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FIRST DIVISION

[G.R. No. 167052, March 11, 2015]

BANK OF THE PHILIPPINE ISLANDS SECURITIES CORPORATION, PETITIONER, VS. EDGARDO V. GUEVARA, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is a Petition for Review under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] dated December 19, 2003 and Resolution[2] dated February 9, 2005 of the Court Appeals in CA-G.R. CV No. 69348, affirming the Decision[3] dated September 11, 2000 of the Regional Trial Court (RTC) of Makati City, Branch 57 in Civil Case No. 92-1445. The RTC acted favorably on the action instituted by respondent Edgardo V. Guevara for the enforcement of a foreign judgment, particularly, the Order[4] dated March 13, 1990 of the United States (U.S.) District Court for the Southern District of Texas, Houston Division (U.S. District Court), in Civil Action No. H-86-440, and ordered petitioner Bank of the Philippine Islands (BPI) Securities Corporation to pay respondent (a) the sum of US$49,500.00 with legal interest; (b) P250,000.00 attorney's fees and litigation expenses; and (c) costs of suit.

The facts are culled from the records of the case.

Ayala Corporation, a holding company, and its subsidiaries are engaged in a wide array of businesses including real estate, financial services, telecommunications, water and used water, electronics manufacturing services, automotive dealership and distributorship, business process outsourcing, power, renewable energy, and transport infrastructure.[5]

In the 1980s, Ayala Corporation was the majority stockholder of Ayala Investment and Development Corporation (AIDC). AIDC, in turn, wholly owned Philsec Investment Corporation (PHILSEC), a domestic stock brokerage firm, which was subsequently bought by petitioner; and Ayala International Finance Limited (AIFL), a Hong Kong deposit-taking corporation, which eventually became BPI International Finance Limited (BPI-IFL). PHILSEC was a member of the Makati Stock Exchange and the rules of the said organization required that a stockbroker maintain an amount of security equal to at least 50% of a client's outstanding debt.

Respondent was hired by Ayala Corporation in 1958. Respondent later became the Head of the Legal Department of Ayala Corporation and then the President of PHILSEC from September 1, 1980 to December 31, 1983. Thereafter, respondent served as Vice-President of Ayala Corporation until his retirement on August 31, 1997.

While PHILSEC President, one of respondent's obligations was to resolve the outstanding loans of Ventura O. Ducat (Ducat), which the latter obtained separately from PHILSEC and AIFL. Although Ducat constituted a pledge of his stock portfolio valued at approximately US$1.4 million, Ducat's loans already amounted to US$3.1 million. Because the security for Ducat's debts fell below the 50% requirement of the Makati Stock Exchange, the trading privileges of PHILSEC was in peril of being suspended.

Ducat proposed to settle his debts by an exchange of assets. Ducat owned several pieces of real estate in Houston, Texas, in partnership with Drago Daic (Daic), President of 1488, Inc., a U.S.-based corporation. Respondent relayed Ducat's proposal to Enrique Zobel (Zobel), the Chief Executive Officer of Ayala Corporation. Zobel was amenable to Ducat's proposal but advised respondent to send Thomas Gomez (Gomez), an AIFL employee who traveled often to the U.S., to evaluate Ducat's properties.

In December of 1982, Gomez examined several parcels of real estate that were being offered by Ducat and 1488, Inc. for the exchange. Gomez, in a telex to respondent, recommended the acceptance of a parcel of land in Harris County, Texas (Harris County property), which was believed to be worth around US$2.9 million. Gomez further opined that the "swap would be fair and reasonable" and that it would be better to take this opportunity rather than pursue a prolonged legal battle with Ducat. Gomez's recommendation was brought to Zobel's attention. The property-for-debt exchange was subsequently approved by the AIFL Board of Directors even without a prior appraisal of the Harris County property. However, before the exchange actually closed, an AIFL director asked respondent to obtain such an appraisal.

William Craig (Craig), a former owner of the Harris County property, conducted the appraisal of the market value of the said property. In his January 1983 appraisal, Craig estimated the fair market value of the Harris County property at US$3,365,000.

Negotiations finally culminated in an Agreement,[6] executed on January 27, 1983 in Makati City, Philippines, among 1488, Inc., represented by Daic; Ducat, represented by Precioso Perlas (Perlas); AIFL, represented by Joselito Gallardo (Gallardo); and PHILSEC and Athona Holdings, N. V. (ATHONA), both represented by respondent. Under the Agreement, the total amount of Ducat's debts was reduced from US$3.1 million to US$2.5 million; ATHONA, a company wholly owned by PHILSEC and AIFL, would buy the Harris County property from 1488, Inc. for the price of US$2,807,209.02; PHILSEC and AIFL would grant ATHONA a loan of US$2.5 million, which ATHONA would entirely use as initial payment for the purchase price of the Harris County property; ATHONA would execute a promissory note in favor of 1488, Inc. in the sum of US$307,209.02 to cover the balance of the purchase price for the Harris County property; upon its receipt of the initial payment of US$2.5 million from ATHONA, 1488, Inc. would then fully pay Ducat's debts to PHILSEC and AIFL in the same amount; for their part, PHILSEC and AIFL would release and transfer possession of Ducat's pledged stock portfolio to 1488, Inc.; and 1488, Inc. would become the new creditor of Ducat, subject to such other terms as they might agree upon.

The series of transactions per the Agreement was eventually executed. However,

after acquiring the Harris County property, ATHONA had difficulty selling the same. Despite repeated demands by 1488, Inc., ATHONA failed to pay its promissory note for the balance of the purchase price for the Harris County property, and PHILSEC and AIFL refused to release the remainder of Ducat's stock portfolio, claiming that they were defrauded into believing that the said property had a fair market value higher than it actually had.

Civil Action No. H-86-440 before the U.S. District Court of Southern District of Texas, Houston Division

On October 17, 1985, 1488, Inc. instituted a suit against PHILSEC, AIFL, and ATHONA for (a) misrepresenting that an active market existed for two shares of stock included in Ducat's portfolio when, in fact, said shares were to be withdrawn from the trading list; (b) conversion of the stock portfolio; (c) fraud, as ATHONA had never intended to abide by the provisions of its promissory note when they signed it; and (d) acting in concert as a common enterprise or in the alternative, that ATHONA was the alter ego of PHILSEC and AIFL. The suit was docketed as Civil Action No. H-86-440 before the U.S. District Court.

PHILSEC, AIFL, and ATHONA filed counterclaims against 1488, Inc., Daic, Craig, Ducat, and respondent, for the recovery of damages and excess payment or, in the alternative, the rescission of the sale of the Harris County property, alleging fraud, negligence, and conspiracy on the part of counter-defendants who knew or should have known that the value of said property was less than the appraisal value assigned to it by Craig.

Before the referral of the case to the jury for verdict, the U.S. District Court dropped respondent as counter-defendant for lack of evidence to support the allegations against him. Respondent then moved in open court to sanction petitioner (formerly PHILSEC), AIFL, and ATHONA based on Rule 11 of the U.S. Federal Rules of Civil Procedure.[7]

In its Order dated March 13, 1990, the U.S. District Court stated that on February 14, 1990, after trial, the jury returned a verdict for 1488, Inc. In the same Order, the U.S. District Court ruled favorably on respondent's pending motion for sanction, thus:

> During the course of the trial, the Court was required to review plaintiff's Exhibit No. 91 to determine whether the exhibit should be admitted. After reviewing the exhibit and hearing the evidence, the Court concluded that the defendants' counterclaims against Edgardo V. Guevara are frivolous and brought against him simply to humiliate and embarrass him. It is the opinion of the Court that the defendants, Philsec Investment Corporation, A/K/A BPI Securities, Inc., and Ayala International Finance Limited, should be sanctioned appropriately based on Fed. R. Civ. P. 11 and the Court's inherent powers to punish unconscionable conduct. Based upon the motion and affidavit of Edgardo V. Guevara, the Court finds that $49,450 is reasonable punishment.
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> ORDERED that defendants, Philsec Investment Corporation A/K/A BPI

> Securities, Inc., and Ayala International Finance Limited, jointly and severally, shall pay to Edgardo V. Guevara $49,450 within 30 days of the entry of this order.[8]

Petitioner, AIFL, and ATHONA appealed the jury verdict, as well as the aforementioned order of the U.S. District Court for them to pay respondent US$49,450.00; while 1488, Inc. appealed a post-judgment decision of the U.S. District Court to amend the amount of attorney's fees awarded. The appeals were docketed as Case No. 90-2370 before the U.S. Court of Appeals, Fifth Circuit.

The U.S. Court of Appeals rendered its Decision on September 3, 1991 affirming the verdict in favor of 1488, Inc. The U.S. Court of Appeals found no basis for the allegations of fraud made by petitioner, AIFL, and ATHONA against 1488, Inc., Daic, Craig, and Ducat:

> [2] To state a cause of action for fraud under Texas law, a plaintiff must allege sufficient facts to show:
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> (1) that a material representation was made;
> (2) that it was false;
> (3) that when the speaker made it he knew that it was false or made it recklessly without any knowledge of the truth and as a positive assertion;
> (4) that he made it with the intention that it should be acted on by the party;
> (5) that the party acted in reliance upon it;
> (6) that he thereby suffered injury.
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> *Stone v. Lawyers Title Ins. Corp.*, 554 S.W.2d 183, 185 (Tex.1977). We agree with the district court's decision to grant a directed verdict against the defendants. The defendants failed to allege sufficient facts to establish the elements necessary to demonstrate fraud. In particular, the defendants have failed to allege any facts that would tend to show that the plaintiff or any of the third party defendants made a false representation or a representation with reckless disregard as to its truth.
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> The Houston real estate market was extremely volatile during the late 1970's and the early 1980's. Like a stream of hot air, property values rose rapidly as the heat and fury generated by speculation and construction plans mounted, but, just as rapidly, the climate cooled and the high-flying market came crashing to an all time low. The real estate transaction involved in this case was certainly affected by this environment of capriciousness. Moreover, a number of additional variables may have contributed to the uncertainty of its value. For instance, the land abutted a two-lane asphalt road that had been targeted by the state for conversion into a major multi-lane divided highway. Water and sewage treatment facilities were located near the boundary lines of the property. In addition, Houston's lack of conventional zoning ordinances meant that the value of the property could fluctuate depending upon the use (commercial or residential) for which the property would ultimately be used.

[3] The fact that the defendants were unable to sell the property at the price for which it had been appraised does not demonstrate that the plaintiff or the third party defendants knew that the value of the property was less than the appraised value, nor does it establish that the opposing parties were guilty of negligent misrepresentation or negligence.

[4] In support of their allegation of fraud, the defendants rely heavily on a loan application completed by 1488 shortly before the subject property was transferred to Athona. See Defendant's Exhibit 29. At the time, 1488 still owed approximately $300,000 to Republic of Texas Savings Association on its original loan for the subject property. The debt had matured and 1488 was planning to move the loan to Home Savings Association of Houston, that is, take out a loan from Home Savings to pay off the debt to Republic. 1488 had planned to borrow $350,000 for that purpose. A line item on the Home Savings loan application form asked for the amount of the loan as a percentage of the appraised value of the land. A figure of thirty-nine percent was typed into that space, and the defendants suggest that this proves that the plaintiff knew Craig's appraisal was erroneous. The defendants reason that if the $350,000 loan amount was only thirty-nine percent of the land's appraised value, then the real estate must have been worth approximately $897,436.

Although their analysis is sound, the conclusion reached by the defendants cannot withstand additional scrutiny. At the time that the loan application was completed, 1488 did not request to have a new appraisal done for the property. Instead, 1488 planned to use the numbers that had been generated for a quasi-appraisal done in 1977. The 1977 report purported only to "supplement" an earlier appraisal that had been conducted in 1974, and the supplement described its function as estimating market value "for mortgage loan purposes" only. See Defendant's Trial Exhibit 4. The two page supplement was based on such old information that even the Home Savings Association would not accept it without additional collateral as security for the loan. See Record on Appeal, Vol. 17 at 5-29 to 5-30. The loan, however, was never made because the property was transferred to Athona, and the outstanding loan to Republic was paid off as part of that transaction. In addition, the loan application itself was never signed by anyone affiliated with 1488. The district court was correct in dismissing this argument in support of the defendant's fraud allegations.

[5] The defendants also allege that the plaintiff and counter defendants knew that Craig's appraisal was fraudulent because the purchaser's statement signed by their own representative, and the seller's statement, signed by the plaintiff, as well as the title insurance policy all recited a purchase price of $643,416.12. Robert Higgs, general counsel for 1488, explained that because of the nature of the transaction, 1488, for tax purposes, wanted the purchase price on the closing statement to reflect only that amount of cash actually exchanged at the closing as well as the promissory note given at the closing. See Record on Appeal, Vol. 17 at 5-127. Although the closing documents recite a purchase price well under