in servicing the loan and in the manner of its payment:

"a. Plaintiff (La Campana) will issue 113 Promissory Notes in favor of IMC, with DBP's guarantee, to be numbered as Promissory Notes (PN) Nos. 1-113.

b. "At the beginning of the First Year, PN Nos. 1-14 aggregating \$1,400,000.00 (at \$100,000.00 each) and PN Nos. 15-16 aggregating \$140,000.00 (1st Year interest), all DUE DATED Dec. 20, 1969, shall be delivered to IMC.

"c. At the end of the First Year, plaintiff shall pay to IMC the interest of \$140,000.00, covered by PN Nos. 15-16 which shall be stamped PAID, and IMC shall surrender PN Nos. 1-14 which shall be stamped RENEWED, in lieu of which PN Nos. 17-30 aggregating \$1,400,000.00 and PN Nos. 31--32 aggregating \$140,000.00 (2nd year interest), all DUE DATED Dec. 20, 1970, shall be released to IMC.

xxx xxx xxx

"f. At the end of the fourth year, plaintiff shall pay to INC \$340,000.00 (1st amortization of \$200,000.00 plus interest for 4th year of \$140,000.00), and IMC shall surrender PN Nos. 49-62 which shall be stamped AMORTIZED & RENEWED, and PN Nos. 63-64 which shall be stamped PAID in lieu of which PN Nos. 65-76 aggregating \$1,200,000.00 and PN Nos. 77-78 aggregating \$120,000.00 (5th year interest), all DUE DATED Dec. 20, 1973, shall be released to IMC.

xxx xxx xxx"[1]

To protect the guarantor, LA CAMPANA executed an additional mortgage in favor of DBP over its properties. What has to be noted in this additional mortgage indenture were the following conditions:

"The proceeds of the loan shall be released at the discretion of the mortgagee after the registration of the deed of mortgage." (Exhibit "Q-2")

"MORTGAGOR shall deposit with the MORTGAGEE the proceeds of the cash dollar loan of \$1,400,000.00 with which shall be made available for payment of MORTGAGOR's obligations to local financial institutions and for working capital;" (Exhibit "Q-28")

The above two clauses have special relevance to this case. The first shall hereinafter be referred to as the "DISCRETIONARY CLAUSE", while the second shall hereinafter be referred to as the "PERMISSIVE CLAUSE".

A peculiarity of the dollar loan was that it was basically payable, within one year, through 16 promissory notes, all with due dates at the end of the one year period on December 20, 1969. However, IMC could extend payment of the notes yearly up to a 10-year period (Exhibits "18" & "18-A"). There is also the peculiar fact that in the negotiable promissory notes executed by LA CAMPANA, and guaranteed by DBP, there was no provision for renewal. A sample (Exhibit. "21-A") of the notes follows:

September 20, 1968

Date of Issue December 20, 1968

PROMISSORY NOTE

By means of this Promissory Note for value received, we unconditionally take the obligation of paying to the order of INTERCONTINENTAL MONETARY CORPORATION, NEW YORK Bank at the office of NATIONAL BANK OF NORTH AMERICA, 160 BROADWAY, NEW YORK New York, New York, the sum of USA DOLLARS ONE HUNDRED THOUSAND (US \$100,000.00) ONLY without any deduction of any Philippine taxes. In case it is not fully paid on maturity, such amount shall bear interest at the rate of Twelve (12) percent per annum on unpaid balances.

Due: December 20, 1969

Manila, Philippines.

(SGD.) RICARDO S. TANTONGCO
RICARDO S. TANTONGCO

President & General Manager

LA CAMPANA Food Products, Inc.

SIGNED IN THE PRESENCE OF:

(SGD.) RODOLFO FAB (SGD.) (Illegible)

G U A R A N T E E

We irrevocably and unconditionally guarantee payment of this Promissory Note issued by LA CAMPANA Food Products, Inc. to the order of INTERCONTINENTAL MONETARY CORPORATION, NEWYORK. If LA CAMPANA Food Products, Inc. does not pay, (the Development Bank of the Philippines) will pay at first demand at the office of NATIONAL BANK OF NORTH AMERICA, 160 BROADWAY, NEW YORK.

(DEVELOPMENT BANK OF THE PHILIPPINES)

(SGD.) G. S. LICAROS

G. S. LICAROS

Chairman"

It will be noted that the notes being negotiable, and unconditionally payable on due dates (not extendible), LA CAMPANA, as drawer, and DBP, as guarantor, would be unconditionally liable to endorsees. Primary responsibility for the notes lies with LA CAMPANA, which negotiated the loan with IMC through the borrower's intervening agents "Mr. Javier and Mrs. Menese" (Exhibit. "33-A"). DBP cannot be blamed for the outcome of the situation brought about by the negotiable notes.

Payout under the loan would be in the amount of \$1,344,000.00. After the 16 negotiable promissory notes were delivered to IMC, the payout amount was remitted to DBP for the account of LA CAMPANA in accordance with arrangements made. The payout amounted to its peso equivalent of P5,265,120.00 which, incidentally, was less than what LA CAMPANA owed to local banks other than DBP. Up to September 11, 1969, or before the end of the 1-year period, DBP had made the following payments (Exhibit "15-A"):

Date Released

Amount

Particulars

1-20-69

P 5,241.60

Charges of CONBANIT (1/10 of 1%)

1-29-69

400,000.00

In favor of La Campana

1-29-69

314,921.88

Applied to arrearages of La Campana's industrial loan accounts.

2-17-69

300,000.00

In favor of La Campana

3-03-69

300,000.00

— do —

3-11-69

100,000.00

China Banking Corporation

4-15-69

100,000.00

— do —

4-25-69

200,000.00

— do —

5-16-69

140,000.00

Phil. Commercial & Industrial Bank

5-19-69

21,012.32

Applied to guarantee fee

9-11-69

41,800.82

Applied to interest and guarantee fee.

TOTAL

P1,922,976.62

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It will thus be seen that, as of December 20, 1969, there was a retained amount of P3,342,143.38.

In the meantime, it appeared that the President of IMC had made a trip to this country in March, 1969. On April 9, 1969, he wrote a letter to LA CAMPANA (Exhibit "33-A"), excerpts of which are:

"Thank you for your letter of March 12. As you undoubtedly know, I was in Manila for a number of days prior to and including March 19. I tried, on a number of occasions, to be in contact with you and left several messages at your various offices. However, I was indeed surprised that you did not make any effort to contact me.

xxx xxx xxx

As you can see from the preceding calculations, there is still an outstanding balance due us of \$22,594.44, plus expenses as previously advised in our letter of January 3rd of \$3,500.00. We now expect your immediate remittance in the total amount of \$26,094.44 to cover your firm commitments to us regarding your loan facility. If you mistakenly paid additional amounts to Mr. Javier, Mrs. Menese or any other individuals, this has nothing whatsoever to do with your firm commitments to us.

As you know, we have agreed to renew this loan on an annual basis for up to 10 years but this renewal agreement between us depends on compliance by both parties. We are willing, ready and able to live up to our commitments so long as you and your company fully live up to your commitments to us.

A copy of this letter is being forwarded to our Attorney, Mr. Artemio Delfino, who will undoubtedly contact you to facilitate the payment of your outstanding balance."

The \$26,094.44 was not paid prior to December 20, 1969, the due dates of the negotiable promissory notes; but on January 2, 1970, LA CAMPANA sent a telex (Exhibit "11") to IMC as follows:

"TELEX
MANILA JAN 2/70
INMONETRU
NY

ATTENTION: CUMEROLA/DONALD ECKER

RE SETTLEMENT OF YOUR DLRS26,094.44, WAS ALREADY DEPOSITED BY DBP WITH INSTRUCTION TO CONTINENTAL NY BANK TO BE RELEASED TO YOU, UPON RENEWALS OF OUR PROMISSORY NOTES NO. 17 TO NO. 32 INCLUSIVE, AND GUARANTEED BY DBP. PLEASE NOTIFY US YOUR ACTION. TO AVOID DELAY REQUEST BY DBP. KINDLY COMMUNICATE WITH CONTINENTAL NY BANK FOR RENEWALS OF THE NOTES AND COLLECT THE DLRS 26,094.44 AND WISH YOU ALL A VERY HAPPY NEWYEAR.

LA CAMPANA FOOD PRODUCTS, INC."

What can be noted is that the payment of the \$26,094.44 was to be contingent on the promissory notes being renewed on December 20, 1969, which did not transpire.

On November 26, 1969, IMC sent a letter (Exhibit "33") to LA CAMPANA requesting settlement of the \$26,094.44 by December 10, 1969, indicating that, otherwise, the promissory notes would not be renewed. The mentioned amount was not remitted before December 10, 1969, and the notes were not extended. Belatedly, DBP sent the amount on December 23rd to its New York correspondent, but still to be held in escrow.

On or before December 20, 1969, IMC had endorsed all the notes, without recourse, to Somex Ltd.; and the latter had endorsed them, also without recourse, to "bearers". The endorsements (Exhibit "21-A-1"), made on the backs of the notes, were as follows:

"WITHOUT RECOURSE
PAY TO THE ORDER OF
SOMEX LTD.
NEW YORK, NEW YORK

Intercontinental Monetary Corp.

(SGD.) DONALD A. ECKER
DONALD A. ECKER, President

WITHOUT RECOURSE TO SOMEX LTD.

SOMEX LTD.

(SGD.) "Illegible"

The endorsee holders of the notes presented them for payment to the National Bank of North America in New York, presumably on their due dates, and DBP, complying with its legal obligation vis-a-vis those holders, had to remit the \$1,400,000.00 payment on December 23, 1969 (Exhibit "40").

The amount released by DBP from the dollar loan actually amounted only to P1,922,976.62. The retained amount of P3,342,143.38 was subsequently used by DBP for the payment of the promissory notes to the endorsee holders. The principal liability then of DBP on the loan was limited to the said amount of P1,922,976.62, while the amount which LA CAMPANA had to pay DBP on account of the latter's guarantee was only the same sum of P1,922,976.62.

On February 10, 1970, DBP demanded payment from LA CAMPANA of the sum of P2,770,000.00 in connection with its guarantee of the dollar loan, presumably together with interest and financial charges. LA CAMPANA asked for "ample time to settle the said account" because as it was negotiating a new financing facility with another financier to substitute the dollar loan (Exhibit "43"). On April 1, 1970, LA CAMPANA revealed it was negotiating a new \$1,400,000.00 loan from Handelscredit Bank AG. of Zurich (Exhibit "16").

Apparently, nothing substantial resulted from the LA CAMPANA negotiations with the Zurich Bank and, on or about October 11, 1972, DBP started the extrajudicial foreclosure of all mortgages previously executed by LA CAMPANA (Exhibit "44") in its favor by submitting a corresponding application to the Sheriff, with notices to the President of LA CAMPANA itself and several third parties who could be affected.

Perhaps through the intercession of interested parties, the Sheriff issued a first notice of sale (Exhibit "J") only on May 30, 1974, scheduling it for June 28, 1974 which, however, was not held. A second notice of sale (Exhibit "44-A") was issued on December 13, 1974, scheduling it for January 15, 1975. The parties agreed several times to postpone the foreclosure sale ultimately to June 30, 1975 (Exhibits "22, etc.").

Having knowledge of DBP's intent to foreclose, LA CAMPANA instituted the instant case, with five (5) causes of action against DBP, before the then Court of First Instance of Rizal, Branch IX, Quezon City (Civil Case No. Q-18518). After the first notice of foreclosure sale was issued on May 30, 1974, LA CAMPANA amended its complaint on June 18, 1974, adding a sixth cause of action in regards to the foreclosure sale, and asked the trial Court to restrain the sale. It is presumably the request for the Restraining Order which resulted in the foreclosure sale on June 28, 1974 not being held. The Order of the trial Court denying the Restraining Order was dated June

26,1974. It may also be presumed that the foreclosure sale was actually held on June 30, 1975, with DBP being the successful bidder for all the mortgaged properties.

LA CAMPANA's complaint faulted DBP in not fully releasing the proceeds of the dollar loan, as a result of which, it claimed it was not able to resume successful operations. It demanded payment of the retained portion of the dollar loan, damages for unearned and expected profits of LA CAMPANA, exemplary damage and attorney's fees. The trial Court, on August 4, 1978, rendered judgment as follows:

"WHEREFORE, judgment is hereby rendered:

a. Ordering defendant DBP to release unto the plaintiff the sum of P3,403,051.79 representing a portion of a total loan of plaintiff in favor of DBP in the sum of P5,265,120.00;

b. Declaring that the aforesaid loan of P5,265,120.00 shall earn interest at the rate of 10% per annum from the date the aforesaid sum of P3,403,051.79 is released by DBP to plaintiff, for a term of nine (9) years from such date, where within the first two (2) years only interests shall be paid, and from the 3rd to the 9th year the annual amortization of P752,160.00 (1/7 of P5,265,120.00) plus interest on the reduced-principal shall be paid, in accordance with the schedule of payments set forth in Par. F, sub-par. 2, hereof;

c. Declaring that plaintiff's industrial loans in favor of DBP is in the total amount of P1,553,928.83, payable within ten (10) years beginning from date of finality of this judgment, in equal quarterly amortization of P38,848.22, plus accruing interest at the rate of 10% per annum likewise payable quarterly;

d. Declaring the foreclosure proceedings of plaintiff's mortgages (Exhs. W, W-1 to W-4, X, X-1 and X- 2, 23 also Q, Q-1 to Q-28), as null and void, and ordering DBP to return or restore to plaintiff such mortgaged properties as may have been seized or disposed of in the said foreclosure proceedings, but that nevertheless the said mortgages shall remain as security for the aforesaid loans of P5,265,120.00 and P1,553,928.83, with the terms and conditions thereof deemed modified in accordance with the above dispositions:

e. Sentencing DBP to pay plaintiff —

(1) an annual sum of P500,000.00, starting the year 1969 and every year thereafter until the date this judgment becomes final, representing profits that plaintiff failed to obtain by reason of DBP's wrongful acts, in accordance with Art. 2200 of the Civil Code;

(2) the sum of P100,000.00, representing injury to plaintiff's business standing or commercial credit, in accordance with Art. 2205 of the Civil Code;

(3) the sum of P100,000.00 by way of exemplary damage, in accordance with Art. 2232 of the Civil Code;

(4) the sum of P50,000.00 for and as attorney's fees; and

(5) the costs of suit."

Upon DBP's appeal, the Intermediate Appellate Court affirmed the judgment of the trial Court with the modification that, the assumed loss of earnings of P500,000.00 yearly to which LA CAMPANA was held entitled by the trial Court, was reduced to P100,000.00 yearly.

The gist of the trial Court's judgment was anchored on its finding that DBP failed "to comply with its obligations in (the) foreign loan transaction"[2], in that DBP wrongfully did not turn over to LA CAMPANA the entire payout amount of the dollar loan. It was based upon that finding that the trial Court ordered DBP to pay to LA CAMPANA the retained proceeds of the loan, and sentenced it to pay un-earned income to LA CAMPANA at the rate of P500,000.00 a year, damages of P100,000.00 for injury to business standing, exemplary damages of P100,000.00, and attorney's fees of P50,000.00, and declaring the invalidity of the foreclosure of the mortgages executed by LA CAMPANA in favor of DBP.

On the basis of that anchor finding of the trial Court, the issue before the Appellate Tribunal was limited to:

"x x x two main issues :

- 1) whether or not appellant Development Bank of the Philippines had unreasonably withheld the release of the \$1.4 million loan to plaintiff La Campana Food Products, and
- 2) whether or not DBP had illegally or prematurely caused the extrajudicial foreclosure of the mortgaged properties of La Campana (Appellants' Brief, pp. 20--21)."[3] (paragraphing supplied)

The resolution of the first issue in favor of DBP will also resolve the second issue in its favor. The fore closure of the mortgages, other than the mortgage executed in connection with the guarantee of the dollar loan, can be another matter if the finding is against DBP.

For ready reference, we hereunder restate the DISCRETIONARY CLAUSE and the PERMISSIVE CLAUSE:

"The proceeds of the loan shall be released at the discretion of the mortgagee after the registration of the deed of mortgage." (Exhibit "Q-2")

"MORTGAGOR shall deposit with the MORTGAGEE the proceeds of the cash dollar loan of \$1,400,000.00 with which shall be made available for payment of MORTGAGOR's obligations to local financial institutions and for working capital;" (Exhibit "Q-28)

The two clauses have been culled from a single document, which is the mortgage executed by LA CAMPANA in favor of DBP in connection with the latter's guarantee of the dollar loan. It is a basic rule that:

"(c) A writing is interpreted as a whole and all writings forming part of the same transaction are interpreted together."[4]

In the face of the DISCRETIONARY CLAUSE, it was error for the Appellate Tribunal to have said:

"A perusal of Exhibits 23 and 24 (Defendants' Folder of Exhibits, pp. 102-A, 103) do not expressly or impliedly provide, as incorrectly alleged by the appellants on page 25 of their Brief, that the proceeds of the dollar loan can only be released at the discretion of DBP. It is, therefore, clear that DBP's pretension that it had the discretion when to release the proceeds of the foreign loan extended to La Campana is without" factual basis."[5]

The error of the Appellate Tribunal was due to the mis-statement made by DBP on page 25 of its Brief. The DISCRETIONARY CLAUSE is found in Exhibit "Q-2".

The Appellate Tribunal has also said:

"Even assuming arguendo that DBP had such a discretion, that does not include its capricious and whimsical exercise amounting to an evasion of a positive duty or a virtual refusal to perform an obligation arising from a contract."[6]

We do not agree with the implication, further on dissented upon, that DBP had acted capriciously and whimsically.

The PERMISSIVE CLAUSE evidences the agreement of the parties that the proceeds of the dollar loan shall be deposited with DBP which will then make such proceeds "available for payment of (LA CAMPANA's) obligations to local financial institution and for (LA CAMPANA's) working capital". Since LA CAMPANA had obligations in favor of several financial institutions, and there was no specification as to its need for working capital, it should be clear that DBP had to make decisions as to which obligations, and how much thereof, should first be paid, with retention of a reasonable amount for LA CAMPANA's working capital needs. In other words,

allocations to creditors and to LA CAMPANA had to be made by DBP at its discretion, and that is the reason why we have termed that part of the agreement of the parties as a PERMISSIVE CLAUSE. The discretion of DBP in the allocations, in effect, had been merely confirmed by the DISCRETIONARY CLAUSE, which can be deemed "declaratory" in nature.

The objective of the discretion lodged in DBP was to place LA CAMPANA, if at all possible, on a viable basis with ability eventually to settle all its debts inclusive of what it owed DBP itself. That was a difficult decision to make in one stroke, considering the factors which arose after DBP received the proceeds of the dollar loan. First was the notice of levy filed by the LA CAMPANA labor union on the properties mortgaged to DBP. Then there was the contro-versy which evolved in regards to LA CAMPANA's, indebtedness to China Bank.

On July 15, 1969, what LA CAMPANA wanted was that the entire unreleased balance of the dollar loan should be turned over to it. Said LA CAMPANA:

"Please reconsider the resumption of the release of our guarantee loan which we urgently need to consummate the purposes for which it has been intended." Exhibit "D")

If DBP had given the entire proceeds then being retained to LA CAMPANA, unpaid creditors, including China Bank (not to mention DBP itself), could have all pounced on LA CAMPANA, and that could have hampered its then possible rehabilitation.

Reviewing the actuations of DBP during the first year of the dollar loan, we do not find that the timing and quantifications of the allocations it had made constituted abuse of its discretion.

WHEREFORE, the judgment under review, as well as the Decision of the then Court of First Instance of Rizal, Branch IX, Quezon City, in its Civil Case No. Q-18518, are hereby reversed and set aside. Costs against LA CAMPANA Food Products, Inc.

SO ORDERED.

Teehankee, (Chairman), Plana, Gutierrez, Jr., De La Fuente, and Patajo, JJ., concur.

Relova, J., on official leave.

[1] Record on Appeal, pp. 401-403.

[2] Ibid., pp. 410-423.

[3] Rollo, p. 31.

[4] I Restatement, Contracts, p. 319.

[5] Rollo, p. 38.

[6] Ibid.

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