

## THIRD DIVISION

[ G.R. No. 203194, April 26, 2021 ]

### ASSET POOL A (SPV-AMC), INC., PETITIONER, VS. SPOUSES BUENAFRIDO AND FELISA BERRIS, RESPONDENTS.

#### D E C I S I O N

##### HERNANDO, J.:

Challenged in this Petition for Review on *Certiorari*<sup>[1]</sup> is the March 23, 2012 Decision<sup>[2]</sup> and August 16, 2012 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 92498 which reversed and set aside the August 29, 2008 Decision<sup>[4]</sup> of the Regional Trial Court (RTC), Branch 136 of Makati City in Civil Case No. 99-1572 ordering the respondents, spouses Buenafrido and Felisa Berris (collectively, spouses Berris), to jointly and severally pay petitioner Asset Pool A (SPV-AMC), Inc. (Asset Pool) the amount of P17,422,072.51 plus interests, liquidated damages, attorney's fees and litigation, other incidental expenses and costs of suit.

The appellate court held that the prior institution of the foreclosure proceedings by Far East Bank and Trust Company (FEBTC), petitioner's predecessor-in-interest, effectively barred the subsequent filing of the collection suit in the RTC in view of the prohibition on splitting a single cause of action.

##### The Antecedents:

On November 15, 1995, FEBTC and B. Berris Merchandising (BBM), a sole proprietorship owned by Buenafrido, entered into a Loan Agreement<sup>[5]</sup> for the total amount of P5,000,000.00 with interest at prevailing market rates payable within a period of five years inclusive of a six-month grace period *via* 18 quarterly amortizations on the principal balance and based on diminishing principal balance and payable every quarter in arrears. To secure the loan, the spouses Berris executed a real estate mortgage on parcels of land covered by Transfer Certificates of Title (TCT) Nos. 129163 and 74496,<sup>[6]</sup> a chattel mortgage<sup>[7]</sup> on their rice mill, and a Comprehensive Surety Agreement.<sup>[8]</sup>

FEBTC also granted BBM a Discounting Line facility in the total amount of P15,000,000.00 with expiry on July 31, 1997.<sup>[9]</sup> On July 3, 1997, the discounting line was renewed for the same amount, valid until July 31, 1998.<sup>[10]</sup> On February 16, 1998, the parties increased the discounting facility to P18,000,000.00 with the same expiry on July 31, 1998.<sup>[11]</sup> It also provided that the discounting accommodation shall be partially secured by a real estate mortgage on TCT Nos. 129163, 74496, 27852, 31079 and 296868<sup>[12]</sup> and the chattel mortgage on the rice mill.<sup>[13]</sup>

Meanwhile, on April 15, 1996, the spouses Berris, for and in behalf of BBM, executed Promissory Note (PN) No. 104-961106/TLS<sup>[14]</sup> in the total amount of P5,000,000.00 due on April 16, 2001 with an interest of 14.5% per *annum* and carrying the same provisions as the Term Loan Agreement, *i.e.* payable within a period of five years inclusive of six-month grace period via 18 quarterly amortizations on the principal balance and based on diminishing principal balance and payable every quarter in arrears.

Thereafter, the spouses Berris, for and in behalf of BBM, executed the following PNs:

a) PN No. 2-104-980259/bdc dated January 23, 1998 in the total amount of P4,000,000.00 due on July 22, 1998 with an interest rate of 26% per *annum*;<sup>[15]</sup>

b) PN No. 2-104-980296/bdc dated January 27, 1998 in the total amount of P2,500,000.00 due on July 24, 1998 with an interest of 27% per *annum*;<sup>[16]</sup>

c) PN No. 2-104-980975 BD/C dated April 15, 1998 in the total amount of P3,000,000.00 due on July 31, 1998 with an interest of 22% per *annum*;<sup>[17]</sup> and

d) PN No. 2-104-981149/BDC dated May 13, 1998 in the total amount of P750,000.00 due on July 31, 1998 with an interest of 21.95% per *annum*.<sup>[18]</sup>

All PNs bore similar provisions which entitled FEBTC to 25% of the amount due by way of attorney's fees in case of default. In addition, the last four PNs, namely, PN Nos. 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC, provided that FEBTC is entitled to liquidated damages of 1% for every 30 days or a fraction thereof on the amount due in case of default.

The spouses Berris failed to pay their obligations under the PNs. Hence, on August 5, 1998, FEBTC sent a letter<sup>[19]</sup> demanding payment of the total amount of P21,055,555.54 representing both their Discounting Line and Loan Agreement availments, exclusive of interest, penalties another charges. The bank, on December 15, 1998, sent another letter<sup>[20]</sup> to the spouses Berris reiterating its demand for payment of the same amount exclusive of interest, penalties and other charges. On February 3, 1999, FEBTC, through counsel, sent a Final Demand Letter<sup>[21]</sup> to the spouses Berris demanding that they pay their obligations amounting P21,055,555.54 exclusive of interest, penalties and other charges, not later than February 19, 1999.

On August 19, 1999, the bank filed a Petition for Extra-Judicial Foreclosure of Real Estate Mortgage under Act No. 3135, as amended, before the RTC of Sta. Cruz, Laguna over the properties covered by TCT Nos. T-129163 and 74496 for the loans covered by PN Nos. 2-104-980258 BDC and 2-104-980888 BDC.<sup>[22]</sup>

Thereafter, on August 30, 1999, FEBTC filed its complaint<sup>[23]</sup> for the collection of the amounts due on:

a) PN Nos. 2-104-961106/TLS;

b) PN 2-104-980259/bdc;

c) PN 2-104-980296/bdc;

d) PN 2-104-980975 BD/C; and

e) PN 2-104-981149/BDC

which was docketed as Civil Case No. 99-1572 before the RTC of Makati.

On October 23, 2000, the spouses Berris filed a Complaint for the Annulment of Sale with Prayer for Injunction and Restraining Order,<sup>[24]</sup> docketed as Civil Case No. 3016-2000-C with the RTC of Calamba, Laguna assailing the extra-judicial foreclosure of mortgage.

On April 7, 2000, the Securities and Exchange Commission (SEC) approved the merger of the Bank of Philippine Islands (BPI) and FEBTC with the former as the surviving corporation.<sup>[25]</sup>

On March 3, 2006, the spouses Berris filed a Motion for Additional Time to File Answer or Other Appropriate Pleadings<sup>[26]</sup> in Civil Case No. 99-1572 which was granted by the RTC Makati in its Order dated March 8, 2006.<sup>[27]</sup> On March 18, 2006, they filed another Second Motion for Time to File Answer or Other Appropriate Pleadings<sup>[28]</sup> in the collection suit which was again granted by the Makati trial court in its March 22, 2006 Order<sup>[29]</sup> giving them until April 2, 2006 within which to file an Answer and other appropriate pleadings.

On April 2, 2006, the spouses Berris filed a Motion to Dismiss<sup>[30]</sup> which was denied by the RTC Makati in its July 27, 2006 Order<sup>[31]</sup> for lack of merit. Their motion for reconsideration was also denied by the trial court in its December 4, 2006 Order.<sup>[32]</sup> Meanwhile, on May 12, 2006, BPI assigned the loans of BBM, including the collaterals, to petitioner Asset Pool.<sup>[33]</sup> The Makati RTC granted petitioner Asset Pool's motion for substitution of parties in order to continue the proceedings of the case in lieu of FEBTC.<sup>[34]</sup>

On December 20, 2006, the spouses Berris filed a Motion for Clarification of Time to Plead<sup>[35]</sup> as to the amendment of the complaint to effect the Asset Pool's substitution and further pray for a period of at least 15 days from the disposal of the instant motion within which to file their Answer. However, petitioner Asset Pool opposed the said motion and prayed that the spouses Berris be declared in default.<sup>[36]</sup>

On March 7, 2007, the trial court issued an Order<sup>[37]</sup> denying the spouses Berris' motions for clarification and extension of time to plead and granting petitioner Asset Pool's motion to declare the Berrises in default. Aggrieved, the spouses Berris filed a motion for reconsideration which was denied by the trial court of Makati in its May 14, 2008 Order.<sup>[38]</sup> Thereafter, trial on the merits ensued. Petitioner Asset Pool proceeded with the *ex-parte* presentation of its evidence.

### **Ruling of the Makati Regional Trial Court in Civil Case No. 99-1572:**

On August 29, 2008, the trial court of Makati rendered its Decision<sup>[39]</sup> in favor of petitioner Asset Pool, the dispositive portion of which reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of plaintiff Asset Pool A (SPC-AMC), Inc. and against the defendant Spouses Buenafrido & Felisa Berris, ordering the latter to pay, jointly and severally the former, the following:

- 1) [P]17,422,072.51 plus the stipulated interests and other charges thereon to be computed from May 7, 1999 until the date the same is fully paid;
- 2) The amount equivalent to 1% of the total amount due as liquidated damages;
- 3) The amount equivalent to 25% of the total amount due as and for Attorney's fees;
- 4) [P]112,332.35 as litigation, other incidental expenses and costs of suit.

SO ORDERED.<sup>[40]</sup>

The RTC Makati found that the spouses Berris indeed failed to pay their outstanding obligations under the PNs which constitute a contractual breach thereof.

#### **Ruling of the Court of Appeals:**

On appeal, the appellate court reversed and set aside the August 29, 2008 Decision of the trial court in its assailed Decision dated March 23, 2012, to wit:

WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The appealed Decision is hereby REVERSED and SET ASIDE and Civil Case No. 99-1572 of Branch 136 of the Regional Trial Court of Makati City, National Capital Judicial Region, is hereby DISMISSED.

SO ORDERED.<sup>[41]</sup>

The appellate court held that the institution of the extrajudicial foreclosure of mortgage of the subject properties to satisfy the loans under PN Nos. 2-104-980258/BDC and 2-104-980888/BDC barred the filing of the collection suit filed by petitioner under PN Nos. 2-1040961106/TLS, 2-104-980259/bdc, 2-104-980296/bdc, 2-104-980975 BD/C and 2-104-981149/BDC.<sup>[42]</sup> It ruled that the loans covered by the five PNs subject of the collection suit are single and indivisible and secured by the same mortgage. Thus, the filing of the collection suit is barred by the prior filing of the foreclosure proceeding in view of the prohibition on splitting a single cause of action. Simultaneous recourse to either of the two remedies, *i.e.* foreclosure of mortgage or filing an ordinary action to collect the debt, bars the creditor from enforcing the other.

Asset Pool filed a Motion for Reconsideration which was denied by the CA in its August 16, 2012 Resolution.<sup>[43]</sup> The appellate court, however, clarified that the prohibition is only against the simultaneous availing of the remedies of foreclosure of mortgage and the collection suit but the mortgagee may subsequently resort to a collection suit to recover any deficiency, if any.

Hence, this Petition for Review on *Certiorari* under Rule 45.

## Issues

1. Whether or not the appellate court gravely erred in ruling that the case of *Bank of the Philippine Islands v. Coscolluela (Coscolluela)*<sup>[44]</sup> is controlling in the case at bar;
2. Whether or not the appellate court gravely erred in failing to take into account the peculiar circumstances of the case at bar, such that there are five mortgaged properties, of which only two were foreclosed, to collect two of the seven loan obligations;
3. Whether or not the appellate court gravely erred in ruling that a previous filing of extrajudicial foreclosure of real estate mortgage barred a personal action for the collection of debt incurred by the spouses Berris; and
4. Whether or not the appellate court gravely erred in ignoring the rule that the principle against unjust enrichment should prevail over the procedural rule on multiplicity of suits.<sup>[45]</sup>

## **Our Ruling**

After an assiduous review, we find the petition partly meritorious.

To put everything in its proper perspective, it must be stressed that the parties executed two loan agreements, namely:

- (a) Loan Agreement dated November 15, 1995 with the total amount of P5,000,000.00;<sup>[46]</sup> and
- (b) Discounting Line which was renewed on July 3, 1997<sup>[47]</sup> and on February 16, 1998<sup>[48]</sup> with a total amount of P15,000,000.00 and P18,000,000.00, respectively, and valid until July 31, 1998.

These two loan facilities granted to the spouses Berris are separate and distinct from each other.

The Discounting Line facility was originally for the amount of P15,000,000.00 before it was renewed prior to its expiry on July 31, 1997. The facility was again renewed effective until July 31, 1998. Then, on February 16, 1998, the discounting facility was increased to P18,000,000.00 with the same expiration date, i.e. July 31, 1998. Notably, the discounting facility did not remotely refer to the November 15, 1995 Loan Agreement as its origin, to wit:

WHEREAS, the **BORROWER/s was granted a/an DISCOUNTING LINE in the amount not exceeding FIFTEEN MILLION PESOS (P15,000,000.00) and has/have entered into a/an Agreement for Renewal of Discounting Line with the BANK for a period expiring on July 31, 1997** as acknowledged before ATTY. JETHRO L.F. VILLANUEVA under Doc. No. 164, Page No. 34, Book No. 18, Series of 1996.

WHEREAS, the **BORROWER/s has/have applied with the BANK for the renewal of the aforementioned credit facility/ies in the**