

METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS. QUILTS & ALL, INC., RESPONDENT.

G.R. No. 91436. May 24, 1993

Ponente: MELO, J.

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MELO, J.:

The petition for review before us was filed under Rule 45 of the Revised Rules of Court and seeks to set aside the decision of the Court of Appeals in CA-G.R. SP No. 18666 (Annex "L", pp. 98-104, Rollo) dated November 27, 1989, which disposed:

WHEREFORE, judgment is hereby rendered giving due course to the petition and declaring that the Honorable respondent court is without jurisdiction to pass upon the issue against defendants Senen B. Dizon and Relita P. de los Santos anent the authority of Senen B. Dizon to enter into the mortgage contract as this falls within the original and exclusive jurisdiction of the Securities and Exchange Commission, and ordering the suspension of further proceedings in Civil Case No. 5570 until said issue shall have been resolved by the Securities and Exchange Commission. Without pronouncement as to costs. (p. 103, Rollo)

On April 7, 1987, Relita P. de los Santos (de los Santos) then Corporate Secretary issued a Secretary's Certificate (Annex "A", p. 31, Rollo) which certified that in a special meeting of the Board of Directors of Quilts and All, Inc. (Quilts) its President, Mr. Senen B. Dizon (Dizon) was authorized and empowered to mortgage in favor of Metrobank, a property belonging to Quilts.

On the basis of this Secretary's Certificate, Metrobank restructured Dizon's existing personal loan in the amount of P700,000.00 (Comment, p. 121, Rollo), secured by his house and lot at Angeles City and the property owned by Quilts covered by Transfer Certificate of Title No. 74172 (Annex "B", p. 32, Rollo). Aside from the mortgage lien, the Secretary's Certificate was likewise annotated on TCT No. 74172 on April 10, 1977.

On July 7, 1988, more than a year later, Metrobank received a letter from Atty. Cesar Villanueva, Quilt's counsel (Annex "D", p. 35, Rollo) offering the amount of P200,000.00 for the cancellation of the mortgage on the property owned by Quilts because, allegedly, "Mr. & Mrs. Senen Dizon had left the Philippines, leaving several creditors." Metrobank refused the offer since the amount offered did not approximate the appraised value of the mortgage property. (Petition, p.10, Rollo)

On October 4, 1988, Atty. Ranel L. Trinidad, Quilt's new counsel wrote Metrobank. (Annex "C", p. 33, Rollo), reiterating the mortgage cancellation. In addition, counsel claimed that the alleged April 7, 1987 special meeting could not have taken place for lack of the requisite number of directors present to constitute a quorum since the Chairman and 2 other members of the Board of Directors were abroad on that date.

On October 20, 1988, Quilts filed a complaint against Metrobank, Dizon and de los Santos for annulment and cancellation of mortgage (CC 5570, RTC Br. 58, Angeles City) (Annex "E", p. 37, Rollo). On December 12, 1988, Metrobank moved to dismiss the complaint based on 1) lack of jurisdiction and 2) failure to state a cause of action. Judge Reynaldo B. Daway, granted the motion on February 9, 1989. (Annex "G", p. 51, Rollo).

However, on August 4, 1989, upon Quilt's motion, Judge Daway issued an Order (Annex "J", p. 73, Rollo) reconsidering and setting aside the dismissal order because the grounds relied upon by Metrobank "did not appear to be indubitable", and deferred the determination of the motion until the trial.

Metrobank filed an original petition for certiorari, prohibition or mandamus, contesting the reinstatement of the complaint and in the process reiterating as grounds lack of jurisdiction on the part of the trial court and failure of Quilt's complaint to state a cause of action. The Court of Appeals upheld the jurisdiction of the lower Court only with respect to Metrobank. It dismissed the case against Dizon and de los Santos, since the issue of whether or not these two persons had committed ultra vires acts is an intra-corporate matter which falls within the original and exclusive jurisdiction of the Securities and Exchange Commission (SEC) pursuant to Section 5 of Presidential Decree 902-A, as amended. Pending the outcome of the case that would be filed in the SEC, however, the Court of Appeals directed the suspension of the proceedings against Metrobank. The appellate court also stated that paragraph 10 of Quilt's complaint was sufficient basis for Quilt's case against Metrobank.

Hence, the instant petition in which the central and key issue is whether or not Quilt's complaint sufficiently states a cause of action against Metrobank.

Pertinent allegations of Quilt's complaint are quoted below:

4. That sometime on 7 April 1987, defendant Relita P. Delos Santos issued and signed a secretary's certificate certifying that she was the incumbent corporate secretary of plaintiff corporation and that a special meeting of the Board of Directors thereof was held on the same date at its principal office and that a resolution was passed and approved authorizing and empowering Senen B. Dizon, the then president of plaintiff corporation as the latter's attorney-in-fact, to mortgage in favor of defendant Metropolitan Bank & Trust Company-Dau Branch the plaintiff corporation's real property located at the Riverside Subd., Angeles City, covered by Transfer Certificate of Title No. 74172, Registry of Deeds of Angeles City, containing an area of 823 square meters, as security for the loan of SEVEN HUNDRED THOUSAND (P700,000.00) Philippine Pesos obtained by Mr. Senen B. Dizon in his personal capacity from the said bank, with full power and authority for Mr. Senen B. Dizon to sign, execute, acknowledge and deliver, for and in behalf of the plaintiff corporation relating to the said loan. A machine copy of the said secretary's certificate is hereto attached as Annex "B" hereof;

5. That verifications made later by the stockholders and some members of the Board of Directors of the plaintiff corporation with the Registry of Deeds of Angeles City revealed that the parcel of land owned by the plaintiff corporation covered by TCT No. 74172 was mortgaged in favor of the defendant Metropolitan Bank & Trust Company to guaranty the personal obligation of defendant Senen B. Dizon in the principal amount of P700,000.00 (see Annex "A-2" hereof);

6. That on 7 April 1987, plaintiff corporation had for its Board of Directors five (5) members namely: Romeo V. Rosas, Arcadio R. Sarmiento, Jr., Romeo N. Pangilinan, Senen B. Dizon, and Relita P. Delos Santos, and for a quorum to be had, for purposes of holding a valid meeting of the Board of Directors, at least three (3) members thereof should be present thereat;

7. That on 7 April 1987, Mr. Romeo V. Rosas was in the United States of America while Mr. Arcadio R. Sarmiento, Jr. was then in New Zealand. Mr. Romeo N. Pangilinan, although in the country on the said date, was never informed and never attended a meeting of the plaintiff corporation's Board of Directors. With the absence of three (3) of plaintiff corporation's five (5) member Board of Directors, no valid meeting could have been held;

8. That a perusal of the Amended Articles of Incorporation of the plaintiff corporation, particularly under the primary and secondary purposes for which it was created, will reveal that the corporation can not hypothecate any of its properties to secure the personal obligations of any of its shareholders, directors or officers. A machine copy of the plaintiff corporation's Amended Articles of Incorporation is hereto attached as Annexes

"C" to "C-8" for pages 1 to 9, respectively, hereof;

9. That a letter demanding for the immediate cancellation of the real estate mortgage constituted upon TCT No. 74172 in favor of defendant Metropolitan Bank & Trust Company have been sent to the latter through its Dau Branch Manager and Legal Department but the said bank failed and refused to comply with the valid demand of the plaintiff corporation. A copy of the said letter is hereto attached as Annexes "D" and "D-1" for pages 1 and 2, respectively, hereof;

10. That plaintiff corporation suffered and continue to suffer actual damages as a result of the illegal acts of defendants for which the former should be compensated in an amount to be proved during the trial of the instant cases. (pp. 38-40 Rollo)

An examination of the complaint shows that the allegations therein pertain mostly to the alleged ultra vires acts of Dizon and de los Santos. Paragraph 10 of the complaint, upon which both the trial court and the Court of Appeals premised a case against Metrobank, merely expresses legal conclusions, and is not an averment or allegation of ultimate facts. In the case of *Alzua and Armalot vs. Johnson*, (21 Phil. 308 [1912]), we stated:

. . . neither legal conclusions, nor conclusions or inferences of facts from facts not stated, nor incorrect inferences or conclusions from facts stated, being admitted by a demurrer to a complaint, conclusions of this nature in no wise aid the pleading. The ultimate facts upon which such conclusions rest must be alleged, though merely probative or evidential facts may be and should be omitted. (at p. 381.)

We agree with Metrobank that the complaint does not contain allegations that Metrobank had prior knowledge of, or could have known with the exercise of due diligence, that the recitals in the Secretary's Certificate were false. The complaint does not even allege specific overt acts which show that Metrobank acted in conspiracy with its co-defendants to defraud Quilts. In the case of *Bacolod-Murcia Milling Co., Inc. vs. First Farmers Milling Co., Inc.* [103 SCRA 436 (1981)] we stated:

. . . Granting, for the sake of argument, that, indeed, assistance in the 'illegal' act was rendered, the same, however, is not supported by well-pleaded averments of facts. Nowhere is it alleged that defendants-appellees had notice, information or knowledge of any flaw, much less any illegality, in their co-defendants' actuations, assuming that there was such a flaw or illegality. This absence is fatal and buoys up instead the PNB-NIDC's position of lack of cause of action... (at pp. 441-442.)

Although it is averred that the defendants' acts were done in bad faith, the Complaint does not contain any averment of facts showing that the acts were done in the manner alleged. Such a bare statement neither establishes any right or cause of action on the part of the plaintiff-appellant. It is a mere conclusion of law not sustained by declarations of facts, much less admitted by defendants-appellees. It does not, therefore, aid in any wise the complaint in setting forth a cause of action ... (pp. 441-442.)

On the other hand, Metrobank cannot be faulted for relying on the Secretary's Certificate. It did so in good faith, unaware of any flaw and on the presumption that the ordinary course of business had been followed (Sec. 5-q, Rule 131, Revised Rules of Court) and that the Corporate Secretary had regularly performed her duties.

WHEREFORE, premises considered, the herein petition is GRANTED. The Resolution of the Court of Appeals in CA-G.R. SP No. 18666, dated November 27, 1989 is MODIFIED in that the Civil Case No. 5570 against Metrobank is hereby DISMISSED.

No special pronouncement is made as to costs.

SO ORDERED.

Feliciano, (Chairman), J., joins Davide, Jr., J., in his dissenting opinion.

Bidin and Romero, JJ., concur.

Davide, Jr. J., please see separate opinion.

Metrobank vs Quilts & All : 91436 : May 24, 1993 : J. Davide Jr : Third Division : Separate Opinion 6 pt 6 pt 0 3

SEPARATE OPINION**DAVIDE, JR., J.:**

I vote to DENY the petition. No reversible error was committed by the Court of Appeals in denying the petitioner's plea to set aside the order of Branch 58 of the Regional Trial Court at Angeles City denying the petitioner's motion to dismiss, on the ground of lack of a cause of action, in Civil Case No. 5570. I respectfully submit that paragraphs 4 to 10, inclusive, of the complaint in the said case, which are reproduced at pages 4 to 6 of the ponencia, adequately state a valid cause of action against the petitioner. It is clear therefrom that the petitioner acted with undue haste in accepting the real estate mortgage of the private respondent's property to secure a personal loan of the latter's President solely on the basis of an alleged certification of the Corporate Secretary to the effect that at a special meeting of the Board of Directors of the private respondent, its President was authorized and empowered to mortgage in favor of the petitioner a property belonging to the corporation. There is no showing that a copy of the Board Resolution is attached to the certification. It is likewise obvious that no special power of attorney was subsequently executed after the President was allegedly authorized to mortgage the private respondent's property to secure the personal loan of the President. A special power of attorney is necessary to create or convey real rights over immovable property; furthermore, the special power of attorney must appear in a public document (paragraph 12, Article 1878, in relation to paragraph 1, Article 1358, Civil Code). In the absence of such a public instrument, a person dealing with an agent would not know the limits or extent of the latter's authority. "It is Horn-Book law that a person dealing with an agent is put upon inquiry as to the power and authority of the agent" (Deen vs. Pacific Commercial Co., 42 Phil. 738, 747 [1922]). In the absence of a special power of attorney in favor of the President of the private respondent, no valid mortgage could have been executed in favor of the petitioner.

Thus, on the face of the allegations in the complaint, the truth of which is hypothetically admitted for purposes of the motion to dismiss, a viable cause of action exists in favor of the private respondent; at the least, the ground for such a motion does not appear to be indubitable. The trial court did not then commit any grave abuse of discretion in denying the petitioner's motion to dismiss.

For lack of merit, the instant petition should be denied.

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