

**FIRST INTEGRATED BONDING & INSURANCE CO., INC. AND
MARIAN REALTY & DEV. CORP., PETITIONERS, VS. HON. ASAALI
S. ISNANI, IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH CLIII,
REGIONAL...**

G.R. No. 70246. July 31, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

By this petition for certiorari and mandamus with preliminary injunction, the petitioners seek to stem the implementation of a writ of execution issued by the lower court to satisfy a final judgment in favor of the respondent Rizal Commercial Banking Corporation (hereafter "RCBC" or "the Bank") in a collection suit filed by the latter against the petitioner Marian Realty & Development Corporation (hereafter MRDC).

On February 2, 1977, MRDC obtained a P500,000 export financing loan from RCBC evidenced by a promissory note (Exh. A) payable within 148 days from date of execution (which would fall on June 30, 1977) with compound interest at 14% per annum. In case of default, the debtor agreed to pay 6% of the amount due as liquidated damages, and 10% as attorney's fees. Under the "SCHEDULE OF PAYMENTS" on the face of the promissory note was written the following:

"50% partial payment on the principal.

"April 30, 1977 P250,000."

(p. 49, Rollo.)

As security for the repayment of the loan, Luis F. Garcia and Soledad F. Garcia, represented by their attorney-in-fact, Ramiro F. Garcia, executed on January 31, 1977 a real estate mortgage on several parcels of land in favor of the Bank. In addition, the First Integrated Bonding & Insurance Co., Inc. (or FIBIC) executed a surety bond (Exh. C). Furthermore, Marcelino Agana, Jr., Antonio V. Agcaoili and Ramiro F. Garcia executed a comprehensive surety agreement obligating themselves solidarily with MRDC, to pay the loan upon its maturity June 30, 1977 (Exh. D).

On April 30, 1977, MRDC signed a second promissory note for P250,000 payable within 61 days (or on June 30, 1977) with 14% interest per annum (Annex N).

Upon MRDC's default, the Bank filed a complaint for sum of money against it and the sureties, in the Court of First Instance of Rizal (Civil Case No. 30878), alleging that MRDC and its sureties (petitioner herein) failed to pay the promissory notes on their due date despite the Bank's demands; that as of January 30, 1978, their outstanding obligation to the Bank amounted to P559,438.68; that in April 1978, the Bank extrajudicially foreclosed the real estate mortgage; that P223,798 was realized from the foreclosure sale; and that the deficiency in the defendants' obligation amounted to P390,069.18 as of April 11, 1978 (Annex G, Petition).

In their answer (Annex H of Petition), MRDC and FIBIC alleged that the loan was usurious hence null and void; that MRDC had paid 50% of the principal on April 30, 1977 as provided on the face of the promissory note (Annex M); that the real estate mortgage, the surety bond, and the comprehensive surety agreement were all null and void; and that the extrajudicial foreclosure sale was also null and void. They asked for moral and exemplary damages and attorney's fees.

For failure of the defendants to appear at the pre-trial despite due notice, it was, on plaintiff's motion, declared as in default and the Bank was allowed to present its evidence ex parte (p. 44, Rollo).

On August 20, 1979, the Court rendered judgment whose dispositive portion reads as follows:

"WHEREFORE, judgment is hereby rendered ordering defendants to jointly and severally pay plaintiff:

"1) The sum of P477,305.34, with interest thereon at 14% from August 9, 1979, which interest if not paid when due shall be added to and become part of the principal, the sum total to earn interest at 14% per annum until fully paid;

"2) A sum equal to 6% of the amount due as penalty or liquidated damages;

"3) A sum equal to 10% of the amount due as attorney's fees.

"Costs against defendants." (p. 47, Rollo.)

The petitioners filed a motion to set aside the order of default and to reconsider the decision, but their motions were denied. They appealed to the Intermediate Appellate Court (CA-G.R. No. 67158-R). On December 29, 1982, the Appellate Court affirmed the decision of the trial court.

The petitioners filed a petition for review in this Court (G.R. No. 62946, "Marian Realty Development Corporation vs. IAC, et al."). On February 23, 1983, this Court denied the petition for lack of merit. Entry of judgment was made on April 22, 1983 and the records were remanded to the trial court for execution of the judgment.

Upon the Bank's motion in the lower court, a writ of execution was issued on January 22, 1985 (Annex A).

The petitioners filed separate motions to quash the writ, alleging that MRDC had paid 50% of the first promissory note; that the second promissory note does not represent an additional loan for P250,000, but it is a renewal note for the balance of the first note half of which had already been paid, so that thereby the first note was cancelled; that P140,069.18 is the balance of the second promissory note; and that, as the proceeds of the foreclosure sale amounted to P223,798, there was no deficiency, but an excess payment, of P83,728.82 which should be returned to MRDC (Annexes D & E of Petition).

Respondent Judge, now CA Associate Justice Asaali S. Isnani, denied the motions to quash because "the payment sought to be credited has been duly presented, hence, could have been considered and appreciated by the Court at the time of the decision, x x x was rendered" (Annex F, p. 29, Rollo).

In this petition for certiorari and mandamus with preliminary injunction, the petitioners allege that the lower court gravely abused its discretion in disallowing their motion to quash the writ of execution and to be permitted to submit proof of payment of the judgment debt. They rely on the decision of this Court in *Naga Development Corporation vs. Court of Appeals* (41 SCRA 105) where this Court ruled:

"Bearing in mind the nature of the instant suit and considering that the Court of Appeals' concurrence in the trial court's assessment of the amount of P143,282.76 is in the nature of a factual finding, this Court cannot now pass upon its correctness. The two courts below had before them the sales agreement between the parties,

and to what extent the parties complied with their respective prestations thereunder was purely a matter of evidence.

"However, although we cannot pass upon the correctness of the said assessment, it is quite obvious that in the execution of its judgment as affirmed by the Court of Appeals, the trial court cannot compel the Naga to pay more than what it actually owes the Pacific under the terms of their covenant. Deeply imbedded in our legal system are the principles that no man may unjustly enrich himself at the expense of another, and that every person must, in the exercise of his rights, act with justice, give everyone his due, and observe honesty and good faith. Upon these sacred legal postulates, the Naga should, therefore, be allowed, during the execution phase of the judgment, to present proof of payments made by it to the Pacific which constitute proper deductions from the principal amount it owes." (Underscoring ours; 41 SCRA 105, 115-116.)

In its comment on the petition, the Bank pointed out that as the judgment in this case had become final and executory, it may no longer be altered. It adverted to a material factual difference between this case (where the decision of the trial court is already final as it has been affirmed by the Court of Appeals and the Supreme Court) and the Naga case where the decision of the Court of Appeals was still under review by the Supreme Court when the latter ruled that "the Naga Development Corporation should be allowed, during the execution phase of the judgment, to present proof of payments made by it to the Pacific which constitute proper deductions from the principal amount it owes" (p. 11, Rollo).

Significantly, the decision of September 30, 1971 in Naga Development Corporation vs. Court of Appeals, on which total reliance has been placed by the petitioners, does not appear to have been reaffirmed by this Court in subsequent cases. It is Justice Antonio Barredo's dissent (quoted below), that appears to have been firmed up in later decisions of this Court:

"x x x I believe that since Naga has been declared in default, and no grave abuse of discretion having been found by the Court in that respect, the judgment by default must stand and be executed, as is. Whether or not Naga has partially paid was part of the issue before the court before judgement we rendered; Naga through its own fault was not allowed to prove any such partial payment by the trial court; surely, that issue cannot be reopened during the execution because that would tend to vary the terms of judgment. The matters of equity which can be raised in an execution proceeding, cannot to my mind, refer to those which the court could have passed upon before judgment. Otherwise, there will be no end to litigation, since conceivably the proof of partial payments could be so seriously controversial as to need another full blown trial, decision and appeal. It is my view that under the circumstances, Naga can do no more than address itself to the benignity or conscience of the private respondent." (Emphasis supplied; 41 SCRA 105, 119.)

It is significant that although the petitioners claim that they had paid 50% of the debt, they failed to present any proof of such payment other than the two promissory notes themselves (Annexes M and N, pp. 50-51, Rollo), which, in the hands of their creditor, are proofs of indebtedness rather than proofs of payment (Sec. 5-K, Rule 13, Rules of Court). They did not present any receipts proving that they had paid the total sum of P359,930.82 on their P500,000 loan leaving an unpaid balance of only P140,069.18. Although their second promissory note contained a footnote that it was a "Partial-Renewal of PN #0295/77 BDS-ST" (Annex N, p. 51, Rollo), the trial court in its decision found, on the basis of evidence adduced by the Bank:

"x x x that the 50% partial payment under the promissory note was not paid on April 30, 1977 as agreed upon and neither was the balance of P250,000 on the date agreed upon; that on April 30, 1977 defendant MRDC obtained another loan from plaintiff for which the former executed in favor of the latter a promissory note of P250,000 to mature on June 30, 1977 (Exh. E); signed by Marcelino Agana, Jr. (Exh. E-1); that defendant MRDC failed likewise to pay this loan upon maturity; that plaintiff sent demand letters to defendant MRDC which failed to pay notwithstanding said demands, x x x." (Underscoring ours; p. 46, Rollo.)

Respondent Judge, therefore, did not abuse his discretion in denying the petitioners' motions to quash the writ of execution for their only evidence in support of those motions had been "duly presented (by RCBC), hence, could have been considered and appreciated by the Court" (Annex F) that rendered the decision which both the Court of Appeals and this Court affirmed.

Petitioners' argument that the "partial renewal" promissory note dated April 30, 1977 (Annex N) for P250,000 proves that they had paid 50% of the original obligation on April 30, 1977 and that the new promissory note represents only the unpaid balance of the loan, is not well taken. Because the petitioners failed to pay 50% (or P250,000) of the P500,000 loan on April 30, 1977, it became necessary for them to renew that portion of the loan for otherwise, the Bank could foreclose its collaterals. But the P250,000 balance of the original promissory note did not have to be renewed on April 30, 1977 because that balance was not due until June 30, 1977.

WHEREFORE, the petition for certiorari is denied for lack of merit. The temporary restraining order which this Court issued on March 26, 1985, is hereby set aside. Costs against the petitioners.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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