

## FIRST DIVISION

[ G.R. No. 179441, August 09, 2010 ]

**ST. JAMES COLLEGE OF PARAÑAQUE; JAIME T. TORRES,  
REPRESENTED BY HIS LEGAL REPRESENTATIVE, JAMES KENLEY  
M. TORRES; AND MYRNA M. TORRES, PETITIONERS, VS.  
EQUITABLE PCI BANK, RESPONDENT.**

### DECISION

**VELASCO JR., J.:**

Appealed via this petition for review under Rule 45 is the Decision<sup>[1]</sup> dated January 17, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 86587, as reiterated in its Resolution<sup>[2]</sup> of August 28, 2007, reversing the earlier orders in SCA No. 2569 of the Regional Trial Court (RTC), Branch 266 in Pasig City.

#### The Facts

Petitioners-spouses Jaime (now deceased) and Myrna Torres owned and operated St. James College of Parañaque<sup>[3]</sup> (St. James College), a sole proprietorship educational institution. Sometime in 1995, the Philippine Commercial and International Bank (PCIB) granted the Torres spouses and/or St. James College a credit line facility of up to PhP 25,000,000. This accommodation or any of its extension or renewal was secured by a real estate mortgage<sup>[4]</sup> (REM) over a parcel of land situated in Parañaque covered by Transfer Certificate of Title (TCT) No. 74598<sup>[5]</sup> in the name of St. James College, particularly described as:

A parcel of Land (lot 2 of the cons. and subd. plan Pcs.-13-0008777, being a portion of the cons. of Lots 4654-B and 5654-C Psd.-13-002266. L.R.C. Rec. No. N-21332), situated in the Bo. of San Dionisio, Mun. of Parañaque, Metro Manila. x x x containing an area of NINETEEN THOUSAND TWO HUNDRED TWENTY FIVE (19,225) SQ. METERS.

St. James College used to occupy the above lot.

PCIB eventually merged with Equitable Bank with the surviving bank known as Equitable PCI Bank (EPCIB) (now Banco de Oro). The credit line underwent several annual renewals, the last being effected in 2001. As petitioners had defaulted in the payment of the loan obtained from the secured credit accommodation, their total unpaid loan obligation, as of September 2001, stood at PhP 18,300,000.

In a bid to settle its loan avilment, petitioners first proposed to EPCIB that they be allowed to pay their account in equal quarterly installments for five years. This payment scheme was apparently not acceptable to EPCIB, as another written letter

later followed, this time petitioners proposing that their outstanding credit be converted into a long term loan payable in 10 equal annual installments.

EPCIB responded via a letter of January 9, 2003.<sup>[6]</sup> In it, EPCIB informed petitioners that it is denying their request for the reinstatement of their credit line, but proposed a restructuring package with a soft payment scheme for the outstanding loan balance of PhP 18,300,000. Under the counter-proposal, the bank would book the accumulated past due loans to current status and charge interest at a fixed rate of 13.375% per annum, payable in either of the ensuing modes and level, at petitioners' options: payment of the PhP 18,300,000 principal either at a monthly rate of PhP 508,333.33; or equal annual amortizations of PhP 6,100,000 payable every May. Petitioner Jaime Torres chose and agreed to the second option, i.e., the equal annual amortizations of PhP 6,100,000 payable every May, by affixing his *conforme* signature at the bottom portion of EPCIB's letter, writing the words "on annual amortization."<sup>[7]</sup>

May 2003 came, but petitioners failed to pay the stipulated annual amortization of PhP 6,100,000 agreed upon. Whereupon, EPCIB addressed to petitioners a demand letter dated June 6, 2003 requiring them to settle their obligation. On June 23, 2003, petitioners tendered, and EPCIB accepted, a partial payment of PhP 2,521,609.62, broken down to cover the following items: PhP 1,000,000 principal, PhP 1,360,881.62 interest due on June 15, 2003, and PhP 160,728.00 insurance premium for the mortgaged property. In the covering June 23, 2003 letter,<sup>[8]</sup> which came with the tender, petitioners promised to make another payment in October 2003 and that the account would be made current in June 2004. They manifested, however, that St. James College is not subject to the 10% value-added tax (VAT) which EPCIB assessed against the school in its June 15, 2003 statement of account. Petitioners accordingly requested the deletion of the VAT portion.

Vis-à-vis the PhP 2,521,609.62 payment to which it issued an official receipt (OR)<sup>[9]</sup> dated June 30, 2003, EPCIB made it abundantly clear on the OR that: "THE RECEIPT OF PAYMENT IS WITHOUT PREJUDICE TO THE BANK'S RIGHT AND CLAIMS ARISING FROM THE FACT THE ACCOUNT IS OVERDUE. NOR SHALL IT RENDER THE BANK LIABLE FOR ANY DAMAGE BY ITS ACCEPTANCE OF PAYMENT." And in answer to petitioners' cover letter of June 23, 2003, EPCIB, through counsel, reminded and made it clear to petitioners that their first partial payment did not detract from the past due character of their outstanding loan for which reason it is demanding the remaining PhP 5,100,000 to complete the first PhP 6,100,000 principal payment. On August 27, 2003, EPCIB again sent another demand letter to petitioners, but to no avail.

On September 15, 2003, petitioners requested that the bank allow a partial payment of the May 2003 amortization balance of PhP 5,100,000. Two days later, EPCIB responded denying petitioners' request, but nonetheless proposed a new repayment scheme to which petitioners were not amenable.

Petitioners made a second check remittance, this time in the amount of PhP 921,535.42,<sup>[10]</sup> the PhP 500,000 portion of which represented payment of the principal and PhP 421,535.42 for interest due on October 15, 2003. By letter dated November 5, 2003, EPCIB again reminded petitioners that its receipt of the check payment for the amount of the PhP 921,535.42 is without prejudice to the bank's

rights considering the overdue nature of petitioners' loan.<sup>[11]</sup>

On November 6, 2003, petitioners issued a Stop Payment Order<sup>[12]</sup> for their PhP 921,535.42 check. And in a November 8, 2003 letter, petitioner Jaime, adverting to EPCIB's November 5, 2003 letter, told the bank, "You cannot just unilaterally decide/announce that you did not approve our proposal/request for restructuring of our loan after receiving our payment, which was based on said proposal/request."<sup>[13]</sup>

On November 10, 2003, EPCIB, through counsel, demanded full settlement of petitioners' loan obligation in the total amount of PhP 24,719,461.48. Appended to the demand letter which went unheeded was a statement of account showing detailed principal obligation, interest, and penalties as well as payments petitioners made and how they were applied.

On November 27, 2003, EPCIB filed before the Office of the Clerk of Court and *Ex-Officio* Sheriff of the RTC in Parañaque City its Petition for Sale<sup>[14]</sup> to extra-judicially foreclose the mortgaged property covered by TCT No. 74598. After due publication, the foreclosure sale of the mortgaged property was set for January 9 and 16, 2004.

On December 8, 2003, in the RTC, Branch 266 in Pasig City, petitioners instituted against EPCIB a complaint for Declaratory Relief, Injunction and Damages, with application for a temporary restraining order (TRO) and/or writ of preliminary injunction,<sup>[15]</sup> docketed as SCA No. 2569.

On the very day of the scheduled foreclosure sale, January 9, 2004, the Pasig City RTC issued a TRO,<sup>[16]</sup> enjoining EPCIB from proceeding with the scheduled foreclosure sale, and set a date for the hearing on the application for a writ of preliminary injunction.

After the scheduled hearing on January 15, 2004, the trial court required the parties to file their respective memoranda. EPCIB filed a motion praying for an additional time to file its memorandum which the RTC eventually denied.

On March 10, 2004, the RTC issued an Order granting a writ of preliminary injunction in favor of petitioners, as plaintiffs *a quo*, thus effectively staying the rescheduled foreclosure sale of St. James College's mortgaged property. The dispositive portion of the RTC Order reads:

WHEREFORE, premises considered, finding plaintiffs' application for writ of preliminary injunction to be well-taken and legally justified, the same is hereby GRANTED.

Accordingly, in the interest of substantial justice, let therefore a writ of preliminary injunction be issued enjoining the defendant EPCIB and/or any of its representative/s or any person acting in its behalf to foreclose the mortgaged property of the plaintiffs until final order of the Court. Plaintiffs are directed to post an injunction bond in the amount of ONE MILLION PESOS (PhP1,000,000.00) to answer for whatever damages that said defendant may suffer in the event that it is finally determined by the

Court that plaintiffs are not entitled to the same.

SO ORDERED.<sup>[17]</sup>

By Order<sup>[18]</sup> of July 6, 2004, the RTC denied EPCIB's Extremely Urgent Motion for Reconsideration.<sup>[19]</sup>

Aggrieved, EPCIB went to the CA on certiorari to nullify the RTC Orders dated March 10, 2004 and July 6, 2004, and necessarily to assail the propriety of the writ of preliminary injunction thus granted.

Meanwhile, petitioner Jaime passed away and was substituted by petitioner James Kenley M. Torres.

### **The Ruling of the CA**

On January 17, 2007, the appellate court--while making short shrift of the jurisdictional challenge raised by EPCIB, but finding that grave abuse of discretion attended the issuance of the assailed writ of preliminary injunction--rendered the assailed decision nullifying and setting aside the RTC orders, disposing as follows:

WHEREFORE, premises considered, the instant petition for certiorari is GRANTED. Accordingly, the March 10, 2004 and July 6, 2004 Orders of the Regional Trial Court of Pasig City, Branch 266, are hereby REVERSED and SET ASIDE.

SO ORDERED.<sup>[20]</sup>

Their Motion for Reconsideration (Of the Decision dated 17 January 2007)<sup>[21]</sup> having been denied in the equally assailed resolution of August 28, 2007, petitioners interposed the instant recourse.

The Court, through its Resolution of December 12, 2007, issued a TRO,<sup>[22]</sup> enjoining the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Parañaque City RTC, and EPCIB, their agents or representatives, from enforcing the appealed decision and resolution of the CA, conditioned upon the posting by petitioners of a PhP 1,000,000 surety bond. On January 29, 2008, petitioners submitted the necessary surety bond.

### **The Issues**

Petitioners urge the setting aside of the appealed CA decision and resolution on the submission that the appellate court committed grave and reversible error:

I. x x x IN RULING THAT THE PETITIONERS (PRIVATE RESPONDENTS IN CA-G.R. SP NO. 86587) FAILED TO ESTABLISH THE ELEMENTS FOR THE ISSUANCE OF THE INJUNCTIVE WRIT CONTRARY TO THE FINDINGS OF THE COURT A QUO BY MISAPPLYING THE CASE OF TOYOTA MOTOR PHILIPPINES CORPORATION WORKERS' ASSOCIATION VS COURT OF

APPEALS, 412 SCRA 69.

II. x x x IN MISINTERPRETING THE DOCTRINE ENUNCIATED IN ESTARES VS. COURT OF APPEALS, 459 SCRA, 619 UPON WHICH IT LIKEWISE BASED ITS ASSAILED DECISION PROMULGATED ON JANUARY 17, 2007.

III. x x x IN RULING THAT THERE WAS NO NOVATION AS PROVIDED FOR UNDER ARTICLE 1292 OF THE NEW CIVIL CODE OF THE PHILIPPINES.<sup>[23]</sup>

The key issues tendered may be summarized, as follows: *first*, whether there was indeed a novation of the contract between the parties; and *second*, whether the required ground or grounds for the issuance of a preliminary injunction is/are present.

### **The Court's Ruling**

The petition is unmeritorious.

#### **No Novation of Contract**

Petitioners admit the existence of their unsettled loan obligation to EPCIB. They would insist, however, that the full amount is still not due owing to the implied novation of the terms of payment previously agreed upon. As petitioners assert in this regard that the acceptance by EPCIB, particularly of the June 23, 2003 PhP 2,521,609.62 payment, without any objection on the new terms set forth in their June 23, 2003 complementing covering letter, novated the terms of payment of the PhP 18,300,000 secured loan. To petitioners, EPCIB veritably acquiesced to the new terms of payment being incompatible with the terms of the January 9, 2003 counter-proposal of EPCIB affecting petitioners' obligation of PhP 18,300,000.

We are not persuaded.

As a civil law concept, novation is the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates it, either by changing its objects or principal conditions, or by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor.<sup>[24]</sup> Novation may be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement.<sup>[25]</sup> Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished, or implied, when the new obligation is on every point incompatible with the old one.<sup>[26]</sup> The test of incompatibility lies on whether the two obligations can stand together, each one with its own independent existence.<sup>[27]</sup>

For novation, as a mode of extinguishing or modifying an obligation, to apply, the following requisites must concur: