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FIRST DIVISION

[G.R. No. 190286, January 11, 2018]

RAMON E. REYES AND CLARA R. PASTOR, PETITIONERS, VS. BANCOM DEVELOPMENT CORP., RESPONDENT.

D E C I S I O N

SERENO, C.J.:

Before this Court is a Petition for Review on Certiorari[1] filed by Ramon E. Reyes and Clara R. Pastor seeking to reverse the Decision[2] and the Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 45959. The CA affirmed the ruling of the Regional Trial Court (RTC) holding petitioners jointly and severally liable to respondent Bancom Development Corporation (Bancom) as guarantors of certain loans obtained by Marbella Realty, Inc. (Marbella).

FACTS

The dispute in this case originated from a Continuing Guaranty[4] executed in favor of respondent Bancom by Angel E. Reyes, Sr., Florencio Reyes, Jr., Rosario R. Du, Olivia Arevalo, and the two petitioners herein, Ramon E. Reyes and Clara R. Pastor (the Reyes Group). In the instrument, the Reyes Group agreed to guarantee the full and due payment of obligations incurred by Marbella under an Underwriting Agreement with Bancom. These obligations included certain Promissory Notes[5] issued by Marbella in favor of Bancom on 24 May 1979 for the aggregate amount of P2,828,140.32.

It appears from the records that Marbella was unable to pay back the notes at the time of their maturity. Consequently, it issued a set of replacement Promissory Notes[6] on 22 August 1979, this time for the increased amount of P2,901,466.48. It again defaulted on the payment of this second set of notes, leading to the execution of a third set[7] for the total amount of P3,002,333.84, and finally a fourth set[8] for the same amount.

Because of Marbella's continued failure to pay back the loan despite repeated demands, Bancom filed a Complaint for Sum of Money with a prayer for damages before the RTC of Makati on 7 July 1981.[9] The case, which sought payment of the total sum of P4,300,247.35, was instituted against (a) Marbella as principal debtor; and (b) the individuals comprising the Reyes Group as guarantors of the loan.

In their defense, Marbella and the Reyes Group argued that they had been forced to execute the Promissory Notes and the Continuing Guaranty against their will.[10] They also alleged that the foregoing instruments should be interpreted in relation to earlier contracts pertaining to the development of a condominium project known as

Marbella II.[11]

The Marbella II contracts were entered into by Bancom; the Reyes Group, as owners of the parcel of land to be utilized for the condominium project along Roxas Boulevard; and Fereit Realty Development Corporation (Fereit), a sister company of Bancom, as the construction developer and project manager.[12] This venture, however, soon encountered financial difficulties. As a result, the Reyes Group was allegedly forced to enter into a Memorandum of Agreement to take on part of the loans obtained by Fereit from Bancom for the development of the project. Marbella, for its part, was supposedly compelled to assume Fereit's obligation to cause the release of P2.8 million in receivables then assigned to State Financing;[13] and subsequently to obtain additional financing from Bancom in the same amount for that purpose.[14]

The above developments were cited by Marbella and the Reyes group in support of the allegation that Bancom took advantage of their resultant financial distress. Bancom allegedly demanded the execution of Promissory Notes and the Continuing Guaranty from the Reyes Group,[15] despite the fact that additional financing became necessary only because of the failure of Fereit (Bancom's sister company) to comply with its obligation.[16]

To bolster its claim that the promissory notes were issued in connection with Fereit's obligations, Marbella, together with the Reyes Group, also presented a document entitled Amendment of Memorandum of Agreement.[17] In this instrument, Fereit undertook to reimburse Marbella for the P2.8 million the latter had paid, and for all penalties, fees, and charges incurred to obtain additional financing.

THE RTC RULING

In a Decision dated 8 April 1991, the RTC held Marbella and the Reyes Group solidarily liable to Bancom. The trial court ordered them to pay the amounts indicated on the Promissory Notes dated 28 February 1980 in the total amount of P4,300,247.35 plus interest computed from 19 May 1981, the date of demand; and to pay penalties and attorney's fees as well.[18]

PROCEEDINGS BEFORE THE CA

Marbella and the Reyes Group appealed the RTC ruling to the CA.[19] They asserted that the trial court erred in disregarding the terms of the earlier agreements they had entered into with Bancom and Fereit.[20] The former also reiterated that the amounts covered by the Promissory Notes represented additional financing secured from Bancom to fulfill Fereit's obligations. Hence, they said they cannot be held liable for the payment of those amounts.[21]

In the course of the proceedings before the CA, Abella Concepcion Regala & Cruz moved to withdraw its appearance in the case as counsel for Bancom.[22] The law firm asserted that it had "totally lost contact" with its client despite serious efforts on the part of the former to get in touch with its officers.[23] The law firm also alleged that it had "received reports that the client has undergone a merger with

another entity," thereby making its authority to represent the corporation subject to doubt.[24]

In a Resolution dated 1 June 2004,[25] the CA granted the motion after noting that the copy of a resolution sent to Bancom had been returned to the appellate court unclaimed. The CA held that this failure of service supported the claim of Abella Concepcion Regala & Cruz that the latter had lost all contact with its client.

THE CA RULING

In a Decision dated 25 June 2009,[26] the CA denied the appeal citing the undisputed fact that Marbella and the Reyes Group had failed to comply with their obligations under the Promissory Notes and the guaranty. The appellate court rejected the assertion that noncompliance was justified by the earlier agreements entered into by the parties. The CA explained:

> In this case, it is worth to note that it is an undisputed fact that defendants-appellants failed to make good their alleged obligations under the Promissory Notes and Continuing Guaranty which they issued in favor of BAN[C]OM. [The instruments'] genuineness and due execution are likewise undisputed.
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> Defendants-appellants' only defense rests on the allegation that their non-payment of such obligations is justified taking into consideration the terms of the Memorandum of Agreement entered into by and among the plaintiff-appellee and defendants-appellants herein particularly paragraph 13 thereof. Said the appellants in support hereof, since Bancom [which was in full control of the financial affairs of Fereit] failed to cause the release of the aforesaid receivables (P2,800,000) to State Financing by Fereit, Bancom should necessarily suffer the consequences thereof - not the defendants-appellants.
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> Apparently, the thrust of defendants-appellants' defense points to Fereit's non-compliance with paragraph 13 of the "Memorandum of Agreement." However, records show that defendants-appellants did nothing to formally [assert] their rights against Fereit. Truly, this Court agrees with the trial court's pronouncement that defendants-appellants' failure to avail of the remedies provided by law, such as the filing of a third-party complaint against Fereit, necessarily indicates that they themselves did not seriously consider Fereit's non-compliance as affecting their own liability to BANCOM. This can be done for after all, Fereit is still a different entity with distinct and separate corporate existence from that of BANCOM even granting that BANCOM is in full control of the financial affairs of Fereit.
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> x x x x
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> Besides, the terms of the promissory notes and "Continuing Guaranty" x x x are clear and unequivocal, leaving no room [for] interpretation. For not being contrary to law, morals, good customs, public order and public

policy, defendants' obligation has the force of law and should be complied with in good faith.[27]

Of the individuals comprising the Reyes Group, only petitioners filed a Motion for Reconsideration of the CA Decision.[28] They reiterated their argument that the Promissory Notes were not meant to be binding, given that the funds released to Marbella by Bancom were not loans, but merely additional financing. Petitioners also contended that the action must be considered abated pursuant to Section 122 of the Corporation Code. They pointed out that the Certificate of Registration issued to Bancom had been revoked by the Securities and Exchange Commission (SEC) on 31 May 2004, and that no trustee or receiver had been appointed to continue the suit; in fact, even Bancom's former counsel was compelled to withdraw its appearance from the case, as it could no longer contact the corporation.

On 23 July 2009, petitioners filed a Supplement to their Motion for Reconsideration.[29] In support of their argument on the abatement of the suit, they attached a Certificate of Corporate Filing/Information issued by the SEC. The latter confirmed that Bancom's Certificate of Registration[30] had been revoked on 26 May 2003 for noncompliance with the SEC's reportorial requirements.

In a Resolution[31] dated 9 November 2009, the CA denied the Motion for Reconsideration, since the points raised therein had already been passed upon in its earlier ruling.

PROCEEDINGS BEFORE THIS COURT

On 27 November 2009, petitioners filed the instant Petition for Review. They assert that the CA committed a grievous error in refusing to declare the suit abated despite the obvious fact that Bancom no longer exists. They likewise contend that the appellate court had incorrectly relied upon the Promissory Notes and the Continuing Guaranty. It allegedly failed to take into account the parties' earlier related agreements that showed that petitioners could not be held liable for the debt.

In a Resolution[32] dated 17 February 2010, we ordered Bancom to comment on the Petition for Review. The copy of the Resolution served at Bancom's address on record was, however, returned unserved with the postal notation "RTS - non-existent address."[33] For this reason, we deemed the filing of a comment waived.[34]

ISSUES

The following issues are presented to the Court for resolution:

1. Whether the present suit should be deemed abated by the revocation by the SEC of the Certificate of Registration issued to Bancom

2. Whether the CA correctly ruled that petitioners are liable to Bancom for (a) the payment of the loan amounts indicated on the Promissory Notes issued by Marbella; and (b) attorney's fees

OUR RULING

We **DENY** the Petition.

The revocation of Bancom's Certificate of Registration does not justify the abatement of these proceedings.

Section 122[35] of the Corporation Code provides that a corporation whose charter is annulled, or whose corporate existence is otherwise terminated, may continue as a body corporate for a limited period of three years, but only for certain specific purposes enumerated by law. These include the prosecution and defense of suits by or against the corporation, and other objectives relating to the settlement and closure of corporate affairs.

Based on the provision, a defunct corporation loses the right to sue and be sued in its name upon the expiration of the three-year period provided by law.[36] Jurisprudence, however, has carved out an exception to this rule. In several cases, this Court has ruled that an appointed receiver,[37] an assignee,[38] or a trustee[39] may institute suits or continue pending actions on behalf of the corporation, even after the winding-up period. The rule was first enunciated in the 1939 case *Sumera v. Valencia*,[40] in which we declared:

> [I]f the corporation carries out the liquidation of its assets through its own officers and continues and defends the actions brought by or against it, its existence shall terminate at the end of three years from the time of dissolution; but if a receiver or assignee is appointed, as has been done in the present case, with or without a transfer of its properties within three years, the legal interest passes to the assignee, the beneficial interest remaining in the members, stockholders, creditors and other interested persons; and said assignee may bring an action, prosecute that which has already been commenced for the benefit of the corporation, or defend the latter against any other action already instituted or which may be instituted even outside of the period of three years fixed for the officers of the corporation.
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> For the foregoing considerations, we are of the opinion and so hold that when a corporation is dissolved and the liquidation of its assets is placed in the hands of a receiver or assignee, the period of three years prescribed by section 77 of Act No. 1459 known as the Corporation Law is not applicable, and the assignee may institute all actions leading to the liquidation of the assets of the corporation even after the expiration of three years.

In subsequent cases, the Court further clarified that a receiver or an assignee need not even be appointed for the purpose of bringing suits or continuing those that are pending.[41] In *Gelano v. Court of Appeals*,[42] we declared that in the absence of a receiver or an assignee, suits may be instituted or continued by a trustee specifically designated for a particular matter, such as a lawyer representing the corporation in a certain case. We also ruled in *Clemente v. Court of Appeals*[43] that the board of directors of the corporation may be considered trustees by legal implication for the purpose of winding up its affairs.