

FIRST DIVISION

[G.R. No. 160758, January 15, 2014]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
GUARIÑA AGRICULTURAL AND REALTY DEVELOPMENT
CORPORATION, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

The foreclosure of a mortgage prior to the mortgagor's default on the principal obligation is premature, and should be undone for being void and ineffectual. The mortgagee who has been meanwhile given possession of the mortgaged property by virtue of a writ of possession issued to it as the purchaser at the foreclosure sale may be required to restore the possession of the property to the mortgagor and to pay reasonable rent for the use of the property during the intervening period.

The Case

In this appeal, Development Bank of the Philippines (DBP) seeks the reversal of the adverse decision promulgated on March 26, 2003 in C.A.-G.R. CV No. 59491,^[1] whereby the Court of Appeals (CA) upheld the judgment rendered on January 6, 1998^[2] by the Regional Trial Court, Branch 25, in Iloilo City (RTC) annulling the extra-judicial foreclosure of the real estate and chattel mortgages at the instance of DBP because the debtor-mortgagor, Guariña Agricultural and Realty Development Corporation (Guariña Corporation), had not yet defaulted on its obligations in favor of DBP.

Antecedents

In July 1976, Guariña Corporation applied for a loan from DBP to finance the development of its resort complex situated in Trapiche, Oton, Iloilo. The loan, in the amount of P3,387,000.00, was approved on August 5, 1976.^[3] Guariña Corporation executed a promissory note that would be due on November 3, 1988.^[4] On October 5, 1976, Guariña Corporation executed a real estate mortgage over several real properties in favor of DBP as security for the repayment of the loan. On May 17, 1977, Guariña Corporation executed a chattel mortgage over the personal properties existing at the resort complex and those yet to be acquired out of the proceeds of the loan, also to secure the performance of the obligation.^[5] Prior to the release of the loan, DBP required Guariña Corporation to put up a cash equity of P1,470,951.00 for the construction of the buildings and other improvements on the resort complex.

The loan was released in several instalments, and Guariña Corporation used the proceeds to defray the cost of additional improvements in the resort complex. In all, the amount released totalled P3,003,617.49, from which DBP withheld P148,102.98 as interest.^[6]

Guariña Corporation demanded the release of the balance of the loan, but DBP refused. Instead, DBP directly paid some suppliers of Guariña Corporation over the latter's objection. DBP found upon inspection of the resort project, its developments and improvements that Guariña Corporation had not completed the construction works.^[7] In a letter dated February 27, 1978,^[8] and a telegram dated June 9, 1978,^[9] DBP thus demanded that Guariña Corporation expedite the completion of the project, and warned that it would initiate foreclosure proceedings should Guariña Corporation not do so.^[10]

Unsatisfied with the non-action and objection of Guariña Corporation, DBP initiated extrajudicial foreclosure proceedings. A notice of foreclosure sale was sent to Guariña Corporation. The notice was eventually published, leading the clients and patrons of Guariña Corporation to think that its business operation had slowed down, and that its resort had already closed.^[11]

On January 6, 1979, Guariña Corporation sued DBP in the RTC to demand specific performance of the latter's obligations under the loan agreement, and to stop the foreclosure of the mortgages (Civil Case No. 12707).^[12] However, DBP moved for the dismissal of the complaint, stating that the mortgaged properties had already been sold to satisfy the obligation of Guariña Corporation at a public auction held on January 15, 1979 at the Costa Mario Resort Beach Resort in Oton, Iloilo.^[13] Due to this, Guariña Corporation amended the complaint on February 6, 1979^[14] to seek the nullification of the foreclosure proceedings and the cancellation of the certificate of sale. DBP filed its answer on December 17, 1979,^[15] and trial followed upon the termination of the pre-trial without any agreement being reached by the parties.^[16]

In the meantime, DBP applied for the issuance of a writ of possession by the RTC. At first, the RTC denied the application but later granted it upon DBP's motion for reconsideration. Aggrieved, Guariña Corporation assailed the granting of the application before the CA on *certiorari* (C.A.-G.R. No. 12670-SP entitled *Guariña Agricultural and Realty Development Corporation v. Development Bank of the Philippines*). After the CA dismissed the petition for *certiorari*, DBP sought the implementation of the order for the issuance of the writ of possession. Over Guariña Corporation's opposition, the RTC issued the writ of possession on June 16, 1982.^[17]

Judgment of the RTC

On January 6, 1998, the RTC rendered its judgment in Civil Case No. 12707, disposing as follows:

WHEREFORE, premises considered, the court hereby resolves that the extra-judicial sales of the mortgaged properties of the plaintiff by the Office of the Provincial Sheriff of Iloilo on January 15, 1979 are null and void, so with the consequent issuance of certificates of sale to the defendant of said properties, the registration thereof with the Registry of Deeds and the issuance of the transfer certificates of title involving the real property in its name.

It is also resolved that defendant give back to the plaintiff or its representative the actual possession and enjoyment of all the properties foreclosed and possessed by it. To pay the plaintiff the reasonable rental

for the use of its beach resort during the period starting from the time it (defendant) took over its occupation and use up to the time possession is actually restored to the plaintiff.

And, on the part of the plaintiff, to pay the defendant the loan it obtained as soon as it takes possession and management of the beach resort and resume its business operation.

Furthermore, defendant is ordered to pay plaintiff's attorney's fee of P50,000.00.

So ORDERED.^[18]

Decision of the CA

On appeal (C.A.-G.R. CV No. 59491), DBP challenged the judgment of the RTC, and insisted that:

I

THE TRIAL COURT ERRED AND COMMITTED REVERSIBLE ERROR IN DECLARING DBP'S FORECLOSURE OF THE MORTGAGED PROPERTIES AS INVALID AND UNCALLED FOR.

II

THE TRIAL COURT GRIEVOUSLY ERRED IN HOLDING THE GROUNDS INVOKED BY DBP TO JUSTIFY FORECLOSURE AS "NOT SUFFICIENT." ON THE CONTRARY, THE MORTGAGE WAS FORECLOSED BY EXPRESS AUTHORITY OF PARAGRAPH NO. 4 OF THE MORTGAGE CONTRACT AND SECTION 2 OF P.D. 385 IN ADDITION TO THE QUESTIONED PAR. NO. 26 PRINTED AT THE BACK OF THE FIRST PAGE OF THE MORTGAGE CONTRACT.

III

THE TRIAL COURT ERRED IN HOLDING THE SALES OF THE MORTGAGED PROPERTIES TO DBP AS INVALID UNDER ARTICLES 2113 AND 2141 OF THE CIVIL CODE.

IV

THE TRIAL COURT GRAVELY ERRED AND COMMITTED [REVERSIBLE] ERROR IN ORDERING DBP TO RETURN TO PLAINTIFF THE ACTUAL POSSESSION AND ENJOYMENT OF ALL THE FORECLOSED PROPERTIES AND TO PAY PLAINTIFF REASONABLE RENTAL FOR THE USE OF THE FORECLOSED BEACH RESORT.

V

THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES AGAINST DBP WHICH MERELY EXERCISED ITS RIGHTS UNDER THE MORTGAGE CONTRACT.^[19]

In its decision promulgated on March 26, 2003,^[20] however, the CA sustained the RTC's judgment but deleted the award of attorney's fees, decreeing:

WHEREFORE, in view of the foregoing, the Decision dated January 6, 1998, rendered by the Regional Trial Court of Iloilo City, Branch 25 in Civil Case No. 12707 for *Specific Performance with Preliminary Injunction* is hereby AFFIRMED with MODIFICATION, in that the award for attorney's fees is deleted.

SO ORDERED.^[21]

DBP timely filed a motion for reconsideration, but the CA denied its motion on October 9, 2003.

Hence, this appeal by DBP.

Issues

DBP submits the following issues for consideration, namely:

WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS DATED MARCH 26, 2003 AND ITS RESOLUTION DATED OCTOBER 9, DENYING PETITIONER'S MOTION FOR RECONSIDERATION WERE ISSUED IN ACCORDANCE WITH LAW, PREVAILING JURISPRUDENTIAL DECISION AND SUPPORTED BY EVIDENCE;

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ADHERED TO THE USUAL COURSE OF JUDICIAL PROCEEDINGS IN DECIDING C.A.-G.R. CV NO. 59491 AND THEREFORE IN ACCORDANCE WITH THE "LAW OF THE CASE DOCTRINE."^[22]

Ruling

The appeal lacks merit.

1.

Findings of the CA were supported by the evidence as well as by law and jurisprudence

DBP submits that the loan had been granted under its supervised credit financing scheme for the development of a beach resort, and the releases of the proceeds would be subject to conditions that included the verification of the progress of works in the project to forestall diversion of the loan proceeds; and that under Stipulation No. 26 of the mortgage contract, further loan releases would be terminated and the account would be considered due and demandable in the event of a deviation from the purpose of the loan,^[23] including the failure to put up the required equity and the diversion of the loan proceeds to other purposes.^[24] It assails the declaration by the CA that Guariña Corporation had not yet been in default in its obligations despite violations of the terms of the mortgage contract securing the promissory note.

Guariña Corporation counters that it did not violate the terms of the promissory note and the mortgage contracts because DBP had fully collected the interest notwithstanding that the principal obligation did not yet fall due and become demandable.^[25]

The submissions of DBP lack merit and substance.

The agreement between DBP and Guariña Corporation was a loan. Under the law, a loan requires the delivery of money or any other consumable object by one party to another who acquires ownership thereof, on the condition that the same amount or quality shall be paid.^[26] Loan is a reciprocal obligation, as it arises from the same cause where one party is the creditor, and the other the debtor.^[27] The obligation of one party in a reciprocal obligation is dependent upon the obligation of the other, and the performance should ideally be simultaneous. This means that in a loan, the creditor should release the full loan amount and the debtor repays it when it becomes due and demandable.^[28]

In its assailed decision, the CA found and held thusly:

x x x x

x x x It is undisputed that appellee obtained a loan from appellant, and as security, executed real estate and chattel mortgages. However, it was never established that appellee was already in default. Appellant, in a telegram to the appellee reminded the latter to make good on its construction works, otherwise, it would foreclose the mortgage it executed. It did not mention that appellee was already in default. The records show that appellant did not make any demand for payment of the promissory note. It appears that the basis of the foreclosure was not a default on the loan but appellee's failure to complete the project in accordance with appellant's standards. In fact, appellant refused to release the remaining balance of the approved loan after it found that the improvements introduced by appellee were below appellant's expectations.

The loan agreement between the parties is a reciprocal obligation. Appellant in the instant case bound itself to grant appellee the loan amount of P3,387,000.00 condition on appellee's payment of the amount when it falls due. Furthermore, the loan was evidenced by the promissory note which was secured by real estate mortgage over several properties and additional chattel mortgage. Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other (*Areola vs. Court of Appeals*, 236 SCRA 643). They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfilment of the other (*Jaime Ong vs. Court of Appeals*, 310 SCRA 1). The promise of appellee to pay the loan upon due date as well as to execute sufficient security for said loan by way of mortgage gave rise to a reciprocal obligation on the part of appellant to release the entire approved loan amount. Thus, appellees are entitled to receive the total loan amount as agreed upon and not an incomplete amount.

The appellant did not release the total amount of the approved loan. Appellant therefore could not have made a demand for payment of the loan since it had yet to fulfil its own obligation. Moreover, the fact that appellee was not yet in default rendered the foreclosure proceedings premature and improper.