

THIRD DIVISION

[G.R. No. 164521, December 18, 2008]

**ALLANDALE SPORTSLINE, INC., AND MELBAROSE R. SASOT,
PETITIONERS, VS. THE GOOD DEVELOPMENT CORPORATION,
RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the May 15, 2003 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 59475 which dismissed the petition of Allandale Sportsline, Inc. and Melbarose R. Sasot from the January 13, 1998 Decision^[2] of the Regional Trial Court (RTC) of Pasig City, Branch 158 in Civil Case No. 61053; and the June 12, 2004 CA Resolution^[3] which denied petitioners' motion for reconsideration.

The relevant facts are as follows:

Allandale Sportsline, Inc. (ASI) obtained a loan of P204,000.00 from The Good Development Corp. (GDC) under a Promissory Note signed by Melbarose R. Sasot (Melbarose) and Allandale R. Sasot (Allandale), President and Vice-President, respectively, of ASI, with Theresa L. Manipon (Manipon) as one of three co-makers. ^[4] The Promissory Note provides that the loan is payable in daily equal installments of P2,000.00 with interest at the rate of 26.002% per annum. In case of default in the payment of any installment, the entire balance of the obligation shall become immediately due and payable, and subject to liquidated penalty/ collection charge equivalent to **2% of the principal.** ^[5]

To provide additional security, ASI and Melbarose executed in favor of GDC a Deed of Mortgage^[6] in which they acceded that:

xxxx should the MORTGAGORS fail to comply with any of the terms of the promissory note and this mortgage contract, the MORTGAGEE shall **automatically have the absolute right without need of prior notice or demand to forthwith judicially or extrajudicially foreclose this mortgage** and proceed against all or any of the mortgaged rights, interests and properties for the full satisfaction of the MORTGAGORS' entire obligation to the MORTGAGEE and, in such event, the MORTGAGORS shall be further liable to the MORTGAGEE in the same judicial or extrajudicial foreclosure proceedings for payment of attorney's fees in an amount equivalent to twenty five (25%) per cent of the unpaid indebtedness but in no case less than Five hundred pesos (500.00); liquidated damages in an amount equivalent to **twenty-five (25%)**

percent of said outstanding obligation and all the expenses and costs incidental to the above proceeding xxx.^[7] (Emphasis supplied)

The properties subject of the mortgage are itemized in an inventory attached to the deed. They include: List A -- all the merchandise and stocks in trade found in the commercial establishment owned by ASI and Melbarose at #514 M.V. delos Santos St., Sampaloc, Manila, valued at P100,000.00; List B -- all the furniture, fixtures, appliances, equipment and other personal property found in said business establishment, valued at P3,500.00; and List C -- one Toyota Corona 2DR. HT. with Motor No. 18R-1474348, valued at P40,000.00 and one Toyota Corolla 4DR. SDN with Motor No. 4K-5872110, valued at P35,000.00.^[8]

On June 24, 1991, GDC demanded that Melbarose pay the unpaid account of P179,000.00 or surrender the mortgaged chattels within five days from notice.^[9]

When no payment was made, GDC filed with the RTC a Complaint^[10] for Replevin and/or Sum of Money with Damages against ASI, Melbarose, Manipon, Florante Edrino and John Doe.^[11] It is significant that plaintiff GDC prayed for alternative reliefs, to wit:

WHEREFORE, for all the foregoing it is most respectfully prayed of this Honorable Court that:

1. A Writ of Replevin be issued ordering the seizure of the above described chattels or personal property with all the accessories or equipments and directing their transfer to Plaintiff **for the purposes of foreclosure &/or transfer** in accordance with the law to satisfy Defendants' obligation in favor of Plaintiff; and
2. After due notice and trial:
 - a. to enforce said seizure and Plaintiff's right over aforescribed chattels and/or personal property; and
 - b. to order Defendants to pay Plaintiff jointly and severally the sum of P43,750.00 as and for attorney's fees and the sum equivalent to 25% of the obligation as and for liquidated damages, plus other expenses of litigation and costs of suit.

On the Alternative Cause of Action, in the event that manual delivery of said chattels or personal property cannot be obtained for some reason or another, to render judgment ordering Defendants to pay plaintiff, jointly and severally as follows:

1. The sum of P175,000.00 plus interest thereon at 26.002% per annum from date of maturity until said sum shall have been fully paid.
2. The sum of P43,750.00 as and for Attorney's fees, the sum equivalent to 25% of the obligation as and for liquidated damages, such other expenses of litigation and costs of suit.^[12]

The RTC issued a Writ of Replevin,^[13] and by virtue thereof, the Sheriff seized and delivered to GDC only one unit of Toyota Corona with Motor No. 18R-1474348 and two appliances.^[14]

On December 2, 1991, GDC filed an Amended Complaint to include in its application for replevin the items under List A.^[15] After admitting the Amended Complaint, the RTC issued an Alias Writ of Replevin^[16] over the items in List A, and, by virtue thereof, the Sheriff seized and delivered to GDC the assorted items enumerated therein.^[17]

It appears that a Second Alias Writ of Replevin^[18] was issued over one unit Toyota Corolla with Motor No. 4K-5872110, but the records do not indicate that the Sheriff made a return on the writ.

Meanwhile, ASI and Melbarose filed their Answer with Counterclaim.^[19] They claimed that their loan obligation to GDC was only for P200,000.00, and after deducting P18,000.00, which amount was retained by GDC as advanced interest payment, and P29,000.00, which represents payments made from June 4, 1991 to July 8, 1991, their unpaid obligation was only P171,000.00;^[20] that they repeatedly tendered payment of this amount, but GDC rejected their efforts for no valid reason; that the unreasonable refusal of GDC to accept their tender of payment relieved them of their loan obligation;^[21] that its Complaint being obviously without merit, GDC should be held liable to them for damages.^[22]

Manipon filed a separate Answer in which she did not deny the authenticity of her signature on the Promissory Note, but argued that she did not knowingly or voluntarily sign the instrument as a co-maker, for at that time she was under the impression that the instrument she was signing was her own loan application with GDC.^[23]

In its Pre-Trial Order dated May 22, 1992, the RTC identified only these issues: (a) whether GDC was entitled to collect P175,000.00, as well as the interests, attorney's fees and other expenses and costs; (b) whether ASI and Melbarose made a valid tender of payment; (c) whether Manipon was a real party-in-interest; and (d) whether the prevailing party was entitled to damages.^[24]

However, it is significant that at the trial that ensued, GDC disclosed that after it obtained possession of the properties subject of the writs of replevin, it caused the auction sale of some of them and realized proceeds amounting to P78,750.00.

While there is no certificate of sale in the records of the case, respondent's witness Leonila Buenviaje testified thus:

ATTY. MAMARIL:

X X X
X

Q- In this case, Miss witness, you were able to seize by way of a writ of replevin some properties of the defendants. What

did you do with these properties?

A- It was being sold by auction sale.

Q- Could you tell this Honorable Court if the auction sale pushed through?

A- Yes, sir.

Q- How much were you able to realize from the auction sale?

x x x

x

A- We had pulled amounting to P55,050.00. The Karaoke - P3,200.00; the t.v. - P500.00; and athletic uniforms amounting to P20,000.00.

Q- So, all in all how much could that be?

x x x

x

A- More than P78,000.00. I think P78,750.00. [25]

On cross-examination, the same witness further described the auction sale:

ATTY. QUINONES:

x x x x

Q- Are you sure that these has been sold already, Miss Buenviaje?

A- Yes, sir.

Q- When was it sold?

A- I forgot the exact date.

Q- Do you have any document that those items were already sold?

A- We have a certificate of sale from the Sheriff.

x x x x

Q- And the car Toyota Corona was also seized and sold?

A- Yes, sir.

Q- And in turn you were able to sell it to a third party?

A- Yes, sir.

Q- And that car was sold already in the amount of P56,000.00, is that correct?

A- P55,000.00. [26]

Moreover, GDC presented to the RTC a Statement of Account dated August 24, 1992, which indicated that the total outstanding balance of the loan obligation of ASI and Melbarose was reduced to P191,111.82 after the proceeds of the auction

sale conducted on June 19, 1992 in the amount of P78,750.00 was deducted from the earlier balance of P266,126.17.^[27]

The RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is rendered in favor of the plaintiff Good Development Corporation against defendants Melbarose Sasot, Allandale Sportsline Inc., and Ma. Theresa Manipon ordering them to pay the plaintiff jointly and severally the amount of ***P269,611.82 plus legal interest thereon effective to date until the full amount is fully paid, and 25% of the total amount due as liquidated damages.***

SO ORDERED.^[28] (Emphasis supplied)

ASI, Sasot and Manipon appealed to the CA, which rendered the Decision assailed herein, to wit:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed decision of the RTC of Pasig City, Branch 158 in Civil Case No. 61053 is hereby AFFIRMED.

SO ORDERED.^[29]

Their Motion for Reconsideration was also denied by the CA.^[30]

Only ASI and Sasot (petitioners) took the present recourse, raising the following issues:

- I. Whether or not petitioners' check payment of Php171,000.00, PCIB Check No. 851688, to cover the total balance of their loan to respondent, became a valid tender of payment by virtue of the respondent's acceptance thereof;
- II. Whether or not the "parol evidence rule" applies on the promissory note in question when the co-makers thereon are total strangers to one another;
- III. Whether or not petitioners are entitled to the return of their properties pursuant to Section 9, Rule 60 of the Rules of Court.
- IV. Whether or not there is legal basis in the award of liquidated damages.^[31]

The second issue deserves scant consideration for lack of basis. Manipon did not join in the petition. Hence, the finding of the RTC, as affirmed by the CA, that she was a co-maker of Promissory Note and a real party-in-interest is already final and conclusive. Petitioners cannot now question this finding by raising the defense that Manipon signed the promissory note without knowledge of the nature of her liability under the instrument. Such defense is personal to Manipon and cannot be invoked by petitioners, unless it is shown that their interests are so interwoven with and dependent on Manipon's as to be inseparable.^[32] However, in their pleadings,