

SPS. SALUSTIANO OCA AND FLORA O. OCA, PETITIONER, VS. COURT OF APPEALS, REPUBLIC PLANTERS BANK (FORMERLY REPUBLIC BANK) AND THE PROVINCIAL SHERIFF OF RIZAL, RESPONDENTS.

G.R. No. 84841. October 30, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari by Spouses Salustiano R. Oca and Flora O. Oca from the decision^[1] dated June 30, 1988 of the Court of Appeals in CA-G.R. CV No. 11445, the dispositive portion of which reads, as follows:

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE and a new one entered authorizing:

(1) The Republic Planters Bank and the Provincial Sheriff of Rizal, or their agents and/or representative to proceed with the sale on foreclosure of the property described in Exhibit F;

(2) The spouses Salustiano R. Oca and Flora O. Oca to jointly and severally pay the appellant's counterclaim in the amount of P7,924,844.32 plus 12% interests [sic] per annum from August 11, 1978 until fully paid but deducting therefrom whatever amount the appellant Bank may realize in the foreclosure sale of the mortgaged property; and

(3) herein spouses-appellees to pay the equivalent of five per centum (5%) of the total amount due as attorney's fees. Costs against appellees.

SO ORDERED.[2]

The instant petition stems from the complaint for damages with preliminary injunction filed by petitioners against private respondent Republic Planters Bank before the Court of First Instance of Pasig, Rizal, Branch XXV.

There is no dispute in the findings of fact made by the Court of Appeals, which We quote as follows:

On January 1963, Salustiano Oca executed a general loan and collateral agreement which constitutes a "continuing agreement, applying to any and all future as well as existing transactions" of plaintiffs-appellees with the defendant-appellant bank pursuant to which "as security for any and all loans, advances, credits, etc." the plaintiffs gave a lien on property of any kind, which may come to the possession or custody of the Bank (Exhibit 1-A, p. 144, Records).

On February 12, 1963, plaintiffs-appellees spouses Oca executed a mortgage in favor of appellant Bank over two (2) parcels of lands covered by T.C.T. 66428 (Manila) and TCT 106214 (Rizal) as security for a loan in the amount of P200,000.00, as principal and "those that the mortgagee may extend to the mortgagors, including interest and expenses or other obligations owing to the mortgagee" as well as "the credit accommodations obtained from the mortgagee by S.R. Oca Logging Industry, Inc." (Exhibit A, pp. 39--45, Records).

On April 27, 1966, a resolution was passed by the Board of Directors of Salustiano R. Oca Logging Industry, Inc. authorizing Salustiano R. Oca to consolidate all credit accommodations extended by the Bank to Salustiano Oca and/or Salustiano R. Oca Logging Industry, Inc. and/or Oca Electric Co., Inc., into one (1) promissory note in favor of the Bank (Exh. 2, p. 115, Original Records).

On May 11, 1966, a promissory note in the sum of P3,017,721.66 was signed by Salustiano Oca in his capacity as President of S.R. Oca Logging Industry, Inc. and in his own behalf, together with his wife Flora O. Oca in her own behalf. Said promissory note is payable on or before May 11, 1967 (Exh. 3, p. 116, Ibid.). The corporation's and the personal undertaking of the spouses Oca's obligation covered by the promissory note was transferred into a time loan designated as time loan No. 043.

Subsequent to the execution of said promissory note, Salustiano R. Oca' Logging Industry, Inc., obtained other credit accommodations, in the form of letters of credit from the Bank as follows:

(1) In 1969, LC-6910108 D in the amount of P50,000.00 as principal, with 12% interest thereon per annum plus trust commission; LC-6910106 D in the amount of P76,655.81 as principal, with interests thereon at the rate of 12% per annum plus trust commission (Exhibit 9-B, p. 124, *ibid.*).

(2) In 1972, another letter of credit was opened in the amount of P66,600.00 with 12% interest per annum plus trust commission (Original Records).

On August 12, 1971, the Bank sent a demand letter for the payment of time loan No. 043 in the sum of P4,830,478.95 as of July 31, 1971 to S.R. Oca Logging Industry, Inc. (Exhibit 8, p. 121, *ibid.*).

July 13, 1977, the Bank sent a demand letter to "Mr. Salustiano R. Oca, President and General Manager of North Mindanao Bay Woods Exports" for the payment of the promissory note dated May 11, 1966 in the amount of 7,889,269.29 computed as of June 8, 1977 (Exhibit 5, p. 118, *ibid.*).

On August 4, 1977, Salustiano R. Oca as President of North Mindanao Bay Woods Exports sent a letter to the bank acknowledging receipt of the Bank's July 13, 1977 letter and at the same time requesting for an extension of 45 days within which its accounts will be settled (Exhibit 6, O, 119, *ibid.*).

In May of 1978, the property located in Manila covered by TCT 103316 was foreclosed and sold at public auction for the sum of P195,000.00 with the Bank as the highest bidder (p. 4, Brief for Plaintiffs-Appellees, p. 53, Rollo; p. 7, Brief for the Defendant-Appellant, p. 48, Rollo, and Exhibit B, p. 46, Original Records).

Subsequent to the above auction sale, the Bank applied for extrajudicial foreclosure of the lot covered by TCT 106211 (Rizal). The Deputy Sheriff of Rizal scheduled the sale for July 28, 1978 at 10:00 A.M. Said foreclosure sale was restrained by the lower court upon commencement of the legal action for damages with preliminary injunction filed by the Oca spouses.[3]

After trial on the merits, the trial court ruled in favor of the petitioners and held that the real estate mortgage was constituted to secure only the personal obligations of the petitioners, and that respondent Bank is barred from foreclosing the real estate mortgage over T.C.T. No. 106211.

Not satisfied with the decision, respondent Bank appealed the decision to the Court of Appeals, alleging, among others, that the trial court erred (1) in holding that its action to foreclose the mortgage is barred by prescription; and (2) in not holding the mortgage as a continuing security for all credit accommodations extended to petitioners and/or S.R. Oca Logging Industry, Inc.

The Court of Appeals found the appeal meritorious and reversed and set aside the decision of the trial court. After their motion for reconsideration was denied, petitioners filed the instant petition, arguing that the Court of Appeals erred (1) in holding that the real estate mortgage is a continuing security not only for loans extended by respondent Bank to them but also to those extended to S.R. Oca Logging Industry, Inc.; (2) in holding that the

additional conditions found on the dorsal portion of the real estate mortgage is binding upon them; (3) in not ruling that the right of respondent Bank to extrajudicially foreclose the mortgage had prescribed; and (4) in reversing the decision of the trial court.

We find the petition unmeritorious.

In support of their first two assigned errors, petitioners argued that the real estate mortgage was executed to secure a loan in the amount of P200,000.00 obtained by the spouses from respondent Bank, as well as other loans the spouses may obtain in their personal capacity.

Petitioners further argue that the additional condition found at the back of the real estate mortgage (also known as the Addendum) does not bind them since these conditions were not embodied in the document proper itself, nor was there any reference made to said conditions in the deed. Moreover, the additional conditions did not have the prior conformity of the petitioners.

We are unimpressed by petitioner's arguments. While it may be true that at the time the mortgage was constituted, it was intended to secure a loan obtained by petitioners in their personal capacities from respondent Bank, subsequent events show that the same was converted into a continuing security for credit accommodations extended by respondent Bank to S.R. Oca Logging Industry, Inc. The most significant of these events was the resolution adopted by the Board of Directors of S.R. Oca Logging Industry, Inc. during its special meeting held on April 27, 1966, which resolution states, to wit:

"RESOLVED, that the President of the corporation [petitioner Salustiano R. Oca], shall have the power and authority to enter into negotiations with the Republic Bank, to borrow and negotiate for loans, to execute promissory notes or any evidences of indebtedness, and in connection therewith, to consolidate all credit accommodations granted in the names of Salustiano R. Oca, and/or S.R. Oca Logging Industry, Inc. and/or Oca Electric Co., Inc. by the said bank into one promissory note in favor of said Republic Bank, the same to be executed in the name of the corporation by its President and Vice President." [4]

Shortly thereafter, on May 11, 1966, petitioners signed a promissory note^[5] wherein they and S.R. Oca Logging Industry, Inc. jointly and severally promised to pay respondent Bank the sum of P3,017,721.66 on or before May 11, 1967.

Thus, it can be seen from the two events that petitioners intended to make their properties as securities for whatever credit accommodations respondent Bank might extend to S.R. Oca Logging Industry, Inc.

Even if this Court were to agree with petitioner's contentions that the real estate mortgage they executed in 1963 was only to answer for their personal obligations to respondent Bank and their assertion that the Addendum found at the dorsal portion of the real estate mortgage did not bind them, the fact remains that petitioners signed the promissory note of May 11, 1966 (also known as Time Loan No. 43) as joint and solidary debtors along with S.R. Oca Logging Industry, Inc. We quote the promissory note in full:

P3,017,721.66 Manila, May 11, 1966

On or before May 11, 1967, for value received, I/we, jointly and severally, promise to pay the REPUBLIC BANK, or order, at its office at 277 Escolta, Manila, Philippines, the sum of THREE MILLION SEVENTEEN THOUSAND SEVEN TWENTY ONE & 66/100 PESOS (P3,017,721.66), Philippine Currency, with interest at the rate of twelve per centum (12%) per annum. Before the date of maturity, I/we hereby bind myself/ourselves to make partial payments, the first payment to be made on June 11, 1966, and the subsequent payments on the 11th day of every month thereafter, and each of all such payments shall be THIRTY THOUSAND PESOS (P30,000.00), or an amount equivalent to Forty per centum (40%) of the proceeds from our exports/local sales, whichever amount is higher, which shall cover amortization on the principal and

interest at the above mentioned rate. All unpaid amortizations shall bear interest at the rate of Twelve per centum (12%) per annum, as liquidated damages.

In is to be understood that we shall pay whatever unpaid balance remains - on the due date of this note.

In case of non-payment of the amount of this note or any portion of it on demand, when due, or any other amount or amounts due on the account of this note, the entire obligation shall become due and demandable and if, for the enforcement of the payment thereof the REPUBLIC BANK is constrained to entrust the case to its attorneys, I/we, jointly and severally, bind myself/ourselves to pay for attorneys fees, as provided for in the mortgage contract, in addition to the legal fees and other incidental expenses.

In the

Presence of:

S.R. OCA LOGGING,
INDUSTRY, INC.

(Unintelligible) (Unintelligible)

by: (sgd.)

SALUSTIANO R. OCA
President

(sgd.)

SALUSTIANO R. OCA
In his own behalf

(sgd.)

FLORA O. OCA
In her own behalf[6]

This gave effect to the portion of the real estate mortgage which states:

That for and in consideration of certain loans, overdrafts and other credit accommodations obtained, from the Mortgagee, and to secure the payment of the same and those that may hereafter obtained, the principals of all of which is hereby fixed at TWO HUNDRED THOUSAND PESOS (P200,000.00), Philippine currency, as well as those that the Mortgagee may extend to the Mortgagor, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary as appears in the accounts, books and records of the Mortgagee x x x.[7]

The question that now remains to be settled is whether the right of respondent Bank to foreclose the mortgage had already prescribed.

Under the terms found therein, Time Loan No. 43 matured on May 12, 1967. The tolling of the prescriptive period within which respondent Bank had to file the foreclosure action began to run on said date, when petitioners failed to fully pay the time loan.

On August 12, 1971, respondent Bank made an extrajudicial demand upon S.R. Oca Logging Industry, Inc. to settle the time loan,[8] a copy of which was furnished petitioner Salustiano R. Oca by registered mail.[9] Two other demand letters were sent by respondent Bank: one dated March 13, 1973 addressed to S.R. Oca Logging Industry, Inc.,[10] and another dated July 13, 1977 addressed to petitioner Salustiano R. Oca as President and General Manager of North Mindanao Bay Woods Exports.[11]

These letters sent by respondent Bank to petitioners and/or S.R. Oca Logging Industry, Inc. effectively stopped the tolling of the prescriptive period. As correctly observed by the Court of Appeals:

It is true that the mortgage actions prescribe after ten (10) years (Article 1142, new Civil Code). However, its running has effectively been interrupted by written demands from the Bank as well as the written acknowledgment issued by Salustiano Oca himself. Article 1155 of the new Civil Code provides:

"Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor. (1973a))."[12]

Thus, the institution of extrajudicial foreclosure proceedings by respondent Bank in 1977 was not yet barred by prescription.

Given Our foregoing discussion of the merits of the case, We hold that the Court of Appeals committed no error in reversing the decision of the trial court.

WHEREFORE, the decision appealed from is hereby affirmed in toto. Costs against petitioners.

SO ORDERED.

Feliciano, Regalado, and Campos, Jr., JJ., concur.

Narvasa, C.J., (Chairman), on official leave.

[1] Justice Segundino G. Chua, ponente; Justices Fidel P. Purisima and Nicolas P. Lapeña, Jr., concurring.

[2] Decision of the Court of Appeals, p. 12, Rollo p. 28.

[3] Decision of the Court of Appeals, pp. 3-4, Rollo, pp. 19-20.

[4] Exhibit "2", Records p. 115. Emphasis supplied.

[5] Exhibit "3", Records p. 115.

[6] Id. Emphasis supplied.

[7] Emphasis supplied.

[8] Exhibit "8", Records, p. 121.

[9] Exhibit "8-b", Records, p. 121.

[10] Exhibit "4", Records, p. 117.

[11] "Exhibit "5", Records, p. 118.

[12] Decision of the Court of Appeals, pp 9-10.

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