

**THE INTERNATIONAL CORPORATE BANK, INC., PETITIONER, VS.
THE INTERMEDIATE APPELLATE COURT, HON. ZOILO AGUINALDO,
AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI,
BRANCH ...**

G.R. No. 69560. June 30, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the Decision of the Court of Appeals dated October 31, 1984 in AC-G.R. SP No. 02912 entitled "THE INTERNATIONAL CORPORATE BANK, INC. v. Hon. ZOILO AGUINALDO, et al." dismissing petitioner's petition for certiorari against the Regional Trial Court of Makati (Branch 143) for lack of merit, and of its Resolution dated January 7, 1985, denying petitioner's motion for reconsideration of the aforementioned Decision.

Petitioner also prays that upon filing of the petition, a restraining order be issued ex-parte, enjoining respondents or any person acting in their behalf, from enforcing or in any manner implementing the Order of the respondent trial court dated February 13 and March 9, 1984, and January 10 and January 11, 1985.

The facts of this case, as found by the trial court and subsequently adopted by the Court of Appeals, are as follows:

In the early part of 1980, private respondent secured from petitioner's predecessors-in-interest, the then Investment and Underwriting Corp. of the Philippines and Atrium Capital Corp., a loan in the amount of P50,000,000.00. To secure this loan, private respondent mortgaged her real properties in Quiapo, Manila and in San Rafael, Bulacan, which she claimed have a total market value of P110,000,000.00. Of this loan, only the amount of P20,000,000.00 was approved for release. The same amount was applied to pay her other obligations to petitioner, bank charges and fees. Thus, private respondent's claim that she did not receive anything from the approved loan.

On September 11, 1980, private respondent made a money market placement with ATRIUM in the amount of P1,046,253.77 at 17% interest per annum for a period of 32 days or until October 13, 1980, its maturity date. Meanwhile, private respondent allegedly failed to pay her mortgaged indebtedness to the bank so that the latter refused to pay the proceeds of the money market placement on maturity but applied the amount instead to the deficiency in the proceeds of the auction sale of the mortgaged properties. With Atrium being the only bidder, said properties were sold in its favor for only P20,000,000.00. Petitioner claims that after deducting this amount, private respondent is still indebted in the amount of P6.81 million.

On November 17, 1982, private respondent filed a complaint with the trial court against petitioner for annulment of the sheriff's sale of the mortgaged properties, for the release to her of the balance of her loan from petitioner in the amount of P30,000,000.00, and for recovery of P1,062,063.83 representing the proceeds of her money market

investment and for damages. She alleges in her complaint, which was subsequently amended, that the mortgage is not yet due and demandable and accordingly the foreclosure was illegal; that per her loan agreement with petitioner she is entitled to the release to her of the balance of the loan in the amount of P30,000,000.00; that petitioner refused to pay her the proceeds of her money market placement notwithstanding the fact that it has long become due and payable; and that she suffered damages as a consequence of petitioner's illegal acts.

In its answer, petitioner denies private respondent's allegations and asserts among others, that it has the right to apply or set off private respondent's money market claim of P1,062,063.83. Petitioner thus interposes counterclaims for the recovery of P5,763,741.23, representing the balance of its deficiency claim after deducting the proceeds of the money market placement, and for damages.

The trial court subsequently dismissed private respondent's cause of action concerning the annulment of the foreclosure sale, for lack of jurisdiction, but left the other causes of action to be resolved after trial. Private respondent then filed separate complaints in Manila and in Bulacan for annulment of the foreclosure sale of the properties in Manila and in Bulacan, respectively.

On December 15, 1983, private respondent filed a motion to order petitioner to release in her favor the sum of P1,062,063.83, representing the proceeds of the money market placement, at the time when she had already given her direct testimony on the merits of the case and was being cross-examined by counsel. On December 24, 1983, petitioner filed an opposition thereto, claiming that the proceeds of the money market investment had already been applied to partly satisfy its deficiency claim, and that to grant the motion would be to render judgment in her favor without trial and make the proceedings moot and academic. However, at the hearing on February 9, 1984, counsel for petitioner and private respondent jointly manifested that they were submitting for resolution said motion as well as the opposition thereto on the basis of the pleadings and of the evidence which private respondent had already presented.

On February 13, 1984, respondent judge issued an order granting the motion, as follows:

"IN VIEW OF THE FOREGOING, the defendant International Corporate Bank is hereby ordered to deliver to the plaintiff Natividad M. Pajardo the amount of P1,062,063.83 covered by the repurchase agreement with Serial No. AOY-14822 (Exhibit "A"), this amount represented the principal of P1,046,253.77 which the plaintiff held including its interest as of October 13, 1980, conditioned upon the plaintiff filing a bond amount to P1,062,063.83 to answer for all damages which the said defendant bank may suffer in the event that the Court should finally decide that the plaintiff was not entitled to the said amount."

Petitioner filed a motion for reconsideration to the aforesaid order, asserting among other things that said motion is not verified, and therefore a mere scrap of paper. Private respondent however manifested that since she testified in open court and was cross-examined by counsel for petitioner on the motion for release of the proceeds of the money market placement, the defect had already been cured. On March 9, 1984, the respondent judge issued an order denying petitioner's motion for reconsideration. (CA Decision, Rollo, pp. 109-111).

On March 13, 1984, petitioner filed a special civil action for certiorari and prohibition with preliminary injunction with the Court of Appeals, (a) for the setting aside and annulment of the Orders dated February 13, 1984 and March 9, 1984, issued by the respondent trial court, and (b) for an order commanding or directing the respondent trial judge to desist from enforcing and/or implementing and/or executing the aforesaid Orders. The temporary restraining order prayed for was issued by respondent Court of Appeals on March 22, 1984. (Please see CA Decision, Rollo, p. 114, last paragraph).

In a decision rendered on October 31, 1984 (Rollo, pp. 109-114), the Court of Appeals dismissed said petition finding — a) that while the Motion for the release of the proceeds of the money market investment in favor of

private respondent was not verified by her, that defect was cured when she testified under oath to substantiate her allegations therein; (b) that, petitioner cannot validly claim it was denied due process for the reason that it was given ample time to be heard, as it was in fact heard when it filed an Opposition to the motion and a motion for reconsideration; (c) that the circumstances of this case prevent legal compensation from taking place because the question of whether private respondent is indebted to petitioner in the amount of 6.81 million representing the deficiency balance after the foreclosure of the mortgage executed to secure the loan extended to her, is vigorously dispute; (d) that the release of the proceeds of the money market investment for private respondent will not make the causes of action of the case pending before the trial court moot and academic nor will it cause irreparable damage to petitioner, private respondent having filed her bond in the amount of P1,062,063.83 to answer for all damages which the former may suffer in the event that the court should finally decide that private respondent is not entitled to the return of said amount (CA Decision, Rollo, pp. 112-114).

The dispositive portion of the aforementioned Decision reads:

"x x x We hold that the respondent court cannot be successfully charged with grave abuse of discretion amounting to lack of jurisdiction when it issued its Orders of February 13, 1984 and March 9, 1984, based as they are on a correct appreciation of the import of the parties' evidence and the applicable law.

IN VIEW WHEREOF, the petition is dismissed for lack of merit and the temporary restraining order issued by this Court on March 22, 1984 is lifted." (Ibid., p. 114).

Petitioner moved for the reconsideration of the above decision (Annex "S", Rollo, pp. 116-124), but for the reason that the same failed to raise any issue that had not been considered and passed upon by the respondent Court of Appeals, it was denied in a Resolution dated January 7, 1985 (CA Resolution, Rollo, p. 126).

Having been affirmed by the Court of Appeals, the trial court issued a Writ of Execution to implement its Order of February 13, 1984 (Annex "BB", Rollo, p. 188) and by virtue thereof, a levy was made on petitioner's personal property consisting of 20 motor vehicles (Annex "U", Rollo, p. 127).

On January 9, 1985, herein private respondent (then plaintiff) filed in the trial court an ex-parte motion praying that the four branches of the petitioner such as: Baclaran Branch, Paranaque, Metro Manila; Ylaya Branch, Divisoria, Metro Manila; Cubao Branch, Quezon City and Binondo Branch, Sta. Cruz, Manila, be ordered to pay the amount of P250,000.00 each, and the main office of the petitioner bank at Paseo de Roxas, Makati, Metro Manila, be ordered to pay the amount of P62,063.83 in order to answer for the claim of private respondent amounting to P1,062,063.83.

Thereupon, on January 10, 1985, the trial court issued an Order (Annex "V", Rollo, p. 129) granting the above-mentioned prayers.

Acting on the ex-parte motion by the plaintiff (now private respondent), the trial court, on January 11, 1984, ordered the President of defendant International Corporate Bank (now petitioner) and all its employees and officials concerned to deliver to the sheriff the 20 motor vehicles levied by virtue of the Writ of Execution dated December 12, 1984 (Annex "W", Rollo, p. 131).

The petitioner having failed to comply with the above-cited Order, the respondent trial court issued two (2) more Orders: the January 16, 1985 (Annex "CC", Rollo, p. 190) and January 21, 1985 Orders (Annex "DD", Rollo, p. 191), directing several employees mentioned therein to show cause why they should not be cited in contempt.

Hence, this petition for review on certiorari with prayer for a restraining order and for a writ of preliminary injunction.

Three days after this petition was filed, or specifically on January 18, 1985, petitioner filed an urgent motion reiterating its prayer for the issuance of an ex-parte restraining order (Rollo, p. 132).

Simultaneous with the filing of the present petition, petitioner, as defendant, filed with the trial court an ex-parte motion to suspend the implementation of any and all orders and writs issued pursuant to Civil Case No. 884 (Annex "A", Rollo, p. 135).

This Court's resolution dated January 21, 1985, without giving due course to the petition, resolved (a) to require the respondents to comment; (b) to issue, effective immediately and until further orders from this Court, a Temporary Restraining Order enjoining the respondents from enforcing or in any manner implementing the questioned Orders dated February 13, 1984, March 9, 1984, January 10, 1985 and January 11 and 16, 1985, issued in Civil Case No. 834.

The corresponding writ was issued on the same day (Rollo, pp. 139-140).

As required, the Comment of private respondent was filed on January 28, 1985 (Rollo, pp. 141-150).

Thereafter, petitioner moved for leave to file a supplemental petition on the ground that after it had filed this present petition, petitioner discovered that the bond filed with, and approved by, the respondent lower court showed numerous material erasures, alterations and/or additions (Rollo, p. 151), which the issuing insurance company certified as having been done without its authority or consent (Annex "Z", Rollo, p. 178).

The Supplemental Petition was actually filed on February 1, 1985 (Rollo, pp. 154-171). It pointed out the erasures, alterations and/or additions in the bond as follows:

- "a. below 'Civil Case No. 884' after the words, 'Plaintiff's Bond,' the phrase 'For Levying of Attachment' was erased or deleted;
- "b. in lines 2 and 3 after the word 'order,' the phrase 'approving plaintiff's motion dated Dec. 15, 1983,' was inserted or added;
- c. in line 3, the phrases 'Of attachment' and 'ordered that a writ of attachment issue' were erased or deleted;
- d. also in line 3 after the words 'the Court has,' the phrase 'approved the Motion' was likewise inserted or added;
- e. in line 9, the phrase 'and of the levying of said attachment' was also erased or deleted;
- f. in line 13, the word 'attachment' was likewise erased or deleted;
- g. also in line 13 after the deletion of word 'attachment' the phrase release of the P1,062,063.83 to the plaintiff was similarly inserted or added."

Petitioner contended therein that in view of the foregoing facts, the genuineness, due execution and authenticity as well as the validity and enforceability of the bond (Rollo, p. 174) is now placed in issue and consequently, the bond may successfully be repudiated as falsified and, therefore, without any force and effect and the bonding company may thereby insist that it has been released from any liability thereunder.

Also, petitioner pointed as error the respondent trial court's *motu proprio* transferring Civil Case No. 884 to the Manila Branch of the same Court arguing that improper venue, as a ground for, and unless raised in, a Motion to Dismiss, may be waived by the parties and the court may not pre-empt the right of the parties to agree between or among themselves as to the venue of their choice in litigating their justiciable controversy (Supplemental Petition, Rollo, p. 160).

On being required to comment thereon, (Rollo, p. 192) private respondent countered (Rollo, pp. 193-198) that bond forms are ready-prepared forms and the bonding company used the form for "Levying of Attachment" because the company has no ready-prepared form for the kind of bond called for or required in Civil Case 884. Whatever deletions or additions appear on the bond were made by the Afisco Insurance Corporation itself for the purpose of accomplishing what was required or intended.

Nonetheless, on May 7, 1985, private respondent filed "Plaintiff's Bond" in the respondent trial court in the amount of P1,062,063.83 a xerox copy of which was furnished this Court (Rollo, p. 219), and noted in the Court's Resolution dated May 29, 1985 (Rollo, p. 225).

On March 11, 1985, petitioner was required to file a Consolidated Reply (Rollo, p. 199) which was filed on April 10, 1985 (Rollo, p. 201).

Thereafter, a Rejoinder (Rollo, p. 238) was filed by private respondent on September 18, 1985 after Atty. Advincula, counsel for private respondents, was required by this Court to show cause why he should not be disciplinarily dealt with or held in contempt for his failure to comply on time (Rollo, p. 226) and on August 19, 1985 said lawyer was finally admonished (Rollo, p. 229) for his failure to promptly apprise the Court of his alleged non-receipt of copy of petitioner's reply, which alleged non-receipt was vehemently denied by petitioner in its Counter Manifestation (Rollo, p. 230) filed on August 5, 1985.

Finally, on October 7, 1985, this petition was given due course and both parties were required to submit simultaneous memoranda (Rollo, p. 249) but before the same were filed, petitioner moved for leave to file sur-rejoinder (Rollo, p. 250), the sur-rejoinder was filed on October 14, 1985 (Rollo, pp. 252-254).

Petitioner's memorandum was filed on December 28, 1985 (Rollo, pp. 264-292) while that of private respondent was submitted on January 10, 1986 (Rollo, pp. 295-304).

Petitioner again moved for leave to file a Reply Memorandum (Rollo, p. 307) which, despite permission from this Court, was not filed and on August 22, 1986, private respondent prayed for early resolution of the petition (Rollo, p. 311).

In a resolution dated October 13, 1986 (Rollo, p. 314) this case was transferred to the Second Division of this Court, the same being assigned to a member of that Division.

The crucial issue to be resolved in this case is whether or not there can be legal compensation in the case at bar.

Petitioner contends that after foreclosing the mortgage, there is still due from private respondent as deficiency the amount of P6.81 million against which it has the right to apply or set off private respondent's money market claim of P1,062,063.83.

The argument is without merit.

As correctly pointed out by the respondent Court of Appeals—

"Compensation shall take place when two persons, in their own right, are creditors and debtors of each other. (Art. 1278, Civil Code). 'When all the requisites mentioned in Art. 1279 of the Civil Code are present, compensation takes effect by operation of law, even without the consent or knowledge of the debtors.' (Art. 1290, Civil Code). Article 1279 of the Civil Code requires among others, that in order that legal compensation shall take place, 'the two debts be due' and 'they be liquidated and demandable.' Compensation is not proper where the claim of the person asserting the set-off against the other is not clear nor liquidated; compensation cannot extend to unliquidated, disputed claim arising from breach of contract. (*Compañia General de Tabacos vs. French and Unson*, 39 Phil. 34; *Lorenzo & Martinez vs. Herrero*, 17 Phil. 29).

"There can be no doubt that petitioner is indebted to private respondent in the amount of P1,062,063.83 representing the proceeds of her money market investment. This is admitted. But whether private respondent is indebted to petitioner in the amount of P6.81 million representing the deficiency balance after the foreclosure of the mortgage executed to secure the loan extended to her, is vigorously disputed. This circumstance prevents legal compensation from taking Place." (CA Decision, Rollo, pp. 112413).

It must be noted that Civil Case No. 83-19717 is still pending consideration at the RTC Manila, for annulment of Sheriff's sale on extra-judicial foreclosure of private respondent's property from which the alleged deficiency arose. (Annex "AA", Rollo, pp. 181-189). Therefore, the validity of the extrajudicial foreclosure sale and petitioner's claim for deficiency are still in question, so much so that it is evident, that the requirement of Article 1279 that the debts must be liquidated and demandable has not yet been met. For this reason, legal compensation cannot take place under Article 1290 of the Civil Code.

Petitioner now assails the motion of the plaintiff (now private respondent) filed in the trial court for the release of the proceeds of the money market investment, arguing that it is deficient in form, the same being unverified (Petitioner's Memorandum, Rollo, p. 266). On this score, it has been held that "as enjoined by the Rules of Court and the controlling jurisprudence, a liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice." (Maturan v. Araula, 111 SCRA615 [1982]).

Finally, the filing of insufficient or defective bond does not dissolve absolutely and unconditionally the injunction issued. Whatever defect the bond possessed was cured when private respondent filed another bond in the trial court.

PREMISES CONSIDERED, the questioned Decision and Resolution of the respondent Court of Appeals are hereby AFFIRMED.

SO ORDERED.

Yap, C. J., Melencio-Herrera, and Padilla, JJ., concur.

Sarmiento, J., dissents; believes there was a valid set-off. Moreover, the circumstances of the transaction do not show that the private respondent is an honest debtor.

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