

APEX INVESTMENT AND FINANCING CORPORATION AND JOSE S.J. VILLASECA, PETITIONERS, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT, CROWN RADIO CORPORATION (PHILIPPINES), RESPONDENTS.

G.R. No. 69723. October 18, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

Subject of this appeal are a promissory note and a real estate mortgage securing its payment, each appearing on its face to have been executed on behalf of the respondent corporation by its president. The question presented is whether, upon the evidence offered and received concerning the circumstances surrounding their execution, they are binding on said respondent. Both the Trial Court and the Intermediate Appellate Court ruled that they are not, to which rulings the mortgagee takes exception in the petition now before the Court.

On December 6, 1968, Uy Han Kiat, also known as George Uy, then president of respondent Crown Radio Corporation (hereafter "Crown" only) executed in favor of petitioner Apex Investment and Financing Corporation (hereafter "Apex") a promissory note with a face amount of P250,000.00.[1] To secure payment thereof a mortgage of real property owned by Crown registered in its name under Transfer Certificates of Title Nos. 22893, 22894, 28747, 31679 and 31780, all of the land records of the Province of Cavite, was also drawn up.[2] The mortgaged was not however registered with the Register of Deeds until more than eight (8) years later, on May 24, 1977.[3]

Barely three months after executing those documents now questioned, Uy Han Kiat left the country, and for good it would appear.[4] On September 9, 1977, on the ground that Crown had failed to pay the mortgage obligation, then allegedly in the amount, principal and accrued interests, of P717,802.78, Apex caused Lawyer (now its co-petitioner) Jose S.J. Villaseca to issue a "Notice of a Notary's Public Sale" of the mortgaged property, purportedly on extrajudicial foreclosure under Act No. 3135 as amended.[5] A copy of the notice was furnished Crown which later claimed that it was only then that it learned of the existence of said mortgage and of the promissory note it supposedly secured.[6]

Shortly afterwards, on October 6, 1977 to be more precise, Crown filed with the then Court of First Instance of Cavite, Branch V, a complaint[7] against Apex and Atty. Villaseca seeking to have declared null and void the promissory note and mortgage subject of the notice of sale referred to, as well as said notice itself, on the ground that it had never authorized its former president, the aforementioned Uy Han Kiat, to execute on its behalf either promissory note or deed of mortgage. The complaint further averred that the interests imputed to the principal of the promissory note were usurious, sought the issuance of a restraining order and thereafter of a writ of preliminary injunction to prevent Atty. Villaseca from proceeding with the sale, which was scheduled for October 10, 1977, and prayed for attorney's fees and litigation expenses of P200,000.00 in addition to costs of suit.[8]

Forthwith upon the filing of the complaint, the Trial Court issued an order setting hearing of Crown's plea for a

preliminary injunction on October 10, 1977 and restraining defendant Villaseca from proceeding in the meanwhile with the projected auction sale until further orders.[9] Hearing on the proposed injunction was postponed at least twice, and the record does not show whether any was later held. It is clear, however, from the decision on the merits thereafter rendered by the Trial Court, that the temporary restraining order of October 6, 1977 was never lifted.[10]

In the meantime, the defendants (Apex and Atty. Villaseca) filed answer setting up, in the main, the defenses that Uy Han Kiat had executed both promissory note and mortgage in question as president of Crown by virtue of a resolution of said corporation's board of directors expressly authorizing him to mortgage the firm's real properties to secure its loan from defendant Apex, and that the interest charged on the loan, instead of being usurious, was based on the rate agreed upon as well as the stipulated penalties for default.[11]

Upon the issues thereby joined and after trial on the merits, judgment in favor of Crown was rendered by the Trial Court on December 20, 1980, declaring null and void, insofar as said plaintiff was concerned, the questioned promissory note, mortgage and notice of sale, making permanent the earlier restraining order issued against the conduct of the proposed auction sale, and adjudging Crown entitled to the custody and possession of the real property covered by the mortgage as well as to payment by Apex of P100,000.00 in attorney's fees and P50,000.00 as litigation expenses, in addition to the costs.[12]

On appeal by the defendants to the Intermediate Appellate Court,[13] said decision was affirmed in all respects save for the award of attorney's fees, which was reduced to P50,000.00.[14]

In their petition for review of the Appellate Court's Decision, the defendants (now petitioners) assert that said Court erred in: (a) "discarding" (sic) the probative value of secondary evidence of the existence of a relevant document; (b) not finding that the petitioner's action was "deliberately instituted to escape a valid and legitimate obligation;" and (c) awarding the petitioner attorney's fees.[15]

What, essentially, petitioners would have this Court do is review the findings or conclusions of fact made by the Intermediate Appellate Court according to its appreciation of the evidence presented. This the Court is ordinarily precluded from doing by the express mandate of the Rules of Court that only questions of law may be raised in appeals such as this[16] -- a rule that yields only to those exceptions which this Court has from time to time for good reason recognized or accepted.[17] That is not the only consideration that in principle militates against the proposed review. Insofar as the questioned findings of the Intermediate Appellate Court approve and affirm those of the Trial Court, and since the evidence upon which the latter's findings are based is principally testimonial, by logical extension review thereof is also proscribed by the venerable dictum until now consistently adhered to that "**** (this) Court will not interfere with the judgment of the trial court in passing on the credibility of opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence, which has been misinterpreted,"[18] the rationale being that "**** having had the opportunity of observing the demeanor and behavior of the witnesses while testifying, the trial court, more than the reviewing tribunal, is in a better position to properly appreciate the relative weight of the often conflicting evidence for both parties." [19]

The Court, after going over the record, finds nothing to warrant departing from the general rule set by the cited precedents or placing this case within any of the recognized exceptions to said rule. With regard, particularly, to the issue of whether or not the Crown directors' resolution -- which allegedly authorized Uy Han Kiat to borrow money from Apex on behalf of Crown on the security of the aforesaid Crown properties and is the cornerstone of Apex's claim of a valid mortgage in its favor -- was in fact duly executed only later to be lost or destroyed, careful consideration of the Trial Court's lengthy recapitulation and appraisal of the conflicting evidence leaves no doubt of the correctness of its finding that such existence and loss had not been sufficiently proved. Said Court

correctly ruled that the secondary evidence of the allegedly lost resolution, which consisted of the testimony of two employees of Apex, Miguel Ocampo and Emelinda Ora, was both self-serving (or biased) and inconclusive as to the existence and supposed loss of that authorization. Such testimony, therefore, cannot be accepted in lieu of the document itself and by way of exception to the best evidence rule. Not only were said witnesses either ignorant of, or vague in recollection about, such details of the supposed resolution as its date, contents, the identity of the corporate officer who certified to its adoption and the circumstances of its alleged loss;[20] as respondent Crown has also pointed out, at the time they testified Emelinda Ora was still employed by Apex while Miguel Ocampo, though no longer connected with said petitioner, was employed in a sister establishment, the Manila Royal Hotel.[21] No error of appreciation is thus imputable to either the Trial Court or the Intermediate Appellate Court in refusing to accord their testimony the effect of acceptable secondary evidence of the execution and contents of a lost document.

It must, therefore follow, lacking as already pointed out sufficient and acceptable evidence to the contrary, that Uy Han Kiat was not specifically authorized by Crown's board of directors to bind said corporation to the questioned loan and mortgage agreements. A number of other circumstances support this conclusion: (1) it would appear that Apex agreed to, and did, extend the questioned loan on collateral already partly mortgaged to another creditor of Crown, Equitable Banking Corporation,[22] which was unusual; (2) Apex approved and extended the loan apparently without requiring submission of the certificates of title covering three of the properties supposedly offered as security;[23] said titles, presumably, were at the time held by the prior mortgagee, Equitable Banking Corporation; this, too, was unusual; (3) the questioned mortgage in favor of Apex was not registered until more than eight years after its execution;[24] and (4) shortly after signing the questioned loan and mortgage contracts, Crown's president Uy Han Kiat left said corporation and the country for good,[25] an act strongly suggesting that he had fraudulently and unauthorizedly used the property and credit of Crown to obtain funds with which he planned to abscond.

The record not only fails to support the claim of specific authority having been granted Crown's former president (Uy Han Kiat), to bind said corporation to the obligations of the loan and mortgage agreements in question; it is also bare of any indication that corporate practice, custom or policy sanctioned such acts on the part of that officer done in the absence of express authorization. Indeed it is the contrary that appears -- that in past transactions where corporate property was mortgaged to secure Crown's loans, it had been a matter of practice for that corporation to adopt board resolutions authorizing said officer to execute and sign the requisite documents on its behalf.[26]

It results that Crown, not being shown to have priorly authorized the execution of the subject loan and mortgage agreements by its president, either expressly or by the implicit sanction of established practice, custom or policy, can only be held bound to said agreements on the theory of subsequent ratification,[27] which is also advanced by Apex. Briefly, it is said petitioner's submission that by having failed to deny that it has accepted or retained benefits from the questioned transactions throughout the course of trial and until appeal to this Court, Crown is deemed to have ratified the same.[28] But as plaintiff in the original action, Crown was under no obligation to deny acceptance or retention of benefits and thereby anticipate a defense to its complaint. It was incumbent upon Apex to affirmatively allege such fact in its answer in order to put it in issue, and this it never did. Nor does it appear that said petitioner made any reference to alleged ratification during the trial of the case or in the course of the appeal to the Intermediate Appellate Court. It was Crown, in fact, which in its pre-trial brief of March 1, 1979 first alluded to that matter when it denied having ratified the transactions, thus:

"c) The alleged 'Mortgage', Annex 'B' of the Complaint, being an isolated and unauthorized act of the former President of the plaintiff corporation, Uy Han Kiat, is illegal and, therefore is not binding against it (plaintiff corporation), there being no ratification, expressly or impliedly, by the stockholders or directors thereof;"[29]

The question of ratification surfaced again only when this Court, in its Resolution of June 26, 1985, required Crown to answer the question "**** whether the P250,000.00 loan allegedly obtained without authority for Crown Radio Corporation was received by said corporation and subsequently spent/distributed for corporate purposes, ****" and Crown complied, again denying, this time specifically, receipt or disbursement of said amount or any part thereof.[30]

The record contains some indication that Apex made some payment to Equitable Banking Corporation in order to release three (3) of Crown's lots from said Bank's mortgage so that these could be included among the collaterals subject of the mortgage now in question. Invoking the principle against unjust enrichment, Apex would also submit that it should be reimbursed said payment, which redounded to the benefit of Crown by freeing said properties from the lien of the earlier mortgage. The Court is however precluded from making such a disposition, not only by the fact that the petitioner did not clearly and categorically interpose such a claim as a counterclaim in the original action but also because it made no serious effort to have the matter otherwise thoroughly ventilated.

On the question, however, of attorney's fees, the Court sees no clear and indubitable justification for the award thereof, even in the reduced amount of P50,000.00 fixed by the Intermediate Appellate Court.

WHEREFORE, the appealed judgment of the Intermediate Appellate Court is affirmed, with the sole modification that the award of P50,000.00 in attorney's fees to respondent Crown Radio Corporation is stricken therefrom. Costs against the petitioners.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino and Medialdea, JJ., concur.

[1] Exhibit C

[2] Exhibit B

[3] Rollo, p. 39

[4] Rollo, p. 40

[5] Exhibit A

[6] Rollo, p. 48

[7] Docketed as Civil Case No. BCV-77-39

[8] Record on Appeal, pp. 1-9

[9] Record on Appeal, p. 14

[10] At that time B.P. 224 limiting to twenty (20) days the effective life of temporary restraining orders issued pending hearing on notice of applications for preliminary injunction still lay far in the future, being enacted only on April 16, 1982

[11] Record on Appeal, pp. 10-13

[12] Record on Appeal, pp. 91-122

[13] Docketed as AC-G.R. No.CV-001501

[14] Rollo, pp. 29-35

[15] *Id.*, pp. 10-11

[16] Rule 45, sec. 2, cited or invoked in *Baniqued vs. C.A.*, 127 SCRA 596, *Moran, Jr. vs. C.A.* 133 SCRA 88, *Collector vs. IAC*, 137 SCRA 3, and other more recent cases

[17] e.g., (1) when the conclusion is grounded entirely on speculation, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd and impossible; (3) where there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the Appellate Court, in making its findings, went beyond the issues of the case, and the same are contrary to the admissions of both the appellant and the appellee; (6) when the findings of said Court are contrary to those of the trial court; (7) when the findings are without citation of specific evidence on which they are based. (see *Tolentino vs. de Jesus*, 56 SCRA 167; *Carolina Industries, Inc. vs. CMS Stock Brokerage, Inc.*, 97 SCRA 734; *Manero vs. CA*, 102 SCRA 817; *Moran, Jr. vs. CA*, *supra*; and *Sacay vs. Sandiganbayan*, 142 SCRA 593, citing many cases)

[18] *People vs. De Otero*, 51 Phil. 201, 209, citing *U.S. vs. Remigio* (1918), 37 Phil. 599, which in turn cites *U.S. vs. Ambrosio and Falsario* (1910), 17 Phil. 295 and many earlier cases

[19] *People vs. Ablaza*, 30 SCRA 173, 176, citing *People vs. Lumayag*, L-19142 March 31, 1965 and *People vs. Clemente*, 21 SCRA 261; see also *People vs. Galicia*, 123 SCRA 550, *People vs. Palon*, 127 SCRA 529, *Baniqued vs. Court of Appeals*, 127 SCRA 596, and *People vs. Mercado*, 131 SCRA 501

[20] TSN, September 25, 1979 and December 18, 1979

[21] *Id.*, at pp. 2-3, 33 (September 25, 1979) and pp. 3-5, 32 (December 18, 1979); see also private respondent's Comment, Rollo pp. 76-80

[22] TSN, September 25, 1979, pp. 31-35, 37-39

[23] TSN, September 25, 1979, p. 10

[24] *supra*; Rollo, p. 39

[25] *supra*; Rollo, p. 40

[26] Exhibits D-1, E-1, F-1, G-1 and H-1

[27] Arts. 1317 and 1403, Civil Code

[28] Rollo, pp. 240-244

[29] Record on Appeal, pp. 51-52

[30] Rollo, pp. 108, 113-116

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