

## SECOND DIVISION

[ G.R. No. 151903, October 09, 2009 ]

**MANUEL GO CINCO AND ARACELI S. GO CINCO, PETITIONERS,  
VS. COURT OF APPEALS, ESTER SERVACIO AND MAASIN  
TRADERS LENDING CORPORATION, RESPONDENTS.**

### DECISION

**BRION, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> filed by petitioners, spouses Manuel and Araceli Go Cinco (collectively, the *wives Go Cinco*), assailing the decision<sup>[2]</sup> dated June 22, 2001 of the Court of Appeals (CA) in CA-G.R. CV No. 47578, as well as the resolution<sup>[3]</sup> dated January 25, 2002 denying the spouses Go Cinco's motion for reconsideration.

#### THE FACTUAL ANTECEDENTS

In December 1987, petitioner Manuel Cinco (*Manuel*) obtained a commercial loan in the amount of P700,000.00 from respondent Maasin Traders Lending Corporation (*MTLC*). The loan was evidenced by a promissory note dated December 11, 1987,<sup>[4]</sup> and secured by a real estate mortgage executed on December 15, 1987 over the spouses Go Cinco's land and 4-storey building located in Maasin, Southern Leyte.

Under the terms of the promissory note, the P700,000.00 loan was subject to a monthly interest rate of 3% or 36% per annum and was payable within a term of 180 days or 6 months, renewable for another 180 days. As of July 16, 1989, Manuel's outstanding obligation with MTLC amounted to P1,071,256.66, which amount included the principal, interest, and penalties.<sup>[5]</sup>

To be able to pay the loan in favor of MTLC, the spouses Go Cinco applied for a loan with the Philippine National Bank, Maasin Branch (*PNB* or *the bank*) and offered as collateral the same properties they previously mortgaged to MTLC. The PNB approved the loan application for P1.3 Million<sup>[6]</sup> through a letter dated July 8, 1989; the release of the amount, however, was conditioned on the cancellation of the mortgage in favor of MTLC.

On July 16, 1989, Manuel went to the house of respondent Ester Servacio (*Ester*), MTLC's President, to inform her that there was money with the PNB for the payment of his loan with MTLC. Ester then proceeded to the PNB to verify the information, but she claimed that the bank's officers informed her that Manuel had no pending loan application with them. When she told Manuel of the bank's response, Manuel assured her there was money with the PNB and promised to execute a document that would allow her to collect the proceeds of the PNB loan.

On July 20, 1989, Manuel executed a Special Power of Attorney<sup>[7]</sup> (*SPA*) authorizing Ester to collect the proceeds of his PNB loan. Ester again went to the bank to inquire about the proceeds of the loan. This time, the bank's officers confirmed the existence of the P1.3 Million loan, but they required Ester to first sign a deed of release/cancellation of mortgage before they could release the proceeds of the loan to her. Outraged that the spouses Go Cinco used the same properties mortgaged to MTLC as collateral for the PNB loan, Ester refused to sign the deed and did not collect the P1.3 Million loan proceeds.

As the MTLC loan was already due, Ester instituted foreclosure proceedings against the spouses Go Cinco on July 24, 1989.

To prevent the foreclosure of their properties, the spouses Go Cinco filed an action for specific performance, damages, and preliminary injunction<sup>[8]</sup> before the Regional Trial Court (*RTC*), Branch 25, Maasin, Southern Leyte. The spouses Go Cinco alleged that foreclosure of the mortgage was no longer proper as there had already been settlement of Manuel's obligation in favor of MTLC. They claimed that the assignment of the proceeds of the PNB loan amounted to the payment of the MTLC loan. Ester's refusal to sign the deed of release/cancellation of mortgage and to collect the proceeds of the PNB loan were, to the spouses Go Cinco, completely unjustified and entitled them to the payment of damages.

Ester countered these allegations by claiming that she had not been previously informed of the spouses Go Cinco's plan to obtain a loan from the PNB and to use the loan proceeds to settle Manuel's loan with MTLC. She claimed that she had no explicit agreement with Manuel authorizing her to *apply* the proceeds of the PNB loan to Manuel's loan with MTLC; the *SPA* merely authorized her to *collect* the proceeds of the loan. She thus averred that it was unfair for the spouses Go Cinco to require the release of the mortgage to MTLC when no actual payment of the loan had been made.

In a decision dated August 16, 1994,<sup>[9]</sup> the *RTC* ruled in favor of the spouses Go Cinco. The trial court found that the evidence sufficiently established the existence of the PNB loan whose proceeds were available to satisfy Manuel's obligation with MTLC, and that Ester unjustifiably refused to collect the amount. Creditors, it ruled, cannot unreasonably prevent payment or performance of obligation to the damage and prejudice of debtors who may stand liable for payment of higher interest rates.<sup>[10]</sup> After finding MTLC and Ester liable for abuse of rights, the *RTC* ordered the award of the following amounts to the spouses Go Cinco:

- (a) P1,044,475.15 plus 535.63 per day hereafter, representing loss of savings on interest, by way of actual or compensatory damages, if defendant corporation insists on the original 3% monthly interest rate;
- (b) P100,000.00 as unrealized profit;
- (c) P1,000,000.00 as moral damages;
- (d) P20,000.00 as exemplary damages;
- (e) P22,000.00 as litigation expenses; and
- (f) 10% of the total amount as attorney's fees plus costs.<sup>[11]</sup>

Through an appeal with the *CA*, MTLC and Ester successfully secured a reversal of the *RTC*'s decision. Unlike the trial court, the appellate court found it significant that

there was no explicit agreement between Ester and the spouses Go Cinco for the cancellation of the MTLC mortgage in favor of PNB to facilitate the release and collection by Ester of the proceeds of the PNB loan. The CA read the SPA as merely authorizing Ester to *withdraw* the proceeds of the loan. As Manuel's loan obligation with MTLC remained unpaid, the CA ruled that no valid objection could be made to the institution of the foreclosure proceedings. Accordingly, it dismissed the spouses Go Cinco' complaint. From this dismissal, the spouses Go Cinco filed the present appeal by *certiorari*.

### **THE PETITION**

The spouses Go Cinco impute error on the part of the CA for its failure to consider their acts as equivalent to payment that extinguished the MTLC loan; their act of applying for a loan with the PNB was indicative of their good faith and honest intention to settle the loan with MTLC. They contend that the creditors have the correlative duty to accept the payment.

The spouses Go Cinco charge MTLC and Ester with bad faith and ill-motive for unjustly refusing to collect the proceeds of the loan and to execute the deed of release of mortgage. They assert that Ester's justifications for refusing the payment were flimsy excuses so she could proceed with the foreclosure of the mortgaged properties that were worth more than the amount due to MTLC. Thus, they conclude that the acts of MTLC and of Ester amount to abuse of rights that warrants the award of damages in their (spouses Go Cinco's) favor.

In refuting the claims of the spouses Go Cinco, MTLC and Ester raise the same arguments they raised before the RTC and the CA. They claim that they were not aware of the loan and the mortgage to PNB, and that there was no agreement that the proceeds of the PNB loan were to be used to settle Manuel's obligation with MTLC. Since the MTLC loan remained unpaid, they insist that the institution of the foreclosure proceedings was proper. Additionally, MTLC and Ester contend that the present petition raised questions of fact that cannot be addressed in a Rule 45 petition.

### **THE COURT'S RULING**

**The Court finds the petition meritorious.**

#### ***Preliminary Considerations***

Our review of the records shows that there are no factual questions involved in this case; the ultimate facts necessary for the resolution of the case already appear in the records. The RTC and the CA decisions differed not so much on the findings of fact, but on the conclusions derived from these factual findings. The correctness of the conclusions derived from factual findings raises legal questions when the conclusions are so linked to, or are inextricably intertwined with, the appreciation of the applicable law that the case requires, as in the present case.<sup>[12]</sup> The petition raises the issue of *whether the loan due the MTLC had been extinguished*; this is a question of law that this Court can fully address and settle in an appeal by *certiorari*.

#### ***Payment as Mode of Extinguishing Obligations***

Obligations are extinguished, among others, by payment or performance,<sup>[13]</sup> the mode most relevant to the factual situation in the present case. Under Article 1232 of the Civil Code, payment means not only the delivery of money but also the performance, in any other manner, of an obligation. Article 1233 of the Civil Code states that "a debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be." In contracts of loan, the debtor is expected to deliver the sum of money due the creditor. These provisions must be read in relation with the other rules on payment under the Civil Code,<sup>[14]</sup> which rules impliedly require acceptance by the creditor of the payment in order to extinguish an obligation.

In the present case, Manuel sought to pay Ester by authorizing her, through an SPA, to collect the proceeds of the PNB loan - an act that would have led to payment if Ester had collected the loan proceeds as authorized. Admittedly, the delivery of the SPA was not, strictly speaking, a delivery of the sum of money due to MTLC, and Ester could not be compelled to accept it as payment based on Article 1233. Nonetheless, the SPA stood as an authority to collect the proceeds of the already-approved PNB loan that, upon receipt by Ester, would have constituted as payment of the MTLC loan.<sup>[15]</sup> Had Ester presented the SPA to the bank and signed the deed of release/cancellation of mortgage, the delivery of the sum of money would have been effected and the obligation extinguished.<sup>[16]</sup> As the records show, Ester refused to collect and allow the cancellation of the mortgage.

Under these facts, Manuel posits two things: *first*, that Ester's refusal was based on completely unjustifiable grounds; and *second*, that the refusal was equivalent to payment that led to the extinguishment of the obligation.

#### **a. Unjust Refusal to Accept Payment**

After considering Ester's arguments, we agree with Manuel that Ester's refusal of the payment was without basis.

Ester refused to accept the payment because the bank required her to first sign a deed of release/cancellation of the mortgage before the proceeds of the PNB loan could be released. As a prior mortgagee, she claimed that the spouses Go Cinco should have obtained her consent before offering the properties already mortgaged to her as security for the PNB loan. Moreover, Ester alleged that the SPA merely authorized her to collect the proceeds of the loan; there was no explicit agreement that the MTLC loan would be paid out of the proceeds of the PNB loan.

There is nothing legally objectionable in a mortgagor's act of taking a second or subsequent mortgage on a property already mortgaged; a subsequent mortgage is recognized as valid by law and by commercial practice, subject to the prior rights of previous mortgages. Section 4, Rule 68 of the 1997 Rules of Civil Procedure on the disposition of the proceeds of sale after foreclosure actually requires the payment of the proceeds to, among others, the junior encumbrancers in the order of their priority.<sup>[17]</sup> Under Article 2130 of the Civil Code, a stipulation forbidding the owner from alienating the immovable mortgaged is considered void. If the mortgagor-owner is allowed to convey the entirety of his interests in the mortgaged property, reason dictates that the lesser right to encumber his property with other liens must

also be recognized. Ester, therefore, could not validly require the spouses Go Cinco to first obtain her consent to the PNB loan and mortgage. Besides, with the payment of the MTLC loan using the proceeds of the PNB loan, the mortgage in favor of the MTLC would have naturally been cancelled.

We find it improbable for Ester to claim that there was no agreement to apply the proceeds of the PNB loan to the MTLC loan. Beginning July 16, 1989, Manuel had already expressed intent to pay his loan with MTLC and thus requested for an updated statement of account. Given Manuel's express intent of fully settling the MTLC loan and of paying through the PNB loan he would secure (and in fact secured), we also cannot give credit to the claim that the SPA only allowed Ester to collect the proceeds of the PNB loan, without giving her the accompanying authority, although verbal, to apply these proceeds to the MTLC loan. Even Ester's actions belie her claim as she in fact even went to the PNB to collect the proceeds. In sum, the surrounding circumstances of the case simply do not support Ester's position.

### **b. Unjust Refusal Cannot be Equated to Payment**

While Ester's refusal was unjustified and unreasonable, we cannot agree with Manuel's position that this refusal had the effect of payment that extinguished his obligation to MTLC. Article 1256 is clear and unequivocal on this point when it provides that -

ARTICLE 1256. If the creditor to whom tender of payment has been made **refuses without just cause to accept it**, the debtor shall be released from responsibility by the consignation of the thing or sum due. [Emphasis supplied.]

In short, a refusal without just cause is not equivalent to payment; to have the effect of payment and the consequent extinguishment of the obligation to pay, the law requires the companion acts of tender of payment and consignation.

Tender of payment, as defined in *Far East Bank and Trust Company v. Diaz Realty, Inc.*,<sup>[18]</sup> is the definitive act of offering the creditor what is due him or her, together with the demand that the creditor accept the same. When a creditor refuses the debtor's tender of payment, the law allows the consignation of the thing or the sum due. Tender and consignation have the effect of payment, as by consignation, the thing due is deposited and placed at the disposal of the judicial authorities for the creditor to collect.<sup>[19]</sup>

A sad twist in this case for Manuel was that he could not avail of consignation to extinguish his obligation to MTLC, as PNB would not release the proceeds of the loan unless and until Ester had signed the deed of release/cancellation of mortgage, which she unjustly refused to do. Hence, to compel Ester to accept the loan proceeds and to prevent their mortgaged properties from being foreclosed, the spouses Go Cinco found it necessary to institute the present case for specific performance and damages.

### **c. Effects of Unjust Refusal**