

## THIRD DIVISION

[ G.R. No. 193890, March 11, 2015 ]

### ESTANISLAO AND AFRICA SINAMBAN, PETITIONERS, VS. CHINA BANKING CORPORATION, RESPONDENT.

#### DECISION

##### REYES, J.:

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> of the Decision<sup>[2]</sup> dated May 19, 2010 of the Court of Appeals (CA) in CA-G.R. CV. No. 66274 modifying the Decision<sup>[3]</sup> dated July 30, 1999 of the Regional Trial Court (RTC) of San Fernando City, Pampanga, Branch 45 for Sum of Money in Civil Case No. 11708.

#### Factual Antecedents

On February 19, 1990, the spouses Danilo and Magdalena Manalastas (spouses Manalastas) executed a Real Estate Mortgage (REM)<sup>[4]</sup> in favor of respondent China Banking Corporation (Chinabank) over two real estate properties covered by Transfer Certificate of Title Nos. 173532-R and 173533-R, Registry of Deeds of Pampanga, to secure a loan from Chinabank of P700,000.00 intended as working capital in their rice milling business. During the next few years, they executed several amendments to the mortgage contract progressively increasing their credit line secured by the aforesaid mortgage. Thus, from P700,000.00 in 1990, their loan limit was increased to P1,140,000.00 on October 31, 1990, then to P1,300,000.00 on March 4, 1991, and then to P2,450,000.00 on March 23, 1994.<sup>[5]</sup> The spouses Manalastas executed several promissory notes (PNs) in favor of Chinabank. In two of the PNs, petitioners Estanislao and Africa Sinamban (spouses Sinamban) signed as co-makers.

On November 18, 1998, Chinabank filed a Complaint<sup>[6]</sup> for sum of money, docketed as Civil Case No. 11708, against the spouses Manalastas and the spouses Sinamban (collectively called the defendants) before the RTC. The complaint alleged that they reneged on their loan obligations under the PNs which the spouses Manalastas executed in favor of Chinabank on different dates, namely:

1. PN No. OACL 634-95, dated April 24, 1995, for a loan principal of P1,800,000.00, with interest at 23% *per annum*; the spouses Manalastas signed alone as makers.<sup>[7]</sup>
2. PN No. OACL 636-95, dated May 23, 1995, for a loan principal of P325,000.00, with interest at 21% *per annum*; the spouses Sinamban signed as solidary co-makers;<sup>[8]</sup>

3. PN No. CLF 5-93, dated February 26, 1991, for a loan principal of P1,300,000.00, with interest at 22.5% *per annum*; only Estanislao Sinamban signed as solidary co-maker.<sup>[9]</sup>

All of the three promissory notes carried an acceleration clause stating that if the borrowers failed to pay any stipulated interest, installment or loan amortization as they accrued, the notes shall, at the option of Chinabank and without need of notice, immediately become due and demandable. A penalty clause also provides that an additional amount shall be paid equivalent to 1/10 of 1% per day of the total amount due from date of default until fully paid, and the further sum of 10% of the total amount due, inclusive of interests, charges and penalties, as and for attorney's fees and costs.<sup>[10]</sup>

In Chinabank's Statement of Account<sup>[11]</sup> dated May 18, 1998, reproduced below, the outstanding balances of the three loans are broken down, as follows:

(a) PN No. OACL 636-95 has an outstanding principal of P325,000.00, cumulative interest of P184,679.00, and cumulative penalties of P258,050.00, or a total amount due of **P767,729.00**;

(b) PN No. OACL 634-95 has an outstanding principal of P1,800,000.00, cumulative interest of P1,035,787.50, and cumulative penalties of P1,429,200.00, or a total amount due of **P4,264,987.50**; and

(c) PN No. CLF 5-93 has an outstanding principal of P148,255.08, cumulative interest of P64,461.84, and cumulative penalties of P156,541.58, or a total amount due of **P369,258.50**. Note that from the original amount of P1,300,000.00, the loan principal had been reduced to only P148,255.08 as of May 18, 1998.<sup>[12]</sup>

CHINA BANKING CORPORATION  
San Fernando, Pampanga  
SPS. DANILO & MAGDALENA MANALASTAS  
STATEMENT OF ACCOUNT  
As of May 18, 1998

<u>PN NUMBER</u>	<u>PRINCIPAL</u>	<u>INTEREST</u>	<u>36% PENALTY FEE</u>	<u>TOTAL</u>
OACL 636-95	325,000.00	184,679.00	258,050.00	<b>767,729.00</b>
OACL 634-95	1,800,000.00	1,035,787.50	1,429,200.00	<b>4,264,987.50</b>
CLF 005-93	148,255.08	64,461.84	156,541.58	<b>369,258.50</b>
	-----	-----	-----	-----
TOTAL	<u>P 2,273,255.08</u>	<u>1,284,928.34</u>	<u>1,843,791.58</u>	<b>5,401,975.00</b>
	-----	-----	-----	-----
TOTAL AMOUNT DUE	-----			5,401,975.00
	-----			-----
PLUS 10% ATTORNEY'S FEE	-----			540,197.50

----

-----  
5,942,172.50

ADD: OTHER EXPENSES

INSURANCE PREMIUM		22,618.37
POSTING OF NOTICE OF SALE		700.00
PUBLICATION FEE		17,500.00
REGISTRATION OF CERTIFICATE OF SALE (MISC.)		1,000.00
REGISTRATION OF CERTIFICATE OF SALE (REGISTER OF DEEDS)		

Registration fee	10,923.00	
Entry fee	30.00	
Legal fund	20.00	
BIR certification	60.00	
Doc. stamps tax	69,000.00	
Capital Gains tax	276,000.00	356,033.00

EXPENSES INCURRED ON OCULAR INSPECTION MADE ON		404.00
--	--	--------

TCT#173532-R & TCT#173533-R		
ATTORNEY'S FEE		<u>18,000.00</u>
		<b>416,255.37</b>

LESS: BID PRICE		<b>4,600,000.00</b>
-----------------	--	---------------------

GRAND TOTAL -----		<b><u>1,758,427.87</u></b> <sup>[13]</sup>
-------------------	--	--

On the basis of the above statement of account, and pursuant to the promissory notes, Chinabank instituted extrajudicial foreclosure proceedings against the mortgage security. The foreclosure sale was held on May 18, 1998, with Chinabank offering the highest bid of P4,600,000.00, but by then the defendants' total obligations on the three promissory notes had risen to P5,401,975.00, before attorney's fees of 10% and auction expenses, leaving a loan deficiency of P1,758,427.87.<sup>[14]</sup> Thus, in the complaint before the RTC, Chinabank prayed to direct the defendants to jointly and severally settle the said deficiency, plus 12% interest *per annum* after May 18, 1998,<sup>[15]</sup> the date of the auction sale.<sup>[16]</sup>

The spouses Sinamban, in their Answer<sup>[17]</sup> dated February 26, 1999, averred that they do not recall having executed PN No. OACL 636-95 for P325,000.00 on May 23, 1995, or PN No. CLF 5-93 for P1,300,000.00 on February 26, 1991, and had no participation in the execution of PN No. OACL 634-95 for P1,800,000.00 on April 24, 1995. They however admitted that they signed some PN forms as co-makers upon the request of the spouses Manalastas who are their relatives; although they insisted that they derived no money or other benefits from the loans. They denied knowing about the mortgage security provided by the spouses Manalastas, or that the latter defaulted on their loans. They also refused to acknowledge the loan deficiency of P1,758,427.87 on the PNs, insisting that the mortgage collateral was

worth more than P10,000,000.00, enough to answer for all the loans, interests and penalties. They also claimed that they were not notified of the auction sale, and denied that they knew about the Certificate of Sale<sup>[18]</sup> and the Statement of Account dated May 18, 1998, and insisted that Chinabank manipulated the foreclosure sale to exclude them therefrom. By way of counterclaim, the Spouses Sinamban prayed for damages and attorney's fees of 25%, plus litigation expenses and costs of suit.

The spouses Manalastas were declared in default in the RTC Order<sup>[19]</sup> dated April 6, 1999, and Chinabank was allowed to present evidence *ex parte* as against them, but at the pre-trial conference held on July 5, 1999, the spouses Sinamban and their counsel also did not appear;<sup>[20]</sup> hence, in the Order<sup>[21]</sup> dated July 5, 1999, the RTC allowed Chinabank to present evidence *ex parte* against the defendants before the Branch Clerk of Court. During the testimony of Rosario D. Yabut, Branch Manager of Chinabank-San Fernando Branch, all the foregoing facts were adduced and confirmed, particularly the identity of the pertinent loan documents and the signatures of the defendants. On July 21, 1999, the court admitted the exhibits of Chinabank and declared the case submitted for decision.<sup>[22]</sup>

### **Ruling of the RTC**

On July 30, 1999, the RTC rendered its Decision<sup>[23]</sup> with the following dispositive portion:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff China Banking Corporation and against defendant Sps. Danilo and Magdalena Manalastas and defendant Sps. Estanislao and Africa Sinamban to jointly and severally pay [Chinabank] the amount of P1,758,427.87, representing the deficiency between the acquisition cost of the foreclosed real estate properties and the outstanding obligation of defendants at the time of the foreclosure sale; interest at the legal rate of 12% per annum from and after May 18, 1998; attorney's fees equivalent to 10% of the aforesaid deficiency amount and the litigation and costs of suit.

SO ORDERED.<sup>[24]</sup>

On Motion for Reconsideration<sup>[25]</sup> of the spouses Sinamban dated August 27, 1999, to which Chinabank filed an Opposition<sup>[26]</sup> dated September 14, 1999, the RTC in its Order<sup>[27]</sup> dated October 22, 1999 set aside the Decision dated July 30, 1999 with respect to the spouses Sinamban, in this wise:

As it is undisputed that Exhibit "B" (Promissory Note dated April 24, 1995 in the amount of P1,800,000.00), was not signed by the Spouses Sinamban it would not be equitable that the said defendants be made solidarity liable for the payment of the said note as co-makers of their co-defendants Spouses Manalastas who are the one[s] principally liable thereto. Prescinding from this premise, the movant spouses could only be held liable for the two (2) promissory notes they have signed, Promissory Notes dated May 23, 1995 in the amount of P325,000.00 and February 26, 1991 in the amount of P1,300,000.00, Exhibits "A" and "C",

respectively. **As the total amount of the said notes is only P1,625,000.00, so even if we would add the interests due thereon, there is no way that the said outstanding loan exceed[s] the acquisition cost of the foreclosed real estate properties subject hereof in the amount of P4,600,000.00.** It would appear then that the Spouses Sinamban could not be held liable for the deficiency in the amount of P1,758,427.87 which should justly be borne alone by the defendant Spouses Manalastas. Guided by law and equity on the matter, the court will not hesitate to amend a portion of its assailed decision to serve the interest of justice.

**WHEREFORE, premises considered, the decision dated July 30, 1999 is hereby Reconsidered and Set Aside with respect to the Spouses Estanislao and Africa Sinamban hereby Relieving them from any liability arising from the said Decision which is affirmed in toto with respect to Spouses Manalastas.**

**SO ORDERED.**<sup>[28]</sup> (Emphases ours)

The RTC ruled that the proceeds of the auction were sufficient to answer for the two PNs co-signed by the spouses Sinamban, including interest and penalties thereon, and therefore the spouses Manalastas should solely assume the deficiency of P1,758,427.87. Chinabank moved for reconsideration on November 11, 1999,<sup>[29]</sup> to which the spouses Sinamban filed their comment/opposition on November 23, 1999.<sup>[30]</sup>

On December 8, 1999, the RTC set aside its Order dated October 22, 1999 and reinstated its Decision dated July 30, 1999, with *modification*, as follows:<sup>[31]</sup>

WHEREFORE, premises considered, the instant Motion for Reconsideration of plaintiff is Granted.

Order dated October 22, 1999 is hereby Set Aside.

Accordingly, the dispositive portion of the Decision dated July 30, 1999 is hereby Modified to read as follows:

WHEREFORE, premises considered, judgment [is] hereby rendered in favor of plaintiff China Banking Corporation and against the defendant Sps. Danilo and Magdalena Manalastas and defendant Sps. Estanislao and Africa Sinamban, ordering them to pay as follows:

1. For defendant Sps. Danilo and Magdalena Manalastas, the amount of P1,758,427.87, the deficiency between the acquisition cost of the foreclosed real properties and their outstanding obligation;
2. For defendant Sps. Sinamban a percentage of P1,758,427.87, jointly and severally with the defendant Sps. [Manalastas] only on two (2) promissory notes;