

## THIRD DIVISION

**[ G.R. No. 183947, September 21, 2016 ]**

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.  
TEODORO G. BERNARDINO, RESPONDENT.**

### DECISION

**JARDELEZA, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> assailing the Decision dated June 10, 2008<sup>[2]</sup> and the Resolution dated July 22, 2008<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 88745. The assailed Decision and Resolution affirmed the Decision dated June 30, 2006<sup>[4]</sup> of the Regional Trial Court, Branch 59, Makati City in Civil Case No. 98-1851, which declared the comprehensive surety agreements between Rizal Commercial Banking Corporation (RCBC) and Teodoro G. Bernardino (Bernardino) unenforceable and having no effect for the reason that the subrogation agreement, a condition precedent, was not executed.

### The Facts

In 1995, Marcopper Mining Corporation (MMC) obtained an unsecured bridge loan from RCBC in the amount of US\$13.7 Million to finance the acquisition of twelve (12) Rig Mining Trucks and one (1) Demag Excavator Shovel. Payment of the bridge loan was supposed to be sourced from the proceeds of a long term loan MMC was seeking from Export-Import Bank (EXIM Bank). EXIM Bank, however, failed to approve the long term loan due to a tailing spill in MMC's mining area in Marinduque which caused the stoppage of MMC's operations.<sup>[5]</sup>

Concerned that the short term loan it extended to MMC was unsecured, RCBC negotiated with MMC to provide collateral or security. MMC yielded to RCBC's request and decided to mortgage twelve (12) units of Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel covered by a Deed of Chattel Mortgage dated April 23, 1996.<sup>[6]</sup> Additionally, MMC pledged shares of stocks covered by Deeds of Pledge dated August 29, 1996<sup>[7]</sup> and September 9, 1997.<sup>[8]</sup> RCBC later expressed interest in substituting these collaterals with MMC's residential property in Forbes Park (Forbes Park property), which was mortgaged with the Asian Development Bank (ADB).<sup>[9]</sup>

In a letter dated July 1, 1997<sup>[10]</sup> to RCBC, MMC proposed two (2) options for the payment of its loan, to wit:

- 1) Initiate a foreclosure on the mortgaged assets, thereby realizing a maximum cash proceeds of about \$11.6 Million. The balance will have to be relegated to the rank of unsecured obligations whose repayment will solely depend

- on the timing and extent of cash proceeds to be generated from the disposal of the company's assets, or
- 2) Accept our proposal which calls for the involvement of [MMC's] major shareholders.

The company may request the involvement of our major shareholders who could ensure a definite repayment plan for the principal exposure of \$13.7 Million. Said repayment plan will consist of the following components:

- a) Implementation of the assignment of the Forbes Park property for the previously agreed amount of P235 Million;
- b) Payment of the amount of P71 Million, being the peso equivalent of the difference between \$11.6 Million and \$8.9 Million (dollar equivalent of P235 Million) over a period of one (1) year on a quarterly basis, plus interest; and
- c) Payment of the balance of P55.4 Million (being the peso equivalent of the difference between the entire principal obligation of \$13.7 Million and \$11.6 Million which is the sum of Items a) and b) above), over a period of two (2) years payable quarterly.<sup>[11]</sup>

In the same letter, MMC encouraged RCBC to choose the second option, thus:

We believe that Option 2 above guarantees your full recovery of our principal obligation to you. Since our major shareholders have already indicated their willingness to support this repayment scheme, may we request you to accept this option for immediate implementation.<sup>[12]</sup>

On July 3, 1997, representatives of MMC and RCBC met: to discuss the details of MMC's proposals. RCBC was represented by its former vice-presidents Filadelfo Rojas (Rojas), Felisa Banzon (Banzon), Susan Santos (Santos), and Arty. Merlyn Dueñas (Arty. Dueñas). RCBC representatives signified their intention to choose Option 2, but raised a concern on the issue of accrued interest.<sup>[13]</sup> MMC also informed them that Placer Dome, a major stockholder of MMC which, as a guarantor, subsequently acquired the mortgage on the Forbes Park property, would only agree to let go of the Forbes Park property if RCBC would release in its favor the mining equipment mortgaged to RCBC.<sup>[14]</sup> It was also discussed that another condition for the second option was for a stockholder of MMC to act as a surety for two (2) promissory notes intended to be executed between the parties.<sup>[15]</sup>

In a letter dated July 8, 1997,<sup>[16]</sup> MMC made some revisions of the second option in view of RCBC's concern regarding accrued interest, to wit:

- 1) The principal amount was to be revised, from the original principal of \$13.7 million to \$14,327 million, which includes interest that has been capitalized;
- 2) Implementation of the assignment of the Forbes Park property for the agreed amount of P235 million, equivalent to about \$8,901,515;
- 3) Payment of the amount of \$2,698,485 over a period of one (1) year payable quarterly plus interest; and
- 4) Payment of the balance of \$2,727,000 over a period of two (2) years, payable quarterly, without interest.

RCBC, through Rojas and Santos, signed its conformity to the July 8, 1997 letter.<sup>[17]</sup>

On August 1, 1997, MMC forwarded four (4) documents to RCBC for signature.<sup>[18]</sup> The cover letter reads:

In connection with the transfer of our Forbes Park Property in your favor, we are transmitting to you herewith the following documents:

1. Deed of Assignment dated August 1, 1997, for BIR purposes;
2. Deed of Partial Release from Mortgage signed by the Attorney-in-Fact of MR Holdings Limited releasing from their mortgage the above-mentioned property; and
3. Copy of Secretary's Certificate of a resolution passed by the Board of Directors of MR Holdings Limited appointing as Attorney-in-Fact, Arty. Alma D. Fernandez-Mallonga. The original of said Secretary's Certificate is with Arty. Mallonga and will be presented to the Register of Deeds when required[;]
4. Deed of Release from Mortgage to be signed by RCBC involving the release from your mortgage six (6) units Rig Tracks and one (1) unit Demag Shovel.

Kindly note that the release of the above-mentioned property by MR Holdings Limited from their mortgage was made on the condition that a substitution thereof with other unencumbered and free assets and properties of the mortgagor under a second Addendum Mortgage be effected. Inasmuch as our only free and unencumbered assets will be those that will be released by you under the Deed of Release from Mortgage mentioned under Item No. 4 above, may we therefore request that your authorized signatories sign as soon as possible the said Deed of Release from Mortgage.<sup>[19]</sup>

RCBC only signed the Deed of Assignment of the Forbes Park property and returned the Deed of Release from Mortgage of the six (6) Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel unsigned.<sup>[20]</sup>

In a letter dated August 22, 1997,<sup>[21]</sup> MMC sent RCBC the surety agreements duly executed by Bernardino, together with the two (2) promissory notes covering the remaining obligation of MMC after effecting partial payment through the assignment of the Forbes Park property to RCBC. Non-Negotiable Promissory Note No. 21-3697<sup>[22]</sup> was for the amount of US\$2,698,485.00 payable within one year with interest at 9% per *annum* and a first quarterly due date of November 24, 1997, while Non-Negotiable Promissory Note No. 21-3797<sup>[23]</sup> was for the amount of US\$2,727,000.00 payable within two years without interest and a first quarterly due date of November 24, 1997.<sup>[24]</sup> The parties signed the promissory notes on August 26, 1997.<sup>[25]</sup>

In a letter dated September 12, 1997,<sup>[26]</sup> MMC, through Banzon, acknowledged the transfer of ownership of the Forbes Park property to RCBC. She, however, informed

MMC that the bank could still not commit to an approval of MMC's request for the release of the six (6) Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel because it was still working on some details of the request.

In a letter dated November 24, 1997,<sup>[27]</sup> MMC requested RCBC to immediately release from mortgage the mining equipment. MMC reminded RCBC that MR Holdings, Ltd., the successor-in-interest of the ADB, agreed to release the Forbes Park property from its mortgage only upon the assurance that RCBC will also release the mining equipment from their mortgage and turn them over to MR Holdings, Ltd. MMC also informed RCBC that it likewise committed to mortgage the shares of stocks subject of the Deeds of Pledge with MR Holdings, Ltd.

In a letter dated December 17, 1997,<sup>[28]</sup> RCBC informed MMC that the release from mortgage of the six (6) units of the Rig Haul Trucks and one (1) Demag Hydraulic Excavator Shovel, as well as the release from pledge of the club shares, have been approved by its Executive Committee subject to the condition that payment for the first amortization be made by MMC.<sup>[29]</sup>

MMC failed to settle the obligations which fell due on November 24, 1997, February 23, 1998 and May 25, 1998.<sup>[30]</sup> Final demand was sent to MMC on July 1, 1998, declaring the whole obligation under the promissory notes due and payable and giving it five (5) days from receipt to settle the whole obligation of US\$5,726,660.28. Demand was also made on Bernardino, as surety for MMC, to pay the amount plus P20,685,872.25 as penalty.<sup>[31]</sup>

On July 31, 1998, Bernardino instituted a Complaint<sup>[32]</sup> for specific performance, and for the declaration of nullity or unenforceability of surety agreements against RCBC. It was docketed as Civil Case No. 98-185 and filed before Branch 59 of the Regional Trial Court (RTC) of Makati City. Bernardino prayed that judgment be rendered declaring the surety agreements between him and RCBC null and void and/or unenforceable, and that RCBC be held liable for damages.<sup>[33]</sup>

In its Answer with Compulsory Counterclaims,<sup>[34]</sup> RCBC alleged that contrary to Bernardino's assertion, the parties did not agree to execute an agreement on Bernardino's subrogation rights and a release of mortgage and pledge over MMC's properties. As its counterclaims, RCBC prayed that Bernardino be declared jointly and severally liable with MMC to pay RCBC the principal amount due under the promissory notes, including the interest and stipulated penalty therein, as well as attorney's fees and damages.<sup>[35]</sup>

### **The Ruling of the Trial Court**

Before resolving the complaint, the RTC, Branch 59, Makati City pointed out that a separate complaint for specific performance docketed as Civil Case No. 98-1661 was filed by MMC against RCBC before the RTC, Branch 57, Makati City. In that case, the issue involved was whether RCBC may be ordered to execute a Deed of Partial Release of Mortgage. The RTC, Branch 57, Makati City ruled in favor of MMC. On appeal, the CA affirmed the RTC Decision. Considering that the issue had been passed upon in Civil Case No. 98-1661, which was then on appeal before us, the RTC, Branch 59 limited the issue before it to the validity of the surety agreements

executed by Bernardino.<sup>[36]</sup>

Ruling in favor of Bernardino, the RTC, Branch 59, Makati City held that he was able to establish his claim by preponderance of evidence. It ruled that the subrogation agreement was a condition precedent before Bernardino may be held liable under the comprehensive surety agreements. Since there was no subrogation agreement, the comprehensive surety agreements are unenforceable and have no effect. The dispositive portion of the RTC Decision reads as follows:

**WHEREFORE, PREMISES CONSIDERED**, judgment is hereby rendered in favor of the plaintiff, declaring that for RCBC's unjust refusal to execute the necessary subrogation agreement which is a condition precedent before plaintiff may be held liable under the comprehensive surety agreements, the same are declared unenforceable and of no effect.

Defendant is also ordered to pay plaintiff the following sums:

- 1) P100,000.00 as moral damages;
- 2) P100,000.00 as nominal and exemplary damages;
- 3) P957,540.94 as attorney's fees;
- 4) P44,519.03 as litigation expenses; and
- 5) Costs of suit against herein defendant.

**SO ORDERED.**<sup>[37]</sup>

### **The Ruling of the Court of Appeals**

The CA denied RCBC's appeal and affirmed the RTC Decision. The CA agreed with the trial court that MMC was led to believe that RCBC agreed to execute a subrogation agreement in favor of Bernardino and to effect a release of the mortgage and pledge.

The CA also denied RCBC's motion for reconsideration in a Resolution dated July 22, 2008.<sup>[38]</sup> Hence, this petition, which raises the main issue of whether RCBC and Bernardino agreed that a subrogation agreement be executed as a condition precedent before Bernardino can be held liable under the surety agreements.

RCBC maintains that in affirming the Decision of the RTC, the CA, in grave error of law, blatantly disregarded:

- 1) Article 1403 of the Civil Code on what constitutes unenforceable contracts. Nowhere in the complaint nor in the evidence on record can one find any claim that the essential elements needed for a contract to be considered unenforceable are missing;
- 2) The principle that in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's;
- 3) The principle that inconsistencies as to minor details and peripheral matters do not affect the credibility of witnesses nor the probative weight of their testimonies. While RCBC's