

FIRST DIVISION

[G.R. No. 181426, July 13, 2015]

**GAMES AND GARMENTS DEVELOPERS, INC., PETITIONER, VS.
ALLIED BANKING CORPORATION, RESPONDENT.**

DECISION

LEONARDO-DE CASTRO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking a review of the Decision^[1] dated October 23, 2007 and Resolution^[2] dated January 23, 2008 of the Court of Appeals in CA-G.R. CV No. 82765, which affirmed with modification the Decision^[3] of the Regional Trial Court (RTC) of Quezon City^[4] in Civil Case No. Q-98-34077, a Complaint for Breach of Contract and Damages instituted by petitioner Games and Garments Developers, Inc. (GGDI) against spouses Bienvenida (Bienvenida) and Benedicto Pantaleon (together referred to as the spouses Pantaleon), Ernesto Mercado (Mercado), and respondent Allied Banking Corporation (Allied Bank). While the RTC rendered judgment against the spouses Pantaleon and Allied Bank, the appellate court dismissed the Complaint in so far as it pertained to Allied Bank.

The antecedent facts are as follows:

Bienvenida, married to Benedicto Pantaleon, agreed to purchase a parcel of land located at Bayanan, Muntinlupa, covered by Transfer Certificate of Title (TCT) No. 205965 of the Register of Deeds, Makati City (subject property), in the name of petitioner Games and Garments Developers, Inc. (GGDI), for the sums of P14,000,000.00 payable to GGDI, P4,000,000.00 payable to the Cosay Family,^[5] and P1,000,000.00 as attorney's fees payable to GGDI VP-Legal and counsel Atty. Cesar M. Lao (Lao). The parties executed a Memorandum of Agreement^[6] (MOA) dated August 22, 1996, with the following terms and conditions:

2. [GGDI], [Cosay family] and Atty. Cesar M. Lao shall be paid in the following manner:

a) Upon signing of this Agreement, the sum of SIX MILLION PESOS (P6,000,000.00) shall be paid directly to [GGDI] by way of Managers/Cashiers check drawn against the Allied Bank, Pasong Tamo Branch, Makati City, and the balance of EIGHT MILLION PESOS (P8,000,000.00) together with interest at the rate of eighteen (18%) percent per annum until the same is fully paid by way of postdated check in ninety (90) days from date of this Agreement with bank [guaranty] of paying the same by Allied Banking Corporation;

b) Upon signing this agreement, the sum of THREE MILLION

PESOS (P3,000,000.00) shall be paid directly to the [Cosay family] by way of managers/cashiers check drawn against the Allied Bank, Pasong Tamo Branch, Makati City, and the balance of ONE MILLION PESOS (P1,000,000.00) without interest by way of postdated check ninety (90) days from date of this agreement with the bank [guaranty] of paying the same by Allied Banking Corporation;

c) The sum of ONE MILLION PESOS (P1,000,000.00) together with interest of eighteen (18%) percent per annum until the same is fully paid shall be paid directly to Atty. Cesar M. Lao by way of postdated check ninety (90) days from date of this Agreement, with bank [guaranty] of paying the same issued by Allied Banking Corporation;

3. Simultaneous upon receipt of payments as above stated in paragraph 2 hereof, [GGDI] shall submit to Allied Bank Pasong Tamo Branch, Makati City, a Deed of Sale in favor of [Bienvenida] while the [Cosay family] their Motion for the withdrawal of the pending Civil Case aforesated. and petition for the cancellation of *lis pendens* annotated in the title under Entry No. (479691) S-107492 TCT No. 205965 addressjed] to the Register of Deeds of Makati City.

x x xx

7. In case [Bienvenida] fails for any reason whatsoever to pay the balance of the amount indicated above in paragraph 2 hereof, then the sale executed by [GGDI] in favor of Bienvenida shall be considered CANCELLED and NULL and VOID and the amount received by the respective parties shall be deemed forfeited in their favor as liquidated damages[.]

On August 22, 1996, Mercado, Branch Manager of Allied Bank-Pasong Tamo, issued a letter addressed to Atty. Lao of GGDI and with Bienvenida's *conforme*, printed on the letterhead of Allied Bank, which reads:

This is with reference to the real property located at National Road, Bayanan, Muntinlupa City[,], a lot covered by Transfer Certificate of Title (TCT) No. 205965.

Please be advised that Bienvenida Pantaleon/Sucat Import/Export who is purchasing the above-mentioned property has an approved real estate loan with us in the amount of PESOS: ELEVEN MILLION ONLY (P11,000,000.00), the portion of the proceeds of which shall be used to partially liquidate the account with you. Succeeding releases which is secured by the subject property will be made payable to Games and Garments Developers, Inc.

After said Transfer Certificate of Title (TCT) covering said property is already transferred in our client's name, our mortgage duly annotated thereon, we guarantee to pay directly to you the amount of PESOS: EIGHT MILLION THREE HUNDRED SIXTY THOUSAND ONLY (P8,360,000.00) ninety days from August 23, 1996 or on or before

November 21, 1996.

It is understood that this guaranty is irrevocable.^[7]

Upon the spouses Pantaleon's request, and assured by Mercado's letter dated August 22, 1996, GGDI, through its President Sunder Hemandas (Hemandas), executed a Deed of Sale^[8] on August 23, 1996 in favor of the spouses Pantaleon. However, in the Deed of Sale, the amount of purchase price for the subject property was reduced to P11,000,000.00, payable to GGDI thus:

1. Upon signing of this Deed, [Bienvenida] shall pay [GGDI] the sum of THREE MILLION PESOS (P3,000,000.00), Philippine Currency, receipt of which is hereby acknowledged by [GGDI] from [Bienvenida] and the balance of the purchase price in the sum of EIGHT MILLION PESOS (P8,000,000.00) plus interest of 18% per annum until the same is fully paid by way of post-dated check ninety (90) days from date hereof and bank [guaranty] from [Allied Bank] to assume payment thereof.

The Deed of Sale also stipulated that:

4. In case for any reason whatsoever, [Bienvenida] fails to pay the balance of the purchase price of P8,000,000.00 then this Deed shall be deemed cancelled and null and void and all payments previously made shall be deemed forfeited in favor of [GGDI] as liquidated damages.

Also on August 23, 1996, the same day the Deed of Sale was executed, the Register of Deeds of Makati cancelled TCT No. 205965 in the name of GGDI and issued TCT No. 206877 in the name of Bienvenida, married to Benedicto Pantaleon;^[9] and to secure her loan for P14,000,000.00 approved by Allied Bank, Bienvenida executed a Real Estate Mortgage of even date constituting a mortgage on the subject property and one other property covered by TCT No. 205488 in favor of said bank.^[10] The notice of *lis pendens* (concerning the civil case of the Cosay family against GGDI) was cancelled and the Real Estate Mortgage in favor of Allied Bank was annotated on Bienvenida's TCT No. 206877. All of the aforementioned transactions were expedited and accomplished in a single day because of the assistance of Allied Bank.

Despite Mercado's letter dated August 22, 1996, and unbeknownst to GGDI, Allied Bank^[11] already released the proceeds of the approved loan to the spouses Pantaleon on August 23, 1996.

In a letter^[12] dated November 21, 1996 to Allied Bank, thru Mercado, Atty. Lao requested for the immediate payment of the balance of the purchase price amounting to P8,360,000.00 considering that the guaranty executed by the bank in favor of GGDI was irrevocable and the TCT for the subject property was already transferred in Bienvenida's name. There being no action on his previous letter, Atty. Lao wrote another letter^[13] dated December 11, 1996 to Allied Bank, thru Mercado, to follow-up on the request for payment.

Bienvenida, in a letter^[14] dated January 6, 1997, offered to pay GGDI P1,000,000.00 on or before January 24, 1997 and the balance of P7,360,000.00 plus interest on March 28, 1997. GGDI received the P1,000,000.00 partial payment from Bienvenida via two checks dated January 17, 1997 and January 24, 1997 for

the amount of P500,000.00 each.^[15] Bienvenida then issued two Allied Bank postdated checks for March 28, 1997 for the amounts of P7,360,000.00 and P442,340.00, to cover the balance of the purchase price for the subject property and interest, respectively.^[16]

Mercado executed another letter dated January 27, 1997 addressed to Atty. Lao, similarly worded as his letter dated August 22, 1996, except for the penultimate paragraph which states that "we guarantee to pay directly to you the amount of PESOS: SEVEN MILLION EIGHT HUNDRED TWO THOUSAND THREE HUNDRED FORTY (P7,802,340.00) sixty days from January 27, 1997 or on or before March 28, 1997."^[17]

When GGDI deposited the two Allied Bank checks dated March 28, 1997 issued by Bienvenida, said checks were dishonored for being "Drawn Against Insufficient Funds."^[18]

Atty. Lao sent a letter dated August 15, 1997 to the Head Office of Allied Bank in Makati City, copy furnished Mercado, referring to Mercado's letter of guaranty dated January 27, 1997 and making a final request for payment of the sum of P7,802,340.00 within seven days from receipt of the current letter.^[19]

Hemandas, President of GGDI, sent a fax letter dated October 7, 1997 to Aida T. Yu, Vice President of Allied Bank, also requesting payment based on Mercado's letter of guaranty dated January 27, 1997. In a letter dated October 13, 1997, Reynaldo A. Maclang, Senior Vice-President of Allied Bank, replied to Hemandas's letter in this wise:

We asked Mr. Mercado about this and he said that this letter [dated January 27, 1997] was not really intended as a [guaranty] for anything but was an accommodation to a request of Atty. Cesar Lao, the Vice President of Games and Garments Developers, Inc. He even emphasized to Atty. Lao that he was not authorized to issue such [guaranty] inasmuch as banks are not allowed to do so under the General Banking Act.

We noted that the letter dated 27 January, 1997 makes reference to a lot covered by TCT# 205965 which was supposed to be purchased, but our records show that this title was already superseded by TCT# 206877 issued to Bienvenida S. Pantaleon since 23 August, 1996 yet.^[20]

In a letter dated December 19, 1997 to Maclang, Hemandas inquired as to the status of the demand for payment of GGDI and sought an opportunity to discuss the matter.^[21]

Without any favorable action from Allied Bank, Atty. Lao, this time for Lacas, Lao & Associates, counsel for GGDI, wrote Maclang a letter dated January 9, 1998, demanding that Allied Bank immediately pay GGDI the sum of P7,802,340.00 plus prevailing bank interest rate from March 28, 1997 until the same is fully paid, otherwise, they would be filing the necessary case/suit before the appropriate body/court.^[22]

On April 15, 1998, GGDI filed before the RTC a Complaint for Breach of Contract (Rescission) and Damages with prayer for Preliminary Attachment against the spouses Pantaleon, Mercado, and Allied Bank. GGDI prayed for: (1) the payment of the balance of the purchase price for the subject property, damages, attorney's fees, and costs of the suit; (2) the annulment of the Deed of Sale, TCT No. 206877 in Bienvenida's name, and the Real Estate Mortgage constituted on the subject property by Bienvenida in favor of Allied Bank; and (3) the reconveyance of the subject property to GGDI or the cancellation by the Register of Deeds of TCT No. 206877, as well as the annotations thereon of the mortgage in favor of Allied Bank and the Special Power of Attorney in favor of Bienvenida.^[23]

After *ex parte* proceedings, the RTC issued an Order^[24] dated May 8, 1998 granting the prayer of GGDI for the issuance of a writ of preliminary attachment. The RTC issued the writ of preliminary attachment^[25] on May 22, 1998 for the real and personal properties of the spouses Pantaleon sufficient to satisfy the demand of GGDI, but in no case to exceed P7,802,340.00. Per the Sheriffs Report^[26] dated June 15, 1998, the real properties of the spouses Pantaleon covered by TCT Nos. 206877 and 205488 were already levied upon.

In its Answer with Compulsory Counterclaim and Crossclaim filed before the RTC, Allied Bank denied knowledge of and any liability under the MOA and the Deed of Sale as it is not a party to both contracts. While Allied Bank admitted that the MOA and the Deed of Sale did contain stipulations regarding the issuance of a guaranty by Allied Bank for payment of the balance of the purchase price for the subject property, Allied Bank was not aware of said contracts until the later part of 1997 when it was provided with copies by Hemandas, long after the proceeds of the approved loan were already released to the spouses Pantaleon. Allied Bank denied that it issued a letter of guaranty in favor of GGDI and maintained that Mercado had no authority to issue the letters dated August 22, 1996 and January 27, 1997 because all banks were prohibited from entering into any contract of guaranty or surety under Section 74 of the General Banking Act. Allied Bank also relayed that Mercado was already separated from service of the bank. Allied Bank further refuted the allegation in the Complaint that it was by reason of the letter of guaranty and the Deed of Sale that a new TCT was issued for the subject property in Bienvenida's name. Allied Bank pointed out that a bank guaranty was not necessary for the issuance of a new TCT and the only document needed was the Deed of Sale.

In its Cross-claim against Mercado and the spouses Pantaleon, Allied Bank alleged that it was an innocent mortgagee for value and in good faith. Allied Bank recounted that on August 23, 1996, Bienvenida was granted through Mercado, former Manager of Allied Bank-Pasong Tamo, a loan in the amount of P14,000,000.00 to finance the construction of a two-storey building, which was secured by a real estate mortgage over the property covered by TCT No. 206877 in the name of Bienvenida, married to Benedicto Pantaleon. Bienvenida executed a Promissory Note and Real Estate Mortgage in favor of Allied Bank. Because the spouses Pantaleon failed to pay the installments and interest on their due dates despite demands by Allied Bank, the entire amount outstanding under Bienvenida's Promissory Note became due and payable pursuant to the acceleration clause in the said note. Allied Bank then caused the extrajudicial foreclosure of the real estate mortgage and was the sole bidder at the public auction sale of the subject property held on March 19, 1998. The subject property was awarded to Allied Bank for the bid price of P21,006,000.00, as