

## SECOND DIVISION

[ G.R. No. 152071, May 08, 2009 ]

**PRODUCERS BANK OF THE PHILIPPINES, PETITIONER, VS.  
EXCELSA INDUSTRIES, INC., RESPONDENT.**

### DECISION

**TINGA, J.:**

This is a petition for review on certiorari<sup>[1]</sup> under Rule 43 of the 1997 Rules of Civil Procedure, assailing the decision<sup>[2]</sup> and resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. CV No. 59931. The Court of Appeals' decision<sup>[4]</sup> reversed the decision of the Regional Trial Court (RTC), Branch 73, Antipolo, Rizal, upholding the extrajudicial foreclosure of the mortgage on respondent's properties, while the resolution denied petitioner's motion for reconsideration.<sup>[5]</sup>

As borne by the records of the case, the following factual antecedents appear:

Respondent Excelsa Industries, Inc. is a manufacturer and exporter of fuel products, particularly charcoal briquettes, as an alternative fuel source. Sometime in January 1987, respondent applied for a packing credit line or a credit export advance with petitioner Producers Bank of the Philippines, a banking institution duly organized and existing under Philippines laws.<sup>[6]</sup>

The application was supported by Letter of Credit No. M3411610NS2970 dated 14 October 1986. Kwang Ju Bank, Ltd. of Seoul, Korea issued the letter of credit through its correspondent bank, the Bank of the Philippine Islands, in the amount of US\$23,000.00 for the account of Shin Sung Commercial Co., Ltd., also located in Seoul, Korea. T.L. World Development Corporation was the original beneficiary of the letter of credit. On 05 December 1986, for value received, T.L. World transferred to respondent all its rights and obligations under the said letter of credit. Petitioner approved respondent's application for a packing credit line in the amount of P300,000.00, of which about P96,000.00 in principal remained outstanding.<sup>[7]</sup> Respondent executed the corresponding promissory notes evidencing the indebtedness.<sup>[8]</sup>

Prior to the application for the packing credit line, respondent had obtained a loan from petitioner in the form of a bill discounted and secured credit accommodation in the amount of P200,000.00, of which P110,000.00 was outstanding at the time of the approval of the packing credit line. The loan was secured by a real estate mortgage dated 05 December 1986 over respondent's properties covered by Transfer Certificates of Titles (TCT) No. N-68661, N-68662, N-68663, N-68664, N-68665 and N-68666, all issued by the Register of Deeds of Marikina.<sup>[9]</sup>

Significantly, the real estate mortgage contained the following clause:

For and in consideration of those certain loans, overdraft and/or other credit accommodations on this date obtained from the MORTGAGEE, and to secure the payment of the same, the principal of all of which is hereby fixed at FIVE HUNDRED THOUSAND PESOS ONLY (P500,000.00) Pesos, Philippine Currency, as well as those that the MORTGAGEE may hereafter extend to the MORTGAGOR, including interest and expenses or any other obligation owing to the MORTGAGEE, the MORTGAGOR does hereby transfer and convey by way of mortgage unto the MORTGAGEE, its successors or assigns, the parcel(s) of land which is/are described in the list inserted on the back of this document, and/or appended hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the MORTGAGOR declares that he/it is the absolute owner, free from all liens and encumbrances.<sup>[10]</sup>

On 17 March 1987, respondent presented for negotiation to petitioner drafts drawn under the letter of credit and the corresponding export documents in consideration for its drawings in the amounts of US\$5,739.76 and US\$4,585.79. Petitioner purchased the drafts and export documents by paying respondent the peso equivalent of the drawings. The purchase was subject to the conditions laid down in two separate undertakings by respondent dated 17 March 1987 and 10 April 1987.<sup>[11]</sup>

On 24 April 1987, Kwang Ju Bank, Ltd. notified petitioner through cable that the Korean buyer refused to pay respondent's export documents on account of typographical discrepancies. Kwang Ju Bank, Ltd. returned to petitioner the export documents.<sup>[12]</sup>

Upon learning about the Korean importer's non-payment, respondent sent petitioner a letter dated 27 July 1987, informing the latter that respondent had brought the matter before the Korea Trade Court and that it was ready to liquidate its past due account with petitioner. Respondent sent another letter dated 08 September 1987, reiterating the same assurance. In a letter 05 October 1987, Kwang Ju Bank, Ltd. informed petitioner that it would be returning the export documents on account of the non-acceptance by the importer.<sup>[13]</sup>

Petitioner demanded from respondent the payment of the peso equivalent of the export documents, plus interest and other charges, and also of the other due and unpaid loans. Due to respondent's failure to heed the demand, petitioner moved for the extrajudicial foreclosure on the real estate mortgage over respondent's properties.

Per petitioner's computation, aside from charges for attorney's fees and sheriff's fees, respondent had a total due and demandable obligation of P573,225.60, including interest, in six different accounts, namely:

1) EBP-PHO-87-1121	=	P119,165.06
(US\$4,585.97 x 21.212)		
2) EBP-PHO-87-1095 (US\$	=	151,580.97
5,739.76 x 21.212)		
3) BDS-001-87	=	61,777.78
4) BDS-030/86 A	=	123,555.55

5) BDS-PC-002-/87	=	55,822.91
6) BDS-005/87	=	<u>61,323.33</u>
		P573,225.60 <sup>[14]</sup>

The total approved bid price, which included the attorney's fees and sheriff fees, was pegged at P752,074.63. At the public auction held on 05 January 1988, the Sheriff of Antipolo, Rizal issued a Certificate of Sale in favor of petitioner as the highest bidder.<sup>[15]</sup> The certificate of sale was registered on 24 March 1988.<sup>[16]</sup>

On 12 June 1989, petitioner executed an affidavit of consolidation over the foreclosed properties after respondent failed to redeem the same. As a result, the Register of Deeds of Marikina issued new certificates of title in the name of petitioner.<sup>[17]</sup>

On 17 November 1989, respondent instituted an action for the annulment of the extrajudicial foreclosure with prayer for preliminary injunction and damages against petitioner and the Register of Deeds of Marikina. Docketed as Civil Case No. 1587-A, the complaint was raffled to Branch 73 of the RTC of Antipolo, Rizal. The complaint prayed, among others, that the defendants be enjoined from causing the transfer of ownership over the foreclosed properties from respondent to petitioner.<sup>[18]</sup>

On 05 April 1990, petitioner filed a petition for the issuance of a writ of possession, docketed as LR Case No. 90-787, before the same branch of the RTC of Antipolo, Rizal. The RTC ordered the consolidation of Civil Case No. 1587-A and LR Case No. 90-787.<sup>[19]</sup>

On 18 December 1997, the RTC rendered a decision upholding the validity of the extrajudicial foreclosure and ordering the issuance of a writ of possession in favor of petitioner, to wit:

WHEREFORE, in Case No. 1587-A, the court hereby rules that the foreclosure of mortgage for the old and new obligations of the plaintiff Excelsa Industries Corp., which has remained unpaid up to the time of foreclosure by defendant Producers Bank of the Philippines was valid, legal and in order; In Case No. 787-A, the court hereby orders for the issuance of a writ of possession in favor of Producer's Bank of the Philippines after the properties of Excelsa Industries Corp., which were foreclosed and consolidated in the name of Producers Bank of the Philippines under TCT No. 169031, 169032, 169033, 169034 and 169035 of the Register of Deeds of Marikina.

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

The RTC held that petitioner, whose obligation consisted only of receiving, and not of collecting, the export proceeds for the purpose of converting into Philippine currency and remitting the same to respondent, cannot be considered as respondent's agent. The RTC also held that petitioner cannot be presumed to have received the export proceeds, considering that respondent executed undertakings warranting that the drafts and accompanying documents were genuine and accurately represented the facts stated therein and would be accepted and paid in accordance with their tenor.<sup>[21]</sup>

Furthermore, the RTC concluded that petitioner had no obligation to return the export documents and respondent could not expect their return prior to the payment of the export advances because the drafts and export documents were the evidence that respondent received export advances from petitioner.<sup>[22]</sup>

The RTC also found that by its admission, respondent had other loan obligations obtained from petitioner which were due and demandable; hence, petitioner correctly exercised its right to foreclose the real estate mortgage, which provided that the same secured the payment of not only the loans already obtained but also the export advances.<sup>[23]</sup>

Lastly, the RTC found respondent guilty of laches in questioning the foreclosure sale considering that petitioner made several demands for payment of respondent's outstanding loans as early as July 1987 and that respondent acknowledged the failure to pay its loans and advances.<sup>[24]</sup>

The RTC denied respondent's motion for reconsideration.<sup>[25]</sup> Thus, respondent elevated the matter to the Court of Appeals, reiterating its claim that petitioner was not only a collection agent but was considered a purchaser of the export

On 30 May 2001, the Court of Appeals rendered the assailed decision, reversing the RTC's decision, thus:

WHEREFORE, the appeal is hereby GRANTED. The decision of the trial court dated December 18, 1997 is REVERSED and SET ASIDE. Accordingly, the foreclosure of mortgage on the properties of appellant is declared as INVALID. The issuance of the writ of possession in favor of appellee is ANNULLED. The following damages are hereby awarded in favor of appellant:

- (a) Moral damages in the amount of P100,000.00;
- (b) Exemplary damages in the amount of P100,000.00; and
- (c) Costs.

SO ORDERED.<sup>[26]</sup>

The Court of Appeals held that respondent should not be faulted for the dishonor of the drafts and export documents because the obligation to collect the export proceeds from Kwang Ju Bank, Ltd. devolved upon petitioner. It cited the testimony of petitioner's manager for the foreign currency department to the effect that petitioner was respondent's agent, being the only entity authorized under Central Bank Circular No. 491 to collect directly from the importer the export proceeds on respondent's behalf and converting the same to Philippine currency for remittance to respondent. The appellate court found that respondent was not authorized and even powerless to collect from the importer and it appeared that respondent was left at the mercy of petitioner, which kept the export documents during the time that respondent attempted to collect payment from the Korean importer.

The Court of Appeals disregarded the RTC's finding that the export documents were the only evidence of respondent's export advances and that petitioner was justified in refusing to return them. It opined that granting petitioner had no obligation to return the export documents, the former should have helped respondent in the collection efforts instead of augmenting respondent's dilemma.

Furthermore, the Court of Appeals found petitioner's negligence as the cause of the refusal by the Korean buyer to pay the export proceeds based on the following: first, petitioner had a hand in preparing and scrutinizing the export documents wherein the discrepancies were found; and, second, petitioner failed to advise respondent about the warning from Kwang Ju Bank, Ltd. that the export documents would be returned if no explanation regarding the discrepancies would be made.

The Court of Appeals invalidated the extrajudicial foreclosure of the real estate mortgage on the ground that the posting and publication of the notice of extrajudicial foreclosure proceedings did not comply with the personal notice requirement under paragraph 12<sup>[27]</sup> of the real estate mortgage executed between petitioner and respondent. The Court of Appeals also overturned the RTC's finding that respondent was guilty of estoppel by laches in questioning the extrajudicial foreclosure sale.

Petitioner's motion for reconsideration<sup>[28]</sup> was denied in a Resolution dated 29 January 2002. Hence, the instant petition, arguing that the Court of Appeals erred in finding petitioner as respondent's agent, which was liable for the discrepancies in the export documents, in invalidating the foreclosure sale and in declaring that respondent was not estopped from questioning the foreclosure sale.<sup>[29]</sup>

The validity of the extrajudicial foreclosure of the mortgage is dependent on the following issues posed by petitioner: (1) the coverage of the "blanket mortgage clause;" (2) petitioner's failure to furnish personal notice of the foreclosure to respondent; and (3) petitioner's obligation as negotiating bank under the letter of credit.

Notably, the errors cited by petitioners are factual in nature. Although the instant case is a petition for review under Rule 45 which, as a general rule, is limited to reviewing errors of law, findings of fact being conclusive as a matter of general principle, however, considering the conflict between the factual findings of the RTC and the Court of Appeals, there is a need to review the factual issues as an exception to the general rule.<sup>[30]</sup>

Much of the discussion has revolved around who should be liable for the dishonor of the draft and export documents. In the two undertakings executed by respondent as a condition for the negotiation of the drafts, respondent held itself liable if the drafts were not accepted. The two undertakings signed by respondent are similarly-worded and contained respondent's express warranties, to wit:

In consideration of your negotiating the above described draft(s), **we hereby warrant that the said draft(s) and accompanying documents thereon are valid, genuine and accurately represent the facts stated therein, and that such draft(s) will be accepted and paid in accordance with its/their tenor.** We further undertake