

FIRST DIVISION

[G.R. No. 194515, September 16, 2015]

**SPOUSES OSCAR AND GINA GIRONELLA, PETITIONERS, VS.
PHILIPPINE NATIONAL BANK, RESPONDENT.**

DECISION

PEREZ, J.:

We have here a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] dated 27 August 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 83870 which reversed and set aside the Decision^[2] of the Regional Trial Court (RTC), Branch 44, Dagupan City in Civil Case No. 2000-0099-D. The RTC granted the complaint of petitioners, the Spouses Oscar and Gina Gironella (Spouses Gironella), against respondent Philippine National Bank (PNB) for: (1) the proper construction of events between the parties relative to the proposed Restructuring Agreement; (2) fraud, gross negligence, and/or at the very least, abuse of right under Article 19, 20 and 21 of the Civil Code; and (3) corollary thereto, payment of actual and compensatory damages, moral damages, attorney's fees and litigation expenses.

First, the bare and undisputed facts.

In separate Credit Agreements respectively dated 11 November 1991 and 16 January 1992, the Spouses Gironella obtained two (2) loans from PNB in the amounts of Php7,500,000.00 and Php2,000,000.00 for the construction of the Dagupan Village Hotel and Sports Complex. The loans were co-terminus, both payable on installments and secured by the same real estate mortgage over a parcel of land covered by Transfer Certificate of Title (TCT) No. 56059 in favor of the creditor, PNB.

In May 1992, seeking to expand their hotel operations, the Spouses Gironella again applied for another loan with PNB in the amount of Php5,800,000.00 for the construction of a restaurant bar and the purchase of a generator set.

From these front events, the dealings between the parties turned into the present case.

The Spouses Gironella began to default in paying their prior two (2) loans. They would aver, in their complaint until this petition, that their default in payment is attributable to PNB whose representatives and officers made them believe that their Php5,800,000.00 loan application would be approved and directed them to proceed with their expansion plans. To that end and with the full knowledge of the PNB's officers and representatives, the Spouses Gironella used the income generated by the hotel for the construction of the restaurant bar and purchase of the generator

set while the Php5,800,000.00 loan was pending and still being processed. In their Complaint, the Spouses Gironella alleged:

[PNB's] officers and representatives, gave their assurance to the [Spouses Gironella] that the said loan will be approved by [PNB] and even directed the [Spouses Gironella] to make use of the- funds being generated by Dagupan Village Hotel for the said purposes, which the [Spouses Gironella] did, but seriously affected the servicing of their first loan. [The Spouses Gironella] then proposed a restructuring of their first loan and after a series of meetings, offers and counter offers, the [Spouses Gironella] accepted the offer of [PNB] to their proposed program (*sic*) to restructure the loan which for all intents and purposes was already perfected.^[3]

From the period of February 1993 to 2 October 1995, the Spouses Gironella paid a total of Php4,219,000.00 on their first two loans of Php9,500,000.00. In January and April 1998, the Spouses Gironella likewise paid PNB Php1,000,000.00 and Php1,650,000.00. They maintain that all these payments were made to effect the restructuring of their loans with PNB.

Meanwhile, in separate instances, on 29 May 1996 and 17 April 1998, while the parties were negotiating and discussing the restructuring of the Spouses Gironella's loans, PNB made a couple of attempts to foreclose the mortgaged property. It filed a Petition for the Extra-Judicial Foreclosure thereof and subsequently, a Notice of Extra-Judicial Foreclosure Sale. However, the final foreclosure of the mortgaged property was stalled because of the continuing negotiations between the parties for the restructuring of the loans.

By the year 2000, negotiations for the restructuring of the Spouses Gironella's loans was still ongoing and remained indefinite. On 25 January 2000, after several exchange of correspondence, PNB wrote the Spouses Gironella and proposed, thus:

May we now have your written final conformity with the proposed restructuring of your account by way of:

Capitalization of the P9,485,620.00, part of the accrued interest as of December 14, 1999 for consolidation with the outstanding P9,500,000.00 unpaid principal to aggregate P14,380,000.00;

Restructuring of this P14,380,000.00 into a fully secured 10 year term loan payable quarterly under the following scheme;

- grace period on the payment of the principal only for Eight (8) quarters.
- amortization for the 1st to 8th quarters be based on accrued interest due.
- amortization from the 9th up to the 39th quarter to be based on a 15-year payment scheme with balloon payment on the 40th quarter.

Restructuring of P8,120,000.00, the other part of the accrued

interest as of December 14, 2000, on clean basis to be payable quarterly for five (5) years with amortization from 1st to 19th quarters based on a 15-year payment scheme and balloon payment on the 20th quarter.

Interest, net of capitalization, to be paid from December 14, 1999 up to date of implementation,

This proposed restructuring is still subject for evaluation and approval of higher management and therefore tentative in nature.

[4] (Emphasis Supplied)

In a letter dated 7 February 2000, the Spouses Gironella gave a qualified acceptance of PNB's proposed restructuring, specifically referring to specific terms in the 25 January 2000 proposal of PNB.

However, in its 8 March 2000 letter, PNB rejected finally the counter offer of the Spouses Gironella for the restructuring of their loan.

On 25 July 2000, PNB re-filed its Petition for Extra-Judicial Foreclosure of the mortgaged property.

Forthwith, the Spouses Gironella filed the Complaint before the RTC with prayer for issuance of a Temporary Restraining Order (TRO) and preliminary injunction to enjoin enforcement of the original credit agreements, and security therefor, between the parties. Effectively, the Spouses Gironella sought to enjoin the foreclosure of the mortgaged property.

On 4 and 28 September 2000, the RTC issued the prayed for TRO and Writ of Preliminary injunction.

Subsequently, the RTC granted the Complaint of the Spouses Gironella ruling that there was a perfected and binding restructured credit agreement, the terms contained in the 25 January 2000 and 7 February 2000 written exchanges of the parties:

WHEREFORE, judgment is rendered in favor of [petitioners] Oscar Gironella and Gina F. Gironella and against [respondent] Philippine National Bank, as follows:

1. On the first and third causes of action, judgment is rendered ordering [PNB] to pay [the Spouses Gironella], the following:

a) P5,000,000.00 and P100,000.00 a month as actual and compensatory damages;

b) P2,000,000.00 as moral damages;

c) P500,000.00 as and for Attorney's fees, plus P10,000.00 for every conference or hearing as Appearance Fees; and

d) P250,000.00 as litigation expenses.

2. On the second cause of action, the [c]ourt declares the restructuring of the subject loan pursuant to the letter of [PNB] dated January 25, 2000, Exhibit U for [the Spouses Gironella], and Exhibit 2 for [PNB], and [the Spouses Gironella's] letter dated February 7, 2000, Exhibit V for the [Spouses Gironella], and Exhibit 3 for [PNB], as perfected and binding upon the parties.

[PNB] is ordered to pay the costs of suit.^[5]

On Motion for Partial Reconsideration and/or Clarification filed by the Spouses Gironella, the RTC clarified that the payment of Php100,000.00 a month as actual and compensatory damages is reckoned from the filing of the Amended Complaint on 25 September 2002. In addition, the RTC declared permanent the writ of preliminary injunction it had previously issued, effectively enjoining the enforcement of the original credit agreements and the accessory contract, the real estate mortgage over the land covered by TCT No. 56059.

Posthaste, PNB appealed to the CA questioning the trial court's ruling. PNB argued that the exchange of correspondence between the parties, specifically the 25 January 2000 and 7 February 2000 letters, did not constitute a perfected and binding restructuring agreement since there was no express acceptance by either party of the other's counter-offer. PNB averred that it, in fact, finally rejected the restructuring proposal of the Spouses Gironella on 8 March 2000.

The appellate court granted the appeal of PNB and reversed the ruling of the trial court. The CA ruled that the Spouses Gironella, apart from their bare allegations, failed to present evidence required in civil cases, *i.e.* by a preponderance of evidence, to establish their claim that PNB fraudulently and in gross negligence and/or, in abuse of right, gave them false hopes and assurances that their third loan would be approved in violation of Articles 19, 20 and 21 of the Civil Code thereby entitling them to damages. The appellate court ruled, thus:

In civil cases, he who alleges a fact has the burden of proving it by a preponderance of evidence. Aside from the surmises of [the Spouses Gironella] that they were given false hope and assurances by [PNB's] officers, the [Spouses Gironella] in this case failed to show proof preponderant enough to sway this [c]ourt in their favor.

As compared to the other transactions and negotiation entered into between the parties herein which were very much documented, the [Spouses Gironella] failed to present any documentary evidence relevant to their claims of fraud, gross negligence, and abuse of right against the [PNB's] officers. The records of the instant case are wanting of any proof that would substantiate the [Spouses Gironella's] claim that they were assured by [PNB's] officers that the additional loan application will be approved and that it was agreed upon that the income of the hotel will be used for the construction of the disco-restaurant and the purchase of the generator set for the meantime.

It must also be noted that [the Spouses Gironella] contracted two previous loans from [PNB] even before the additional loan subject of this

case was applied for. Thus, not being their first time to enter into a loan with a bank, the [Spouses Gironella] are already very much aware of the process being observed in obtaining a loan from such kind of institution. Gina Gironella even wrote in her 7 August 1992 letter to Mr. Alfredo S. Besa, Manager of the PNB Dagupan Branch, that:

Dear Mr. Besa:

I was very much elated over the information relayed to me by my father, thru our Resident Manager, William Crossly, regarding the profound concern and interest shown by your Vice-President for Northern Luzon Branches Pedrito D. Torres towards the Dagupan Village Hotel and Sports Center. I understand that VP Torres was also convinced that the construction of the additional function hall and night club would, indeed, upgrade the revenue-earning capacity of the hotel, thus reportedly giving his assent for the immediate commencement of the project.

In this connection, therefore, may I reiterate our appeal manifested in our previous letters for the approval of our additional loan application with which to underwrite the above project which was started almost two months ago, and the purchase of a 125 ... generating set.

In the above letter, [petitioner] Gina Gironella appears to be mindful that a formal approval is necessary for their application to be considered as finally approved. Thus, when the [Spouses Gironella] undertook to initiate the construction of the disco-restaurant and the purchase of the generator set even without the formal approval of their additional loan, the [Spouses Gironella] did it at their own risk.^[6]

On the finding of the trial court that the correspondence between the parties embodied in the 25 January 2000 and 7 February 2000 letters of PNB and the Spouses Gironella, respectively, constituted the restructuring agreement, the appellate court found that there was no final agreement reached by the parties where the offer was certain and acceptance thereof by the other party was absolute. The appellate court held that, in this case, a qualified acceptance equated to a counter-offer and, at that point, there was no absolute and unqualified acceptance which is identical in all respects with that of the offer so as to produce consent or meeting of the minds.

Hence, this appeal by *certiorari* of the Spouses Gironella insisting on the correctness of the trial court's ruling.

We deny the petition and affirm the appellate court's ruling.

The Spouses Gironella claim fraud, gross negligence and/or, at the very least, abuse of right in violation of Articles 19, 20 and 21 of the Civil Code when PNB, essentially, twice did not approve their loan applications: (1) the additional loan of Php5,800,000.00 for their businesses' expansion plans, and (2) restructuring of their original credit agreements, despite purported assurances and representations