

PROVIDENT SAVINGS BANK, PETITIONER, VS. COURT OF APPEALS, FORMER SPECIAL EIGHTH DIVISION AND WILSON CHUA, RESPONDENTS.

G.R. No. 97218. May 17, 1993

Ponente: MELO, J.

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MELO, J.:

The error, if error it be, of respondent Court of Appeals which petitioner seeks to rectify via the petition for certiorari before us refers to respondent court's major conclusion arrived at in CA-G.R. CV No. 21312 (Javellana (P), Kalalo, Dayrit, JJ) barring petitioner from foreclosing the subject realty on account of prescription. Petitioner begs to differ, insisting that the period during which it was placed under receivership by the Central Bank is akin to a *caso fortuito* and should not thus be reckoned against it.

Both petitioner and private respondent accepted the synthesized factual backdrop formulated by respondent court, to wit:

This is an appeal by both plaintiff and defendant from the decision of the Regional Trial Court of the National Capital Judicial Region, Branch CLXIX, Malabon, dated 29 September 1988, in Civil Case No. 977-NW, which directed plaintiff-appellant to pay defendant-appellant the personal obligation of the spouses Guarin to defendant-appellant in the amount of P62,500.00, together with the interest, penalties, and bank charges due thereon, and ordering defendant-appellant thereafter to: (1) release the real estate mortgage executed by the spouses Lorenzo K. Guarin and Liwayway J. Guarin in favor of defendant bank on 16 February 1967; (2) return or surrender to plaintiff-appellant, as successor-in-interest of the spouses Guarin, the latter's Owner's Duplicate of Title No. 177014; (3) pay plaintiff-appellant P20,000.00 as and for attorney's fees; and, (4) pay the costs of suit.

The established facts are:

On 16 February 1967, the spouses Lorenzo K. Guarin and Liwayway J. Guarin (Guarins) obtained a loan from defendant-appellant in the amount of P62,500.00, payable on or before 20 June 1967. As security for the loan, they executed a real estate mortgage in favor of defendant-appellant over a parcel of land covered by TCT No. 177014. (Exhs. C and D)

In September, 1972, defendant-appellant was placed under receivership by the Central Bank of the Philippines until 27 July 1981 when the receivership was set aside by the Honorable Supreme Court.

On 11 December 1984, Lorenzo K. Guarin, in reply to the letter of latter's counsel informing that the mortgaged property would be sold at public auction on 27 December 1984, assured he and his wife had every intention of paying their obligation and requesting for a recomputation of their account and a postponement of the foreclosure sale. (Exh. 1)

On 10 February 1986, the Guarins received a Statement of Account from defendant-appellant showing two outstanding accounts as of 15 February 1986. One was the account of Lorenzo K. Guarin in the amount of

P591,088.80, and the other was the account of L.K. Guarin Manufacturing Co., Inc. in the amount of P6,287,380.27. (Attachment to Exh. 2)

On 26 February 1986, Lorenzo K. Guarin wrote defendant-appellant stating that he was ready and willing to pay his obligation in the total amount of P591,088.80 as recomputed by defendant-appellant whenever defendant-appellant was ready to receive the payment and inquiring as to when his mortgaged title would be available for him to pick up. (Exh. 2)

Defendant-appellant replied on 27 February 1986 that Lorenzo K. Guarin may make payment at its office in Makati, Metro Manila, but that the mortgaged title could not be released to him even after the payment of the obligation of P591,088.80 as it also served as security for the indebtedness of L.K. Guarin Manufacturing Co., Inc., to defendant-appellant which was undertaken by Lorenzo K. Guarin in his personal capacity and as president of the corporation. (Exh. 3)

On 20 May 1986, plaintiff-appellant wrote defendant-appellant saying that the mortgaged property of the Guarins had been offered to him as payment of the judgment he obtained against the Guarins in Civil Case No. Q-47465 entitled, "Wilson Chua vs. Lorenzo K. Guarin", and requesting for defendant-appellant's conformity to the assignment and expressing his willingness to pay for the obligation of Mr. Guarin so that the title could be released by defendant-appellant. (Exh. 4)

On 10 July 1986, the Guarins and plaintiff-appellant executed a Deed of Absolute Sale With Assumption of Mortgage whereby the Guarins sold the mortgaged property to plaintiff-appellant for the sum of P250,000.00 and plaintiff-appellant undertook to assume the mortgage obligation of the Guarins with defendant-appellant which as of 15 February 1985 amounted to P591,088.80. (Exh. B)

On 5 August 1986, plaintiff-appellant informed defendant-appellant that as a result of the judgment in Civil Case No. Q-47645, the mortgaged property had been sold to him by the Guarins, as evidenced by the Deed of Sale enclosed for the guidance and information of defendant-appellant. He requested that he be allowed to pay the loan secured by the mortgage, otherwise, he would be constrained to bring the matter to court. (Exh. 5) In reply, defendant-appellant, on 11 August 1986, informed plaintiff-appellant that his request could be granted if he would settle the obligation of L.K. Guarin Manufacturing Co., Inc., as well and enclosing with the reply a copy of defendant-appellant's letter to Mr. Guarin dated 27 February 1986. (Exh. 6)

On 3 August 1987, counsel for plaintiff-appellant addressed a letter to defendant-appellant informing that plaintiff-appellant had purchased the mortgaged property from the Guarins and requesting that the owner's copy of TCT No. 177014 in the possession of defendant-appellant be released to him so that he can register the sale and have the title to the property transferred in his name. He, likewise, informed defendant-appellant that it had lost whatever right of action had against the Guarins because of prescription. (Exh. E) Defendant-appellant replied on 10 August 1987 stating the reasons why they could not comply with plaintiff-appellant's demands. (Exh. F)

On 21 August 1986, plaintiff-appellant filed a complaint against defendant-appellant to compel the latter to: (1) release the real estate mortgage executed by the Guarins in favor of defendant-appellant on 16 February 1967; (2) return or surrender to plaintiff-appellant, as successor-in-interest of the Guarins, the latter's owner's duplicate of TCT No. 177014; and, (3) pay plaintiff-appellant P2,750,000.00 as actual and/or consequential damages, moral damages as may be proved during the trial, exemplary damages as may be reasonably assessed by the court, and attorney's fees of P50,000.00. Defendant-appellant answered the complaint traversing the material allegations thereof and setting up special and affirmative defenses. After trial, judgment was rendered as stated in the opening paragraph hereof from which both parties appealed... (pp. 35-37, Rollo.)

Concerning the challenge posed by Provident Saving Bank against the personality of Wilson Chua to initiate the action to compel the release of the real estate mortgage and the delivery of the owner's duplicate copy of the certificate of title, respondent court noted that Wilson Chua can be considered a real-party-in-interest because he

is the successor-in-interest of the Guarins who is naturally entitled to the realty as against the so-called right of Provident Savings Bank, as mortgagee, to foreclose the mortgage which had become stale through sheer lapse of time. The matter of novation in the form of substitution of debtor without the corresponding acquiescence of the mortgagee was viewed by respondent court to be legally inconsequential due to the demeanor of the mortgagee-bank in requiring Wilson Chua to pay the indebtedness of Lorenzo Guarin, posterior to the change of obligors, which act was construed as equivalent to consent.

To the question of whether petitioner can still fore-close the subject realty, respondent court gave a negative response on account of the absence of proof to indicate that the bank was precluded from collecting indebtedness while it was under receivership from September, 1972 until July 20, 1981. Thus, there was no legal interruption of the prescriptive period to speak of, said respondent court, which intervened between June 20, 1967, the date the mortgage matured, and June 20, 1977 the last day within which petitioner could have foreclosed the mortgage.

Respondent court did not also heed the suggestion of the petitioner bank to interpret Wilson Chua's assumption of the mortgage on July 10, 1986 as tantamount to an explicit acknowledgment that the obligation was outstanding and had not yet prescribed.

As a result of these observations, respondent court reversed the decision of the trial court insofar as it ordered Wilson Chua to pay the sum of P591,088.80 to the bank and affirmed the other dispositions made by the court of origin (p. 42, Rollo).

Following the unfavorable judgment, the bank filed a motion for reconsideration and a motion for new trial premised on newly discovered evidence relative to a statement of account unearthed by the bank's liaison officer from the loose folders on October 18, 1990 which it believed to be of legal significance to the case. But respondent court was unperturbed, observing that the vital piece of document could have been located in the course of trial had the slightest degree of prudence been exercised, considering that the statement of account sprouted the same day the liaison officer was advised to take an inventory of the records (p. 45, Rollo).

Hence, the petition at bar.

Consistent with its theory premised on *fuerza mayor*, petitioner insists that it can not be blamed for not lifting a finger, so to speak, during the period when it was enjoined by the Central Bank on September 15, 1972 from transacting business until this Court affirmed on July 27, 1981 the decision of the Court of Appeals annulling the proscription against petitioner in *Central Bank vs. Court of Appeals* (106 SCRA 143 [1981]). We are not unaware of the rule laid down in *Teal Motor Co. vs. Court of First Instance of Manila* (51 Phil. 549 [1928]; *Martin, Commentaries and Jurisprudence on the Philippine Commercial Laws*, 1986 Revised ed., p. 125) that the appointment of a receiver does not dissolve the corporation nor does it interfere with the exercise of its corporate rights. But this principle is, of course, applicable to a situation where there is no restraint imposed on the corporation, unlike in the case at bar where petitioner Provident Savings Bank was specifically forbidden and immobilized from doing business in the Philippines on September 15, 1972 through Monetary Board Resolution No. 1766 until 1981 when the decision in *Central Bank vs. Court of Appeals* (*supra*, at p. 150) was rendered. The question which immediately crops up is whether a foreclosure proceeding falls within the purview of the phrase "doing business". In *Mentholatum Co., Inc., et al. vs. Mangaliman, et al.* (72 Phil. 524 [1941]; *Moreno, Philippine Law Dictionary*, Second ed., 1972, p. 186), the term was construed by Justice Laurel to refer to:

... a continuity of commercial dealings and arrangements, and contemplates to that extent, the performance of acts or words or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. (p. 528; underscoring ours.)

Withal, we believe that a foreclosure is deemed embraced by the phrase "doing business" as a preparatory measure to acquiring or holding property for petitioner as a savings bank under Section 34 of the General Banking Act. Like any other banking institution, petitioner is vested with the usual attributes and powers of a corporation under Section 36 of the Corporation Code (Vitug, *Pandect of Commercial Law and Jurisprudence*, 1990 ed., p. 475). The prerogative of a bank to foreclose is implicit from and is even necessary to enforce collection of secured debts under Sections 36(11) and 45 of the Corporation Code, in conjunction with Section 29 of the General Banking Act (6 Fletcher, 206; 3 Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, 1990 ed., p. 325).

When a bank is prohibited from continuing to do business by the Central Bank and a receiver is appointed for such bank, that bank would not be able to do new business, i.e., to grant new loans or to accept new deposits. However, the receiver of the bank is in fact obliged to collect debts owing to the bank, which debts form part of the assets of the bank. The receiver must assemble the assets and pay the obligation of the bank under receivership, and take steps to prevent dissipation of such assets. Accordingly, the receiver of the bank is obliged to collect pre-existing debts due to the bank, and in connection therewith, to foreclose mortgages securing such debts. This is not to ignore *The Philippine Trust Co. vs. HSBC* (67 Phil. 204 [1939]), for in that case, the Court simply rejected the objections of certain creditors to the report of a receiver, that is, objections that the receiver did not report the collections made before the beginning of his receivership. It would follow that the bank is bound by the acts, or failure to act, of the receiver. At the same time, the receiver is liable to the bank for culpable or negligent failure to collect the assets of such bank and to safeguard said assets.

Having arrived at the conclusion that a foreclosure is part of a bank's business activity which could not have been pursued by the receiver then because of the circumstances discussed in the Central Bank case, we are thus convinced that the prescriptive period was legally interrupted by *fuerza mayor* in 1972 on account of the prohibition imposed by the Monetary Board against petitioner from transacting business, until the directive of the Board was nullified in 1981. Indeed, the period during which the obligee was pre-vented by a *caso fortuito* from enforcing his right is not reckoned against him (Article 1154, New Civil Code). When prescription is interrupted, all the benefits acquired so far from the possession cease and when prescription starts anew, it will be entirely a new one. This concept should not be equated with suspension where the past period is included in the computation being added to the period after prescription is resumed (4 Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, 1991 ed., pp. 18-19). Consequently, when the closure of petitioner was set aside in 1981, the period of ten years within which to foreclose under Article 1142 of the New Civil Code began to run again and, therefore, the action filed on August 21, 1986 to compel petitioner to release the mortgage carried with it the mistaken notion that petitioner's own suit for foreclosure had prescribed. What exacerbates the situation is the letter of private respondent requesting petitioner on August 6, 1986 that private respondent be allowed to pay the loan secured by the mortgage as a result of the Deed of Sale executed by the Guarins in his favor on July 10, 1986 (pp. 36-37, Rollo). In point of law, this written communication is synonymous to an express acknowledgment of the obligation and had the effect of interrupting the period of prescription for the second time (Article 1155, New Civil Code; *Osmeña vs. Rama*, 14 Phil. 99 [1909]; 4 Tolentino, *supra* at p. 50). And this piece of document necessarily estops private respondent from setting up prescription vis-a-vis his unfounded supposition that acknowledgment of the debt is of no moment because the right of petitioner to foreclose had long prescribed in 1977 (p. 13, Petition; p. 7, Comment; pp. 19 and 58, Rollo).

Contrary to respondent court's perception of the existence of novation, the evidence at hand does not buttress a finding along this line from the mere fact that petitioner supposedly did not question the substitution when the bank reacted to private respondent's offer to pay the loan (p. 39, Rollo). What seems to have escaped respondent court's attention was the condition imposed by petitioner that it will grant private respondent's request if the latter

will also shoulder the obligation incurred by Lorenzo Guarin in his capacity as president of the corporation (p. 37, Rollo). The consent of petitioner to the substitution, as creditor, was thus erroneously appreciated.

With the conclusions reached, we need not discuss the other issues raised in the petition.

WHEREFORE, the petition is hereby GRANTED. The decision dated August 31, 1990, including the resolution dated February 6, 1991 of respondent court are hereby set aside and another one entered dismissing Wilson Chua's complaint. No special pronouncement is made as to costs.

Bidin, Davide, Jr., and Romero, JJ., concur.

Feliciano, J., (Chairman), in the result.

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