

## FIRST DIVISION

[ G.R. No. 210542, February 24, 2016 ]

**ROSALINA CARODAN, PETITIONER, VS. CHINA BANKING CORPORATION, RESPONDENT.**

### DECISION

**SERENO, C.J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> seeking to set aside the Decision<sup>[2]</sup> dated 9 July 2013 and the Resolution<sup>[3]</sup> dated 29 November 2013 rendered by the Court of Appeals (CA), Ninth Division, Manila, in CA-G.R. CV No. 95835. The CA denied petitioner's appeal assailing the Decision<sup>[4]</sup> dated 23 June 2010 issued by the Regional Trial Court (RTC) of Tuguegarao City, Branch 2, in Civil Case No. 5692.

### THE ANTECEDENT FACTS

The records reveal that on 6 June 2000, China Banking Corporation (China Bank) instituted a Complaint<sup>[5]</sup> for a sum of money against Barbara Perez (Barbara), Rebecca Perez-Viloria (Rebecca), Rosalina Carodan (Rosalina) and Madeline Carodan (Madeline). China Bank claimed that on 15 January 1998, Barbara and Rebecca, for value received, executed and delivered Promissory Note No. TLS-98/007<sup>[6]</sup> to respondent bank under which they promised therein to jointly and severally pay the amount of P2.8 million.<sup>[7]</sup> China Bank further claimed that as security for the payment of the loan, Barbara, Rebecca and Rosalina also executed a Real Estate Mortgage<sup>[8]</sup> over a property registered in the name of Rosalina and covered by Transfer Certificate Title (TCT) No. T-10216.<sup>[9]</sup> Respondent alleged that a Surety Agreement<sup>[10]</sup> in favor of China Bank as creditor was also executed by Barbara and Rebecca as principals and Rosalina and her niece Madeline as sureties. Through that agreement, the principals and sureties warranted the payment of the loan obligation amounting to F2.8 million including interests, penalties, costs, expenses, and attorney's fees.<sup>[11]</sup>

Barbara and Rebecca failed to pay their loan obligation despite repeated demands from China Bank. Their failure to pay prompted the bank institute extrajudicial foreclosure proceedings on the mortgaged property on 26 November 1999.<sup>[12]</sup> From the extrajudicial sale, it realized only PI.5 million as evidenced by a Certificate of Sale.<sup>[13]</sup> This amount, when applied to the total outstanding loan obligation of PI,865,345.77, would still leave a deficiency of P365,345.77. For that reason, the bank prayed that the court order the payment of the deficiency amount with interest at 12% per annum computed from 13 January 2000; attorney's fees equal to 10% of the deficiency amount; and litigation expenses and costs of suit.<sup>[14]</sup>

Barbara and Rebecca filed their Answer. They interposed the defense that although

they both stood as principal borrowers, they had entered into an oral agreement with Madeline and Rosalina. Under that agreement which was witnessed by China Bank's loan officer and branch manager, they would equally split both the proceeds of the loan and the corresponding obligation and interest pertaining thereto, and they would secure the loan with the properties belonging to them.<sup>[15]</sup> Barbara and Rebecca used as security their real properties covered by TCT Nos. T-93177, T-93176, T-93174, T-93167, T-93169, T-93170, T-93171 and T-93172; while Rosalina and Madeline used for the same purpose the former's property covered by TCT No. T-10216.<sup>[16]</sup>

Barbara and Rebecca further alleged that while Rosalina and Madeline obtained their share of P1.4 million of the loan amount, the latter two never complied with their obligation to pay interest. It was only Rebecca's account with China Bank that was automatically debited in the total amount of P1,002,735.54.<sup>[17]</sup> Barbara and Rebecca asked China Bank for the computation of their total obligation, for which they paid P1.5 million aside from the interest payments, and respondent bank thereafter released the Real Estate Mortgage over their properties.<sup>[18]</sup>

By way of crossclaim, Barbara and Rebecca asked Rosalina and Madeline to pay half of P1,002,735.54 as interest payments, as well as the deficiency amount plus 12% interest per annum and attorney's fees, the total amount of which pertained to the loan obligation of the latter two.<sup>[19]</sup> By way of counterclaim, Barbara and Rebecca also asked China Bank to pay P1million as moral damages, P500,000 as exemplary damages, plus attorney's fees and costs of suit.<sup>[20]</sup>

China Bank filed its Reply and Answer to Counterclaim clarifying that it was suing Barbara and Rebecca as debtors under the Promissory Note and as principals in the Surety Agreement, as well as Rosalina and Madeline as sureties in the Surety Agreement.<sup>[21]</sup> It claimed that equal sharing of the proceeds of the loan was "a bat at misrepresentation" and "a self-serving prevarication," because what was clearly written on the note was that Rebecca and Barbara were the principal debtors.<sup>[22]</sup> It reiterated that the two were liable for the full payment of the principal amount plus the agreed interest, charges, penalties and attorney's fees, with recourse to reimbursement from Rosalina and Madeline.<sup>[23]</sup>

China Bank also disputed the claim of Rebecca and Barbara that upon their payment to the bank of P1.5 million, the Real Estate Mortgage over their properties was cancelled. Their claim was disputed because, even after their payment of P1.5 million, Rebecca and Barbara were still indebted in the amount of P1.3 million exclusive of interest, charges, penalties and other legitimate fees.<sup>[24]</sup> Furthermore, respondent stated that if there was a cancellation of mortgage, it referred to other mortgages securing other separate loan obligations of Barbara and Rebecca; more particularly, that of Barbara.<sup>[25]</sup>

Rosalina filed her Answer with Counterclaim and Crossclaim.<sup>[26]</sup> She alleged that on 2 July 1997, she and Barbara executed (1) a Real Estate Mortgage covering Rosalina's lot and ancestral house, as well as Barbara's eight residential apartments, annotated as an encumbrance at the back of the TCTs corresponding to the properties as evidenced by the Annexes to the Answer; and (2) a Surety Agreement

to secure the credit facility granted by the bank to Barbara and Rebecca up to the principal amount of P2.8 million.<sup>[27]</sup> Rosalina further stated that the execution of the contracts was "made in consideration of the long-time friendship" between Barbara and Rebecca, and Madeline, and that "no monetary or material consideration whatsoever passed between [Barbara and Rebecca], on the one hand, and [Rosalina], on the other hand."<sup>[28]</sup>

Rosalina acknowledged that on 15 January 1998, Barbara and Rebecca executed a Promissory Note for the purpose of evidencing a loan charged against the loan facility secured by the mortgage.<sup>[29]</sup> She averred, though, that when Barbara and Rebecca paid half of the loan under the Promissory Note, the properties of Barbara covered by the mortgage were released by the bank from liability. The cancellation of the mortgage lien was effected by an instrument dated 27 May 1999 and reflected on the TCTs evidenced by the Annexes to the Answer.<sup>[30]</sup>

This cancellation, according to Rosalina, illegally and unjustly caused her property to absorb the singular risk of foreclosure.<sup>[31]</sup> The result, according to her, was the extinguishment of the indivisible obligation contained in the mortgage pursuant to Article 1216<sup>[32]</sup> of the Civil Code.<sup>[33]</sup>

Rosalina further averred that when the bank instituted the foreclosure proceedings, it misrepresented that her property was the only one that was covered by the mortgage; omitted from the schedule of mortgaged properties those of Barbara; and misrepresented that "the terms and condition of the aforesaid mortgage have never been changed or modified whether tacitly or expressly, by any agreement made after the execution thereof."<sup>[34]</sup>

Finally, Rosalina stated that she had made demands on Barbara and Rebecca to cause the rectification of the illegal and unjust deprivation of her property in payment of the indemnity. Allegedly, Barbara and Rebecca simply ignored her demands, so, she prayed that the two be held solidarily liable for the total amount of damages and for the deficiency judgment sought in this Complaint.<sup>[35]</sup>

China Bank filed its Reply and Answer to Counterclaim.<sup>[36]</sup> It alleged that the issue of whether Rosalina obtained material benefit from the loan was not material, since she had voluntarily and willingly encumbered her property;<sup>[37]</sup> that the indivisibility of mortgage does not apply to the case at bar, since Article 2089<sup>[38]</sup> of the Civil Code presupposes several heirs, a condition that is not present in this case;<sup>[39]</sup> that nothing short of payment of the debt or an express release would operate to discharge a mortgage;<sup>[40]</sup> and that, as surety, Rosalina was equally liable as principal debtor to pay the deficiency obligation in the sum of P365,345.77.<sup>[41]</sup> The bank also filed its Comment/Opposition<sup>[42]</sup> to the Entry of Appearance of Atty. Edwin V. Pascua as counsel for Rosalina. It said that Atty. Pascua had once been its retained lawyer pursuant to a Retainer Agreement dated 5 September 1997.<sup>[43]</sup> Because of its Opposition, Rosalina was subsequently represented by Atty. Reynaldo A. Deray.

All the parties submitted their Pre-Trial Briefs with the exception of Madeline, whose case had been archived by the RTC upon motion of China Bank for the court's failure

to acquire jurisdiction over her person. The issues of the case were thereafter limited to the following: (1) whether the defendants were jointly and severally liable to pay the deficiency claim; (2) whether the surety was still liable to the bank despite the release of the mortgage of the principal borrower; (3) whether there was a previous agreement among the defendants that Barbara and Rebecca would receive half and Rosalina and Madeline, the other half; and (4) whether respondent bank still had a cause of action against the surety after the mortgage of the principal borrower had been released by the bank.<sup>[44]</sup>

### **THE RULING OF THE RTC**

The RTC ruled that although no sufficient proof was adduced to show that Rosalina had obtained any pecuniary benefit from the loan agreement between Rebecca and Barbara and China Bank, the mortgage between Rosalina and China Bank was still valid.<sup>[45]</sup> The trial court declared that respondent bank had therefore lawfully foreclosed the mortgage over the property of Rosalina, even if she was a mere accommodation mortgagor.<sup>[46]</sup> The RTC also declared Rosalina's claim to be without merit and without basis in law and jurisprudence. She claimed that because the Real Estate Mortgage covering her property was a single and indivisible contract, China Bank's act of releasing the principal debtors' properties resulted in the extinguishment of the obligation.<sup>[47]</sup> The trial court held that the creditor had the right to proceed against any one of the solidary debtors, or some or all of them simultaneously; and that a creditor's right to proceed against the surety exists independently of the creditor's right to proceed against the principal.<sup>[48]</sup>

Finally, the RTC ordered Rebecca, Barbara and Rosalina to be jointly and severally liable to China Bank for the deficiency between the acquisition cost of the foreclosed real estate property and the outstanding loan obligation of Barbara and Rebecca at the time of the foreclosure sale. Interest was set at the rate of 12% per annum from 13 January 2000 until full payment. Rebecca and Barbara were also ordered to reimburse Rosalina for the amount of the deficiency payment charged against her including interests thereon.<sup>[49]</sup>

### **THE RULING OF THE CA**

Rosalina filed a timely Notice of Appeal and imputed error to the trial court in finding her, together with Rebecca and Barbara, jointly and severally liable to pay the deficiency claim; in finding that she was still liable as surety even if the bank had already released the collateral of the principal borrower; and in not annulling the foreclosure sale of the property, not reconveying the property to her, and not awarding her damages as prayed for in her counterclaim. She said that these were done by the court despite the fact that China Bank had deliberately and maliciously released the properties of the principal borrowers, thereby exposing her property to risk.<sup>[50]</sup>

The CA found the appeal bereft of merit.<sup>[51]</sup> It qualified Rosalina as a surety who had assumed or undertaken a principal debtor's responsibility or obligation. As such, she was supposed to be principally liable for the payment of the debt in case the principal debtors did not pay, regardless of their financial capacity to do so.<sup>[52]</sup> As for the deficiency, the CA cited *BPI Family Savings Bank v. Avenido*,<sup>[53]</sup> The

Supreme Court had ruled therein that the creditor was not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property, subject of the real estate mortgage, would result in a deficiency.<sup>[54]</sup> The CA ultimately affirmed the RTC Decision *in toto*<sup>[55]</sup> and denied the Motion for Reconsideration.<sup>[56]</sup> Hence, this Petition.

Before this Court, petitioner Rosalina now imputes error to the CA's affirmance of the RTC Decision. She says that the CA Decision was not in accord with law and jurisprudence in holding that petitioner, jointly and severally with Barbara and Rebecca, was liable to pay China Bank's deficiency claim after the bank's release of the collateral of the principal debtors. Respondent bank's alleged act of exposing Rosalina's property to the risk of foreclosure despite the indivisible character of the Real Estate Mortgage supposedly violated Article 2089 of the New Civil Code.<sup>[57]</sup>

China Bank filed its Comment<sup>[58]</sup> claiming that all the grounds cited by petitioner were "mere reiterations, repetitions, or rehashed grounds and arguments raised in the Appellant's Brief x x x which were exhaustively passed upon and considered by the CA in its Decision",<sup>[59]</sup> and that the petition "is wanting of any new, substantial and meritorious grounds that would justify the reversal of the CA Decision affirming the RTC decision."<sup>[60]</sup>

### **THE ISSUE**

The sole issue to be resolved by this Court is whether petitioner Rosalina is liable jointly and severally with Barbara and Rebecca for the payment of respondent China Bank's claims.

### **THE RULING OF THIS COURT**

Loan transactions in banking institutions usually entail the execution of loan documents, typically a promissory note, covered by a real estate mortgage and/or a surety agreement.<sup>[61]</sup> In the instant case, petitioner Rosalina admitted that she was a party to these loan documents although she vehemently insisted that she had received nothing from the proceeds of the loan.<sup>[62]</sup> Meanwhile, respondent bank offered in evidence the Promissory Note, the Real Estate Mortgage and the Surety Agreement signed by the parties.

We find that Rosalina is liable as an accommodation mortgagor.

In *Belo v. PNB*,<sup>[63]</sup> we had the occasion to declare:

An accommodation mortgage is not necessarily void simply because the accommodation mortgagor did not benefit from the same. The validity of an accommodation mortgage is allowed under Article 2085 of the New Civil Code which provides that (t)hird persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. An accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such.<sup>[64]</sup>