

## THIRD DIVISION

[ G.R. No. 181675, June 22, 2009 ]

**SPOUSES EDUARDO AND MAYDA TANKIANG, PETITIONERS, VS. HON. SELMA P. ALARAZ, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT (RTC) OF MAKATI, BRANCH 62, SHERIFF ROMEO C. GONZALES, BRANCH SHERIFF OF RTC MAKATI, BRANCH 62, SHERIFF REY B. MAGSAJO, DEPUTY SHERIFF OF THE METROPOLITAN TRIAL COURT (MTC), MAKATI CITY, BRANCH 61, AND METROPOLITAN BANK & TRUST COMPANY, INC. RESPONDENTS.**

### RESOLUTION

**NACHURA, J.:**

Before us is a Manifestation and/or Motion for Judgment Based on a Compromise Agreement<sup>[1]</sup> filed by petitioner spouses Eduardo Tankiang and Mayda Tankiang (petitioners).

Earlier, petitioners filed their Petition (With Application for Temporary Restraining Order)<sup>[2]</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>[3]</sup> dated March 30, 2007 and the Resolution<sup>[4]</sup> dated February 8, 2008 of the Court of Appeals in CA-G.R. SP No. 89342. Respondent Metropolitan Bank & Trust Company, Inc. (Metrobank) timely filed its Comment.<sup>[5]</sup> Instead of filing their Reply, petitioners submitted for approval their Manifestation and/or Motion for Judgment with the attached Compromise Agreement<sup>[6]</sup> dated January 8, 2009 which reads -

### COMPROMISE AGREEMENT

This Compromise Agreement ("Agreement") is entered into by and between:

**SPS. EDUARDO TANKIANG AND MAYDA TANKIANG**, both of legal age, Filipino, and with postal address at **1146 Tamarind Road, Dasmariñas Village, Makati City**, hereinafter referred to as "**Sps. Tankiang**;"

- and -

**LNC 3 ASSET MANAGEMENT INC.**, a corporation duly organized and existing under and, by virtue of the laws of the Philippines, with office at Karport Building, 32<sup>nd</sup> Street, Bonifacio Global City, Taguig, Metro Manila, represented herein by its authorized representatives Jose Romarx Salas and Adrian L. Apostol, herein referred to as "**LNC**."

(Spouses Tankiang and LNC shall be collectively referred to herein as the "**Parties**", and individually, a "Party.")

- with the conformity of -

**METROPOLITAN BANK & TRUST COMPANY**, a corporation duly organized and existing under and, by virtue of the laws of the Philippines, with office at Metrobank Plaza, Sen. Gil Puyat Ave., Makati City, represented herein by its authorized representative \_\_\_\_\_, hereinafter referred to as "**Metrobank.**"

**WITNESSETH THAT:**

WHEREAS, Sps. Eduardo Tankiang and Mayda Tankiang (hereinafter "Sps. Tankiang") and Metropolitan Bank & Trust Company (hereinafter "Metrobank") has filed suits and countersuits now pending in various courts (hereinafter "Civil Cases") in connection with the loan transactions entered into by Sps. Tankiang, as borrower/mortgagor and Metrobank, as creditor/mortgagee.

WHEREAS, the Sps. Tankiang hereby acknowledge the existence of its loan, which was granted by the original creditor bank, Metrobank. Moreover, Sps. Tankiang also acknowledge the sale, transfer and conveyance of its loan account and the securities/collaterals they executed pursuant to such loan from Metrobank, subsequently to Asia Recovery Corporation and then finally to LNC.

WHEREAS, to buy peace and avoid further litigation, the Parties have agreed to settle their differences subject of the Civil Cases.

**NOW, THEREFORE**, for and in consideration of the foregoing premises, and subject to the mutual covenants and conditions hereinafter set forth, in the spirit of goodwill and understanding, and to avoid the uncertainties and additional costs of litigation, the Parties have agreed to amicably settle their misunderstandings, including the Civil Cases, and all other and future claims between the Parties arising out of the facts and circumstances alleged in the Civil Cases, and hereby agree as follows:

**I. Terms of Settlement:**

**A. Manner**

In view of the mutual desire of the parties to liquidate the properties which are currently in the possession of Sps. Tankiang and Metrobank, the Parties expressly agree that the Sps. Tankiang shall:

- a. Buy back the residential property at 1146 Tamarind Road, Dasmariñas Village, Makati City covered by T[ransfer] Certificate of Title No. 219538 and commercial lots at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City, covered by Tranfer Certificate of Title Nos. 145175 and 145176.

It is understood by the Parties that all taxes, fees and expenses relative to the transfer and consolidation of the properties referred herein to Sps. Tankiang shall be borne exclusively by the latter including but not limited to the consolidation of the titles from Metrobank and any and all succeeding transfer of title as deemed necessary in their favor.

b. Have a right to match any offer to sell the following properties:

- (i) residential property at 39 Banaba St., Forbes Park (South), Makati City; and
- (ii) residential property at 214 Recoletos St., Urdaneta Village, Makati City;

Sps. Tankiang shall have the right to match an offer for the purchase of the properties in item (b) above by other party on the same terms and conditions as may be set forth in any bona fide offer received by LNC from a third party, in writing. LNC, upon receipt of such offer to purchase, shall promptly transmit the offer to Sps. Tankiang who shall have a period of thirty (30) days to match the offer and all of its terms, covenants and conditions (the "Acceptance Period"). Sps. Tankiang shall send to LNC a written notice of acceptance of the offer within the Acceptance Period. The failure to accept the offer within the Acceptance Period containing the same terms and conditions as set forth in the offer shall be deemed a waiver of Sps. Tankiang's right to match and LNC may therefore sell the property upon all of the terms set forth in the offer. The right to match shall be for a period of eighteen (18) months from the date of signing of this settlement agreement and conditioned on the faithful compliance by Sps. Tankiang of all the terms and conditions stipulated therein. After the lapse of such period, LNC may offer for sale the property to any third party.

The Parties hereby agree that Sps. Tankiang shall inform the tenants of all subject properties, if any, as to the terms and conditions of this Compromise Agreement within thirty (30) days from the date of signing of this Agreement.

However, Metrobank and LNC shall be rendered free and harmless of all and any liability arising out of the sale and liquidation of the properties, provided that Metrobank and LNC comply in good faith with the manner of sale, as stated in this Agreement.

For and in consideration of this opportunity to match any offer to purchase the above-described properties, the Sps. Tankiang hereby unconditionally agree to surrender, within five (5) days from the signing of this Agreement, to LNC or its authorized agents or representatives the possession of the commercial vacant lots at National Hi-way corner Barrio San Isidro, Cabuyao, Laguna. Sps. Tankiang further confirm LNC's (or Metrobank) right of possession over residential property at 39 Banaba St., Forbes Park (South), Makati City; and residential property at 214 Recoletos St., Urdaneta Village, Makati City.

For the properties subject of buyback, particularly the Dasmariñas property, the real property taxes shall continuously be paid by the Sps. Tankiang. For the Roxas Boulevard property, Sps. Tankiang shall reimburse any taxes paid in advance by LNC3. For clarity, cut off date for the computation of the pro-rata reimbursement shall commence from the execution of this agreement.

The Parties hereby agree that the rights granted to Sps. Tankiang in relation to the right to match any offer to sell the subject properties are exclusive and shall not be assigned to any third party.

## **B. Consideration**

The Parties and Metrobank agree to the dismissal, settlement and end to the Civil Cases upon the happening of the following:

- a. Payment of the aggregate amount of Pesos: Sixty Five Million (Php 65,000,000.00) to buy back the residential property at 1146 Tamarind Road, Dasmariñas Village, Makati City and commercial lot at Roxas Boulevard (Service Road) Brgy. San Rafael, Pasay City; the said amount payable in three (3) years with upfront payment of Pesos: Eight Million Five Hundred Thousand (Php 8,500,000.00) payable on 11 November 2008 or the day after Sps. Tankiang's receipt of the Compromise Agreement signed by Metropolitan Bank & Trust Company Inc. (hereinafter "signed copy"), whichever is later. In case Sps. Tankiang receives the signed copy after 11 November 2008, the postdated check issued by the Tankiangs will be exchanged to reflect a later date. The balance of the contract price shall be payable in equal quarterly payments of Php 4,708,333.33 Million commencing on the sixth (6<sup>th</sup>) month from receipt of the first payment. A schedule of payment is hereto attached an Annex "A" hereof.
- b. Upon execution of the Compromise Agreement, the Sps. Tankiang, their assigns, heirs, successor-in-interest, shall fully and unconditionally forever release, waive, and discharge the Metrobank, ARC and LNC, as well as its assigns, successors-in-interest, agents, and employees for any and all causes of action, claims, counterclaims and demands they and their assigns, heirs and successors-in-interest may have at present or in the future whatsoever, pertaining, or having any relation, to the following cases:
  - 1) LRC Case No. M-4507, Regional Trial Court of Makati City, Branch 62;
  - 2) Civil Case No. 04-243, Regional Trial Court of Makati City, Branch 132;
  - 3) CA-GR SP No. 89372, Court of Appeals, 11<sup>th</sup> Division;
  - 4) GR No. 18322, Supreme Court;

- 5) LRC Case No. B-3175, Regional Trial Court of Biñan, Laguna, Branch 24;
- 6) LRC Case No. B-3185, Regional Trial Court of Biñan, Laguna, Branch 24;
- 7) LRC Case No. B-6380, Regional Trial Court of Biñan, Laguna, Branch 25;
- 8) CA G.R. SP No. 99236, Court of Appeals, 8<sup>th</sup> Division;
- 9) G.R. No. 181675, Supreme Court, 3<sup>rd</sup> Division; and
- 10) Civil Case No. 03-0376 CFM, Regional Trial Court of Pasay City, Branch 111;
- 11) CA-G.R. CV No. 81889, Court of Appeals;
- 12) CA-G.R. SP No. 83444, Court of Appeals;
- 13) G.R. No. 166576, Supreme Court;
- 14) All other cases pending before administrative and judicial bodies relating to the properties involving Metrobank, Asia Recovery Corp. and LNC3.

The Parties hereby agree that upon the signing of this agreement, Sps. Tankiang shall cause the immediate removal of the annotation of Lis Pendens on the subject properties and the dismissal of the certiorari cases filed in appellate courts. Sps. Tankiang can only cause the removal of the annotation of Lis Pendens and cause the dismissal for the cases in which they are parties. They cannot cause the dismissal of the case filed by the Heirs of Clarita Tankiang Sanchez or cause the removal of the notice of Lis Pendens annotated by the Heirs of Clarita Tankiang Sanchez. On the assumption that this applies to the Roxas Boulevard property only.

The Parties shall execute and/or cooperate in the execution of the necessary documents for the proper discharge and release of whatever claims against Metrobank, ARC, LNC, its assigns, successors-in-interest, agents, and employees for any and all causes of action, claims, counterclaims and demands that Sps. Tankiang, their assigns, heirs and successors-in-interest may have at present or in the future whatsoever, pertaining, or having any relation, to the above cases.

Subject to the terms and conditions hereof, each Party agrees to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate the transactions contemplated by this settlement agreement as expeditiously as practicable, including, but without limitation to, performance of such further acts or the execution and delivery of any additional instruments or documents to obtain or required for effecting the purposes of this agreement.