

FIRST DIVISION

[G.R. No. 179665, April 03, 2013]

**SOLID BUILDERS, INC. AND MEDINA FOODS INDUSTRIES, INC.,
PETITIONERS, VS. CHINA BANKING CORPORATION,
RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This petition for review on *certiorari*^[1] assails the Decision^[2] dated April 16, 2007 and the Resolution^[3] dated September 18, 2007 of the Court of Appeals in CA-G.R. SP No. 81968.

During the period from September 4, 1992 to March 27, 1996, China Banking Corporation (CBC) granted several loans to Solid Builders, Inc. (SBI), which amounted to P139,999,234.34, exclusive of interests and other charges. To secure the loans, Medina Foods Industries, Inc. (MFII) executed in CBC's favor several surety agreements and contracts of real estate mortgage over parcels of land in the Loyola Grand Villas in Quezon City and New Cubao Central in Cainta, Rizal.^[4]

Subsequently, SBI proposed to CBC a scheme through which SBI would sell the mortgaged properties and share the proceeds with CBC on a 50-50 basis until such time that the whole obligation would be fully paid. SBI also proposed that there be partial releases of the certificates of title of the mortgaged properties without the burden of updating interests on all loans.^[5]

In a letter dated March 20, 2000 addressed to CBC, SBI requested the restructuring of its loans, a reduction of interests and penalties and the implementation of a *dacion en pago* of the New Cubao Central property.^[6] The letter reads:

March 20, 2000

**CHINA BANKING CORPORATION
Dasmarinas cor. Juan Luna Sts.
Binondo, Manila**

***Attn: Mr. George Yap
Account Officer***

Dear Mr. Yap,

This is to refer to our meeting held at your office last March 10, 2000.

In this regard[,] please allow us to call your attention on the following important matters we have discussed:

1. With respect to the penalties, we are requesting for a reduction in the rates as we find it onerous considering the big amount of our loan (P218,540,648.00). The interest together with the penalties that you are imposing is similar to the ones being charged by private lending institutions, i.e., 4.5%/month total.
2. As I had discussed with you regarding *Dacion en Pago*, which you categorically stated that it could be a possibility, we are considering putting our New Cubao Central (NCC) on Dacion and restructuring our loan with regards to our Loyola Grand Villas.

Considering that you had stated that our restructuring had not been finalized, we find it timely to raise these urgent matters and possibly agree on a realistic and workable scheme that we can incorporate on our final agreement.

Thank you and we strongly hope for your prompt consideration on our request.

Very truly yours,

V. BENITO R. SOLIVEN (Sgd.)

President^[7]

In response, CBC sent SBI a letter dated April 17, 2000 stating that the loans had been completely restructured effective March 1, 1999 in the amount of P218,540,646.00. On the aspect of interests and charges, CBC suggested the updating of the obligation to avoid paying interests and charges.^[8] The relevant portion of the letter dated April 17, 2000 reads:

First of all, to clarify, the loan's restructuring has been finalized and completed on **3/01/99** with the booking of the Restructured loan of **P218,540,646**. Only two Amendments of Real Estate Mortgages remain to be registered to date. Certain documents that we requested from your company since last year, that could facilitate this amendment have not yet been forwarded to us until now. Nevertheless, this does not change the fact that the restructuring of the loan has been done with and finalized.

This in turn is with regards to statement[s] no. 1 & 2 of your letter, referring to the interest rates and penalties. As per our records, the rates are actually the prevailing bank interest rates. In addition, penalty charges are imposed in the event of non-payment. To avoid experiencing having to pay more due to the penalty charges, updating of obligations is necessary. Thus[,] we advise updating of your obligations to avoid penalty charges. However, should you be able to update both interest and penalty through a "one-time" payment, we shall present your request to Senior Management for possible reduction in penalty charges.

Concerning statement no. 3 containing your request for the possible Dacion en Pago of your NCC properties, as was discussed already in the meeting, it is a concern that has to be discussed with Senior Management and approved by the Executive Committee before we can commit to you on the matter. We suggest that your company, Solid Builders, exhaust all possibilities to sell the NCC properties yourselves because, being a real estate company, Solid has better ways and means of selling the properties.^[9]

This was followed by another communication from CBC to SBI reiterating, among others, that the loan has been restructured effective March 1, 1999 upon issuance by SBI of promissory notes in favor of CBC. The relevant portion of that letter dated May 19, 2000 reads:

Again, in response to your query with regards the issue of the loans restructuring, to reiterate, the loan restructuring has been finalized and completed on **3/01/99** with the **booking** of the Restructured loan of **P231,716,646**. The Restructured Loan was effective ever since the new Promissory Note was signed on the said date.

The interest rates for the loans are actually rates booked since the new Promissory Notes were effective. Any move of changing it or "re-pricing" the interest is only possible every 90 days from the booking date, which represents the interest amortization payment dates. No change or "re-pricing" in interest rates is possible since interest payment/obligations have not yet been paid.

With regards to the possible Dacion en Pago of your NCC properties, as was discussed already in the meeting, it is a concern that has to be discussed with Senior Management and approved by the Executive Committee before we can commit to you on the matter. We suggest that your company, Solid Builders, exhaust all possibilities to sell the NCC properties yourselves because, being a real estate company, Solid has better ways and means of selling the properties.^[10]

Subsequently, in a letter dated September 18, 2000, CBC demanded SBI to settle its outstanding account within ten days from receipt thereof. The letter dated September 18, 2000 reads:

September 18, 2000

SOLID BUILDERS, INC.

V.V. Soliven Bldg., I

EDSA, San Juan, Metro Manila

PN NUMBER	O/S BALANCE	DUE DATE	INTEREST PAID UP TO
PN-MK-TS-	PHP 89,700,000.00	03/01/2004	04/13/1999

342924			
PN-MK-TS-	19,350,000.00	03/01/2004	08/05/1999
342931			
PN-MK-TS-	35,888,000.00	03/01/2004	-----
342948			
PN-MK-TS-	6,870,000.00	03/01/2004	-----
342955			
PN-MK-TS-	5,533,646.00	03/01/2004	07/26/1999
342962			
PN-MK-TS-	21,950,000.00	03/01/2004	-----
342979			
PN-MK-TS-	3,505,000.00	03/01/2004	08/09/1999
342986			
PN-MK-TS-	19,455,000.00	03/01/2004	-----
342993			
PN-MK-TS-	4,168,000.00	03/01/2004	-----
343002			
PN-MK-TS-	12,121,000.00	03/01/2004	-----
343026			
	<u>PHP218,540,646.00</u>		

Greetings!

We refer again to the balances of the abovementioned Promissory Notes amounting to PHP218,540,646.00 excluding interest, penalties and other charges signed by you jointly and severally in our favor, which remains unpaid up to this date despite repeated demands for payment.

In view of the strict regulations of Bangko Sentral ng Pilipinas on past due accounts, we regret that we cannot hold these accounts further in abeyance. Accordingly, we are reiterating our request that arrangements to have these accounts settled within ten (10) days from receipt hereof, otherwise, we shall be constrained to refer the matter to our lawyers for collection.

We enclose a Statement of Account as of September 30, 2000 for your reference and guidance.

Very truly yours,

MERCEDES E. GERMAN (Sgd.)
Manager

Loans & Discounts Department – H.O.^[11]

On October 5, 2000, claiming that the interests, penalties and charges imposed by CBC were iniquitous and unconscionable and to enjoin CBC from initiating foreclosure proceedings, SBI and MFII filed a Complaint "To Compel Execution of Contract and for Performance and Damages, With Prayer for Writ of Preliminary Injunction and Ex-Parte Temporary Restraining Order" in the Regional Trial Court (RTC) of Pasig City. The case was docketed as Civil Case No. 68105 and assigned to Branch 264.^[12]

In support of their application for the issuance of writ of preliminary injunction, SBI and MFII alleged:

IV. APPLICATION FOR PRELIMINARY INJUNCTION WITH EX- PARTE TEMPORARY RESTRAINING ORDER

A. GROUND[S] FOR PRELIMINARY INJUNCTION

1. That [SBI and MFII] are entitled to the reliefs demanded, among which is enjoining/restraining the commission of the acts complained of, the continuance of which will work injustice to the plaintiffs; that such acts are in violation of the rights of plaintiffs and, if not enjoined/restrained, will render the judgment sought herein ineffectual.
2. That under the circumstances, it is necessary to require, through preliminary injunction, [CBC] to refrain from immediately enforcing its letters dated April 17, 2000 and May 19, 2000 and September 18, 2000 during the pendency of this complaint, and
3. That [SBI and MFII] submit that they are exempt from filing of a bond considering that the letters dated April 17, 2000, May 19, 2000 and September 18, 2000 are a patent nullity, and in the event [they are] not, they are willing to post such bond this Honorable Court may determine and under the conditions required by Section 4, Rule 58.^[13]

In its Answer and Opposition to the issuance of the writ of preliminary injunction, CBC alleged that to implement the agreed restructuring of the loan, SBI executed ten promissory notes stipulating that the interest rate shall be at 18.5% per annum. For its part, MFII executed third party real estate mortgage over its properties in favor of CBC to secure the payment of SBI's restructured loan. As SBI was delinquent in the payment of the principal as well as the interest thereon, CBC demanded settlement of SBI's account.^[14]

After hearing the parties, the trial court issued an Order dated December 14, 2000 granting the application of SBI and MFII for the issuance of a writ of preliminary injunction. The trial court held that SBI and MFII were able to sufficiently comply with the requisites for the issuance of an injunctive writ:

It is well-settled that to be entitled to an injunctive writ, a party must show that: (1) the invasion of right sought to be protected is material and substantial; (2) the right of complainant is clear and unmistakable; and, (3) there is an urgent and paramount necessity for the writ to prevent serious damage.

The Court opines that the above-mentioned requisites have been sufficiently shown by plaintiffs in this case, accordingly, a writ of preliminary injunction is in order.

The three subject letters, particularly the letter dated September 18,