

## FIRST DIVISION

[ G.R. No. 129713, December 15, 1999 ]

**CAGAYAN DE ORO COLISEUM, INC., PETITIONER, VS. COURT OF APPEALS, MAXIMIANO MABANAG, JR. AND RICHARD GO KING, RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

In this petition for review, petitioner Cagayan de Oro Coliseum, Inc. assails the decision of the Court of Appeals in CA-G.R. CV No. 43782<sup>[1]</sup> which reversed and set aside the decision dated August 5, 1993 of the Regional Trial Court, Branch 19, Cagayan de Oro City in two consolidated cases, Civil Case No. 89-098 and Special Civil Action No. 6811

Spanning a period of more than twenty (20) years, this case involves a long drawn-out struggle for ownership over a valuable piece of real property in Cagayan de Oro City.

In 1977, petitioner Cagayan de Oro Coliseum, Inc., a domestic corporation domiciled in Cagayan de Oro City, obtained from one Santiago Maceren a loan in the amount of P149,253.73.<sup>[2]</sup> As security for the loan, petitioner executed a promissory note and a mortgage over all its assets and properties, including a parcel of land situated in the poblacion of the City and registered in its name under Transfer Certificate of Title (TCT) No. T-3383. The land, which has an area of 4,025 square meters with two (2) commercial buildings thereon respectively measuring 1,606 and 379 square meters,<sup>[3]</sup> is more particularly described as follows:

A parcel of land [Lot 845-B-2-B of the subdivision plan (LRC) Psd-19292, being a portion of Lot 845-B-2, described on (sic) plan Psd-34454, LRC (GLRO) Cad. Rec. No. 1562], situated in the Poblacion, City of Cagayan de Oro, Island of Mindanao. Bounded on the NE. and SE., points 3 to 4 and points 4 to 1 by Lot 845-B-2-F; on the SW., points 1 to 2 by Lot 845-B-2-C; and on the NW., points 2 to 3 by Lot 845-B-2-E all of the subdivision plan. x x x containing an area of FOUR THOUSAND AND TWENTY FIVE (4,025) SQUARE METERS more or less.<sup>[4]</sup>

The loan, together with the promissory note and the mortgage, were later assigned by Maceren to the Commercial Credit Corporation of Cagayan de Oro (Commercial Credit).<sup>[5]</sup> Petitioner failed to pay the loan when it became due, hence, the Commercial Credit commenced foreclosure proceedings on the said parcel of land.

On October 23, 1979, five stockholders of petitioner corporation instituted before the then Court of First Instance (CFI) of Misamis Oriental, Branch IV, a petition for injunction against Commercial Credit, the City Sheriff of Cagayan de Oro and herein

petitioner corporation, entitled "*Ralph Lou I. Willkom, Benber B. Apepe, Bernardo Roa, Marcos Balarias and Teresita Macale, Petitioners versus Rufo J. Waminal, City Sheriff of Cagayan de Oro, Commercial Credit Corporation and Cagayan de Oro Coliseum, Inc., Respondents,*" docketed as Special Civil Action No. 6811. The five stockholders sought to enjoin the public sale of the corporate property alleging that the loan was contracted by Diego Imperio, the president of the corporation, without authority from the stockholders; and that the creditor, Santiago Maceren, was corporate treasurer and a member of the Board of Directors of petitioner corporation at the time the loan was obtained.<sup>[6]</sup>

Eventually, the parties, assisted by their respective counsel, entered into a compromise agreement which became the basis of a judgment rendered by the trial court on March 11, 1980, whereby the five stockholders ratified the loan of the corporation to Commercial Credit in the amount of P249,263.23, computed as of February 15, 1980; the corporation bound itself to pay the loan in equal monthly installments of P11,000.00 and agreed that failure to pay any of the installments shall render the judgment immediately executory, with penalty on overdue and unpaid installments at the rate of three per cent (3%) per month plus five per cent (5%) of the outstanding balance as additional attorney's fees. The Compromise Judgment reads as follows:

The parties in the above-entitled case assisted by their respective counsel, submitted for approval the following Compromise Agreement, to wit:

COMES NOW, Parties, Petitioners and Respondents, represented by their respective counsels, unto this Honorable Court, most respectfully submit for approval the following Compromise Agreement:

1. That, petitioners herein hereby state that they ratified and approved the loan and real estate mortgage entered into and assigned by the Cagayan de Oro Coliseum, Inc. to the Commercial Credit Corporation of Cagayan de Oro and as such therefore, the issue raised by the herein petitioners in the above entitled case has become moot and academic;
2. That, by virtue of the aforementioned, the Cagayan de Oro Coliseum, Inc., thru its Board of Directors and represented by its President, Mr. Johnny Wilson, hereby admits its total outstanding obligation to herein Respondent Commercial Credit Corporation of Cagayan de Oro in the amount of TWO HUNDRED FORTY NINE THOUSAND TWO HUNDRED SIXTY THREE & 23/100 PESOS (P249,263.23), as of February 15, 1980, including therein the sum of P10,000.00 representing attorney's fees for Respondent Commercial Credit Corporation of Cagayan de Oro;
3. That, the Cagayan de Oro Coliseum, Inc. has agreed to pay the above obligation plus interest on diminishing balance computed yearly at sixteen (16%) per cent per annum, thus:

Total ..... P249,263.23

Account	
Total	
Interest .....	76,138.60
	-----
Total	
Payable .....	P325,401.83

4. That, the Cagayan de Oro Coliseum, Inc. hereby agrees to pay the foregoing obligation in paragraph (3) hereof in equal monthly installments of P11,000.00, the first installment shall be payable in February 1980 and every month thereafter until the whole account payable as aforementioned is fully paid;
5. That, failure on the part of Respondent Cagayan de Oro Coliseum, Inc. to pay any of the installments as they shall become due, the whole amount then outstanding and unpaid shall immediately become due and payable in its entirety and shall render the judgment herein to be immediately final, unappealable and executory; and the overdue and unpaid installments shall earn a three per cent (3%) per month penalty charge until fully paid, plus five per cent (5%) of the outstanding balance as additional attorney's fees;
6. That, Respondent Commercial Credit Corporation of Cagayan de Oro hereby agrees to withdraw its application with Respondent City Sheriff of Cagayan de Oro for the extrajudicial foreclosure of the real estate mortgage subject of this complaint;
7. That, the Parties herein waive in favor of each other any and all forms of damage arising out of, connected with and/or as a result of this action.

WHEREFORE, the Parties respectfully pray of this Honorable Court that judgment in accordance with the Compromise Agreement be rendered.

Cagayan de Oro City,  
Philippines,  
February 25, 1980.

COMMERCIAL CREDIT

CAGAYAN DE ORO

CORPORATION OF  
CAGAYAN  
DE ORO

COLISEUM, INC.

(Respondent)

(Respondent)

By:

By:

(SGD.) ROMEO V.  
ORENDAIN  
Resident Manager

(SGD.) JOHNNY WILSONR  
President

(SGD.) RUFO J. WAMINAL  
Cagayan de Oro  
City Sheriff  
(Respondent)

(SGD.) BENBER B. APEPE  
(Petitioner)

(SGD.) PRIMITIVO S.  
BELLA, JR.

(SGD.) MARCOS BALARIA

Counsel for CCC-Cagayan  
de Oro and City Sheriff of  
Cagayan de Oro

(Petitioner)

(SGD.) TERESITA MACALE  
(Petitioner)

(SGD.) ANGEL R. QUIMPO  
Counsel for Petitioners  
and Respondent Cagayan  
de Oro Coliseum, Inc.'

WHEREFORE, finding the above-quoted compromise agreement not contrary to law, morals and public policy, the same is hereby approved, and judgment is rendered in accordance therewith. The parties are hereby enjoined to observe and comply strictly with the terms and conditions therein set forth, without special pronouncement as to costs.

SO ORDERED.<sup>[7]</sup>

On March 4, 1983, Commercial Credit filed with the court *a quo*, now the Regional Trial Court, Branch 19, Cagayan de Oro City, an "*Ex-Parte* Motion for the Issuance of a Writ of Execution." Commercial Credit alleged that petitioner corporation failed to pay several installments on its loan and left an outstanding balance of P70,152.68, excluding sheriff's expenses.<sup>[8]</sup> The trial court granted the motion on March 9, 1983.<sup>[9]</sup> The following day, the Branch Clerk of Court issued the writ of execution on the personal and real properties of petitioner corporation. On March 11, the deputy sheriff filed a notice of levy on petitioner's title with the Register of Deeds of Cagayan de Oro City.<sup>[10]</sup>

Petitioner forthwith filed a "Motion for Reconsideration of the Order of Execution" alleging that the issuance of the order of execution *ex-parte* violated petitioner's right to due process; that a hearing should have been conducted on the motion for execution because petitioner had already made payments in the total amount of P419,429.95, resulting in an overpayment of P94,028.12.<sup>[11]</sup>

In an order dated November 26, 1986, the trial court denied petitioner's motion for reconsideration. The trial court, however, reduced petitioner's principal obligation

from P70,152.68 to P64,956.19 but ordered it to pay the three per cent (3%) monthly penalty charge until full payment and five per cent (5%) of the outstanding balance as additional attorney's fees. Accordingly, the court ordered the issuance of a writ of execution for the collection of said amount:

WHEREFORE, the motion for reconsideration filed by respondent Coliseum is DENIED. Let a writ of execution be issued against said respondent for the collection of its outstanding obligation of P64,956.19 with the respondent CCC, including the "three per cent (3%) per month penalty charge until fully paid, plus five per cent (5%) of the outstanding balance as additional attorney's fees" as provided in paragraph 5 of the compromise agreement.<sup>[12]</sup>

On December 4, 1986, the Branch Clerk of Court of the trial court issued the writ of execution, which reads:

You are hereby commanded that of the goods and chattels of respondent Coliseum, Cagayan de Oro City, you cause to be made the sum of P64,956.19 as principal plus 3% penalty per month, plus 5% of the outstanding balance as attorney's fees and all expenses incurred together with your lawful fees for the service of this execution, all in the Philippine currency, which the respondent CCC recovered in this Regional Trial Court of Misamis Oriental and that you render the said sums to the respondent CCC aside from your own fees on this execution and do likewise return this writ within SIXTY (60) DAYS from receipt hereof with your proceedings endorsed thereon. But if sufficient personal property/ies cannot be found whereof to satisfy this execution and lawful fees thereon, then you are commanded that of the lands and buildings of the said respondent Coliseum you make the said sums of money in the manner required by the Rules of Court.<sup>[13]</sup>

Pursuant to this writ, Deputy Provincial Sheriff Maximiano Mabanag, Jr. published the notice of auction sale scheduled on January 23, 1987. The sale did not proceed on said date, however, due to some internal problems in the office of the sheriff.

Meanwhile, petitioner filed with the Court of Appeals an action for annulment of judgment of the trial court, docketed as CA-G.R. SP No. 10888, wherein it sought to set aside the compromise judgment on the ground of fraud and misrepresentation which it discovered only in 1983. Petitioner pleaded four causes of action, *viz*: (1) Of its total obligation of P325,401.83 to Commercial Credit, petitioner had already paid P303,758.15 and left a balance of only P21,647.79, not P70,152.68 as claimed by Commercial Credit. Respondent judge ordered execution of the compromise judgment without a hearing and petitioner's motion for reconsideration was decided three years and seven months later which gave Commercial Credit a longer period to impose the monthly 3% penalty and 5% additional attorney's fees on the increased balance; (2) Two stipulations in the compromise judgment violated the provisions of Presidential Decree No. 116 amending the Usury Law, and Central Bank Circular No. 721 issued on February 25, 1980, prior to the promulgation of the compromise judgment by the trial court on March 11, 1980; (3) Respondent judge gravely abused his discretion in applying portions of the installment payments as past due charges instead of fully applying them to the principal debt; and (4) The Branch Clerk of Court issued a writ of execution and the Deputy Provincial Sheriff