

GATEWAY ELECTRONICS CORPORATION, PETITIONER, VS. LAND BANK OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. 155217 and 156393. July 30, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before the Court are consolidated petitions (1) for review of the decision of the Court of Appeals in CA-G.R. SP No. 62658,[1] which set aside the Order dated October 18, 2000 of the Regional Trial Court of Makati City, Branch 133, in Civil Case No. 98-782;[2] and (2) to cite Landbank President Margarito Teves, and Landbank's counsel, in contempt of Court.

The undisputed facts are as follows: In 1995, petitioner Gateway Electronics Corporation applied for a loan in the amount of one billion pesos with respondent Landbank to finance the construction and acquisition of machineries and equipment for a semi-conductor plant at Gateway Business Park in Javalera, General Trias, Cavite. However, Landbank was only able to extend petitioner a loan in the amount of six hundred million pesos (P600,000,000.00). Hence, it offered to assist petitioner in securing additional funding through its investment banking services, which offer petitioner accepted. Thereafter, Landbank released to petitioner the initial amount of P250,000,000.00, with the balance of P350,000,000.00 to be released in June 1996. As security for the said loans, petitioner mortgaged in favor of Landbank two parcels of land[3] located in Barangay Jalavera, General Trias, Cavite, the movable properties as well as the machineries to be installed therein.[4]

After petitioner's acceptance of Landbank's financial banking services, the latter prepared an Information Memorandum which it disseminated to various banks to attract them into providing additional funding for petitioner. The Information Memorandum stated that the security for the proposed loan syndication will be the "Mortgage Trust Indenture (MTI) on the project assets including land, building and equipment." [5] In a letter dated July 30, 1996, Landbank informed petitioner of its willingness to share the loan collateral which the latter constituted in its favor as part of the collateral for the syndicated loan from the other banks.[6] On August 20, 1996, Landbank confirmed its undertaking to share the said collateral with the other creditor banks, to wit:

In case of failure of syndication of the loan, allow the banks that have granted loans to GEC [Gateway Electronics Corporation] in anticipation of the loan syndication to have a registered *pari passu* mortgage with you over the property, the intention being that all banks, including Landbank, shall be on equal footing where the aforesaid collateral is concerned.[7]

Consequently, Philippine Commercial International Bank (PCIB), Union Bank of the Philippines, (UBP), Rizal Commercial Banking Corporation-Trust Investment Division (RCBC), and Asia Trust Bank (Asia Trust) joined the loan syndication and released various loans to petitioner. On October 10, 1996, a Memorandum of Understanding (MOU)[8] was executed by Landbank, PCIB, UBP, RCBC, Asiastrust and the petitioner, with RCBC as the trustee of the loan syndication. Under the Memorandum of Understanding, the said signatories agreed to -

enter into a Mortgage Trust Indenture (herein, the "MTI"), under which GEC will constitute a mortgage over the land, building, other land improvements, machinery and equipment of GEC located within Gateway Business Park, Crisanto de Los Reyes Avenue, Javalera, General Trias, Cavite as well as the assets to be acquired by GEC under the Project (as hereinafter defined) in favor of RCBC-TID as trustee, for the benefit of the Creditors (as defined in the MTI), to secure the payment by GEC of its loan obligations.[9]

Meanwhile, the negotiations for the execution of an MTI failed because Landbank and the petitioner were unable to agree on the valuation of the equipment and machineries to be acquired by the latter. The petitioner insisted on a 70% valuation, while the former wanted a 50% valuation. To break the impasse, PCIB, RCBC, UBP, and Asiatrust proposed, subject to the approval of their respective Executive Committees or Board of Directors, to execute a Joint Real Estate Mortgage (JREM)[10] as the "new mode to secure [their] respective loan vis-à-vis [petitioner's] collaterals." [11] Under the proposed JREM, the six hundred million peso-loan granted by Land Bank shall be secured up to 94.42%, while the loans granted by PCIB, RCBC, and UBP would be similarly secured up to 75.22%.[12] Land Bank, however, refused to agree to the said proposal unless 100% of its loan exposure is secured, pursuant to the Loan Agreement it executed with petitioner.[13]

On February 27, 1998, Land Bank informed petitioner of its intention not to share collaterals with the other banks. In the meantime, petitioner's loan with PCIB became due because of its failure to comply with the collateral requirement under the MTI or JREM, or to provide acceptable substitute collaterals. Hence, petitioner filed with the Regional Trial Court of Makati City, Branch 133, a complaint against Land Bank for specific performance and damages with prayer for the issuance of preliminary mandatory injunction.

After hearing, the trial court issued an order on October 18, 2000 granting petitioner's prayer for the issuance of a writ of preliminary mandatory injunction, the dispositive portion of which reads:

Wherefore, in view of the foregoing, the application for a writ of preliminary mandatory injunction is granted, conditioned upon the filing of a bond in the amount of three hundred thousand pesos (P300,000.00).

Defendant is hereby directed to accede to the terms of the draft MTI and/or to agree to share collaterals under a joint real estate mortgage [JREM] with long-term creditors of plaintiff (including PCIB) as joint mortgagees and with defendant as custodian of the titles.

SO ORDERED.[14]

With the denial of its motion for reconsideration, respondent filed a petition for certiorari with the Court of Appeals, on the ground that the trial court gravely abused its discretion in issuing the assailed writ of preliminary mandatory injunction. On March 23, 2001, the Court of Appeals, on motion of Landbank, issued a temporary restraining order enjoining the trial court from enforcing the October 18, 2000 Order.[15]

In a decision rendered on April 12, 2002, the Court of Appeals annulled the assailed order of the trial court.[16] It ruled that petitioner failed to prove the requisite clear and legal right that would justify the issuance of the writ of preliminary mandatory injunction; and that respondent cannot be compelled to accede to the terms of the MTI and/or JREM which was supposed to cover the syndicated loan of petitioner inasmuch as the said schemes were never executed nor approved by the petitioner and the participating banks.

Hence, the instant petition for review filed by petitioner which was docketed as G.R. No. 155217. On December 10, 2002, petitioner filed an omnibus motion seeking, inter alia, the issuance of a temporary restraining order enjoining Landbank from proceeding and completing the foreclosure proceedings over its mortgaged properties.[17] On January 22, 2003, the Court denied said motion for lack of merit.[18] Petitioner's motion for reconsideration was likewise denied on March 26, 2003.[19]

Meanwhile, on January 10, 2003, petitioner filed a petition to cite Landbank President Margarito Teves and Landbank's lawyer in contempt of Court for proceeding and concluding the foreclosure proceedings and public auction sale.[20] Petitioner contended that Landbank's acts constitute improper conduct which directly or indirectly impede, obstruct, or degrade the administration of justice. The petition was docketed as G.R. No. 156393.

On March 12, 2003, the consolidation of G.R. No. 156393 and G.R. No. 155217 was ordered.[21]

The issues to be resolved in this petition are as follows: (1) Is Landbank bound to share the properties mortgaged to it by respondent with the other creditor banks in the loan syndication? (2) If the answer is in the affirmative, can Landbank be compelled at this point to agree with the terms of the MTI or JREM?

Anent the first issue, the Court finds that Landbank is bound by a perfected contract to share petitioner's collateral with the participating banks in the loan syndication. Article 1305 of the Civil Code defines a contract as a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. A contract undergoes three distinct stages -- (1) preparation or negotiation; (2) perfection; and (3) consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof. Article 1315 of the Civil Code, on the other hand, provides that a contract is perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.[22]

In the case at bar, a perfected contract for the sharing of collaterals is evident from the exchange of communications between Landbank and petitioner and the participating banks, as well as in the Memorandum of Understanding executed by petitioner and the participating banks, including Landbank. In its July 31, 1996 letter to petitioner, Landbank stated that it is "willing to submit the properties covered by the real estate mortgage (REM) in its favor as part of [petitioner's] assets that will be covered by a Mortgage Trust Indenture (MTI)." Thus, the Information Memorandum distributed by Landbank to entice other banks to participate in the loan syndication, expressly stated that the security for the syndicated loan will be the "MTI on project assets including land, building and equipment." [23] Finally, on October 10, 1996, petitioner, Landbank, PCIB, RCBC, UBP, and Asiatrust executed a Memorandum of Understanding confirming the said collateral sharing agreement. To effect said sharing, they decided to enter into a Mortgage Trust Indenture (MTI) which will be secured by the same properties previously mortgaged by petitioner to Landbank, or more specifically, to -

enter into a Mortgage Trust Indenture (herein, the "MTI"), under which GEC will constitute a mortgage over the land, building, other land improvements, machinery and equipment of GEC located within Gateway Business Park, Crisanto de Los Reyes Avenue, Javalera, General Trias, Cavite as well as the assets to be acquired by GEC under the Project (as hereinafter defined) in favor of RCBC-TID as trustee, for the benefit of the Creditors (as defined in the MTI), to secure the payment by GEC of its loan obligations.[24]

Clearly, there was an acceptance by petitioner and by PCIB, RCBC, UBP, and Asiatrust of Landbank's offer to share collaterals, culminating in the execution of the Memorandum of Understanding. We agree with petitioner that the MTI and/or the JREM belong to the realm of consummation of said Memorandum of Understanding, being the proposed vehicles or modes to effect the sharing agreement. Thus, in the JREM which was approved by Landbank, except for its loan security coverage, the participating banks expressly acknowledged that "[t]he Joint Real Estate Mortgage [is] pursued by [them] as a new mode to secure [their] respective loans vis-à-vis GEC's collateral." [25] Verily, the perfection of the collateral sharing agreement is not dependent upon the execution of

the MTI or the JREM. The failure to execute said schemes did not affect the perfected and binding collateral sharing contract.

With respect, however, to the second issue, we find that the issuance by the trial court of the writ of preliminary mandatory injunction directing Landbank to agree with the terms of the MTI or JREM was premature. This is so because the MTI and/or JREM that were supposed to consummate the perfected collateral sharing agreement have not yet come into existence. As correctly held by the Court of Appeals, Landbank cannot be compelled to agree with the terms of the MTI considering that no such terms were finalized and approved by the petitioner and the participating banks. Simply stated, Landbank cannot be forced to give its conformity to an inexistent contract. So, also, the proposed JREM was never approved by the petitioner and the participating banks. Notably, the JREM expressly stated that "we hereby appeal to the GEC's senior management to decide swiftly and to favorably approve our humble requests so that, in turn, we can seek respective approvals from our senior management to culminate this long term project financing deal of ours." [26] No such approval, however, appears in the records.

As to the questioned security coverage under the JREM, Landbank cannot be compelled to agree to the proposed 94.42% loan security coverage over its six hundred million peso-loan to petitioner. The security coverage of the participating banks on the collaterals of petitioner was not agreed upon in the Memorandum of Understanding. While it is true that Landbank informed petitioner in its letter dated July 30, 1996 that "the participating banks in the loan syndication will have equal security position", [27] and that on August 20, 1996, Landbank confirmed to PCIB that the participating banks, "shall be on equal footing where the aforesaid collateral is concerned", [28] no such stipulation was embodied in the Memorandum of Understanding executed by petitioner, Landbank, PCIB, RCBC, UBP, and Asiatrust on October 10, 1996. As the repository of the terms and conditions agreed upon by the parties, the Memorandum of Understanding is considered as containing all their stipulations and there can be no evidence of such terms other than the contents thereof. [29] Inasmuch as the parties to the Memorandum of Understanding did not agree on the terms of the security coverage of the participating banks in the MTI or JREM, we can neither add such a stipulation nor direct Landbank to agree to the security coverage stated in the JREM. Furthermore, the reasonableness of the terms of the MTI and JREM, as well as the good faith or bad faith of the parties in negotiating the terms of the said schemes, are matters that should be determined at the trial, and cannot at this point be passed upon by this Court.

Furthermore, the other participating banks, namely PCIB, RCBC, UBP, and Asiatrust, are not parties to the instant case and cannot, therefore, be bound by an order directing Landbank to accede to the terms of the MTI or the JREM. We are not even aware if said banks are amenable to the said schemes or pursuing other modes to effect the sharing agreement. Indeed, the scheme or mode and the terms that would consummate the collateral sharing agreement are matters that the signatories of the Memorandum of Understanding have yet to come up with. The rule in this jurisdiction is that the contracting parties may establish any agreement, term, and condition they may deem advisable, provided they are not contrary to law, morals or public policy. The right to enter into lawful contracts constitutes one of the liberties guaranteed by the Constitution. It cannot be struck down or arbitrarily interfered with without violating the freedom to enter into lawful contracts. [30]

A writ of mandatory injunction requires the performance of a particular act and is granted only upon a showing of the following requisites - (1) the invasion of the right is material and substantial; (2) the right of a complainant is clear and unmistakable; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage. Since it commands the performance of an act, a mandatory injunction does not preserve the status quo and is thus more cautiously regarded than a mere prohibitive injunction. Accordingly, the issuance of the former is justified only in a clear case, free from doubt and dispute. [31]

While it is true that petitioner has a right to compel Landbank to comply with the collateral sharing agreement, its

right to enforce the same by way of an inexistent MTI or JREM is certainly not clear and unmistakable. At this stage, Landbank cannot be compelled to agree to the terms of the MTI and/or JREM. At the most, Landbank can be compelled to comply with its obligation to share with the other participating banks of the loan syndication the properties mortgaged to it by petitioner and to execute the necessary contract that would implement said collateral sharing agreement.

Coming now to the petition for contempt, we find that Landbank's acts of foreclosing and selling at public auction the lots mortgaged by petitioner were not contumacious. Landbank instituted the foreclosure proceedings upon an honest belief that petitioner had defaulted in the payment of its obligation. Having acted in good faith, the officers of the bank cannot be held in contempt of court. However, in order not to render this decision moot and ineffectual, the sale at public auction should be annulled.

WHEREFORE, in view of all the foregoing, the petition in G.R. No. 155217 is GRANTED. The decision of the Court of Appeals dated April 12, 2002 in CA-G.R. SP. No. 62658 is SET ASIDE. The assailed Order dated October 18, 2000 of the Regional Trial Court of Makati City, Branch 133, in Civil Case No. 98-782 is MODIFIED as follows: respondent Landbank is directed to implement its agreement under the Memorandum of Understanding dated October 10, 1996 to share with Philippine Commercial International Bank (PCIB), Union Bank of the Philippines, (UBP), Rizal Commercial Banking Corporation-Trust Investment Division (RCBC), and Asia Trust Bank (Asia Trust) the properties mortgaged to it by petitioner Gateway Electronics Corporation, as collaterals for the syndicated loan.

In G.R. No. 156393, the petition to cite Landbank President Margarito Teves and Landbank's lawyer in contempt of Court is DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Buenaventura J. Guerro, and concurred in by Associate Justices Rodrigo V. Cosico and Eliezer R. De Los Santos (Rollo, p. 42).

[2] Penned by Judge Napoleon E. Inutoran (Rollo, p. 212).

[3] Covered by Transfer Certificate of Title Nos. T-671538 [T-575414] and T-671539 [T-575415] (Rollo, p. 175), on which the Gateway Electronics Corporation plant in Gateway Business Park now stands (Rollo, p. 111).

[4] Rollo, pp. 111 and 212.

[5] Information Memorandum, Rollo, p. 78.

[6] Rollo, p. 98.

[7] Rollo, p. 99.

[8] Rollo, p. 100.

[9] Rollo, p. 103.

[10] Rollo, p. 217.

[11] Id.

[12] Rollo, p. 218.

[13] Rollo, p. 128.

[14] Rollo, pp. 215-216.

[15] Court of Appeal's Decision, Rollo, p. 42.

[16] Rollo, p. 42.

[17] Rollo, p. 150.

[18] Rollo, p. 199.

[19] Rollo, p. 235.

[20] The Minutes of the Auction sale show that the two lots mortgaged by petitioner with Landbank was sold and awarded to the latter in a public auction sale held on October 29, 2002 (Rollo, p. 177). The Notice of Extra-judicial Foreclosure of Chattel Mortgage dated September 3, 2002 set the date of public auction sale of the personal properties on October 29, 2002 (Rollo, pp. 177-178).

[21] Rollo, p. 234.

[22] Metropolitan Development Authority v. Jancom Environmental Corporation, G.R. No. 147465, 30 January 2002; citing Bugatti v. Court of Appeals, G.R. No. 138113, 17 October 2000, 343 SCRA 335; Civil Code, Article 1319.

[23] Rollo, p. 78.

[24] Rollo, p. 103.

[25] Rollo, p. 217.

[26] Rollo, p. 219.

[27] Rollo, p. 98.

[28] Rollo, p. 99.

[29] Rules of Court, Rule 130, Section 9.

[30] People v. Pomar, 46 Phil. 440, 449-448 (1924).

[31] Subic Bay Metropolitan Authority v. Universal International Group of Taiwan, G.R. No. 131680, 14 September 2000, 340 SCRA 375, citing Pelejo v. Court of Appeals, 203 Phil. 29 (1982).

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