

## THIRD DIVISION

[ G.R. NO. 164159, July 17, 2007 ]

**HONORIO C. BULOS, JR., PETITIONER, VS. KOJI YASUMA,  
RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the 1997 Revised Rules of Civil Procedure seeking to set aside and to declare null and void (1) the Decision,<sup>[2]</sup> dated 5 January 2004, of the Court of Appeals in CA-G.R. CV No. 54969, which affirmed the Decision,<sup>[3]</sup> dated 30 August 1996, of the Makati City Regional Trial Court (RTC), Branch 148, in Civil Case No. 90-1053; and (2) the Resolution<sup>[4]</sup> of the Court of Appeals, dated 11 June 2004, which denied the petitioner's Motion for Reconsideration.

Herein petitioner Honorio C. Bulos (petitioner) was one of the defendants in a Complaint for collection of sum of money plus damages with prayer for a writ of preliminary attachment, docketed as Civil Case No. 90-1053, entitled, "*Koji Yasuma v. Ramon R. Lim, Honorio C. Bulos and Bede S. Tabalingcos*," filed with the RTC by herein respondent Koji Yasuma, a Japanese national.

The controversy in the present case arose from the following antecedents:

Petitioner, together with Dr. Ramon R. Lim (Dr. Lim) and Atty. Bede S. Tabalingcos (Atty. Tabalingcos), obtained a loan from Koji Yasuma (respondent) in the amount of P2,500,000.00, as evidenced by a promissory note,<sup>[5]</sup> dated 11 October 1988, signed solely by Dr. Lim per agreement among the petitioner, Dr. Lim and Atty. Tabalingcos.<sup>[6]</sup> The said promissory note provides for the following conditions: (1) payment of interest at the rate of 4% for a period of three months or until 10 January 1989; (2) in case of a "roll over" for failure of the borrowers to pay on the agreed period, the extension will be considered running monthly under the same terms and rate of interest until the principal amount has been fully paid; and (3) should the said promissory note be brought to court for collection, the borrowers agree to pay an additional amount equivalent to 10% of the principal amount plus attorney's fee, which in no case shall be less than P10,000.00. As a security for the said loan, both petitioner and Dr. Lim executed Real Estate Mortgages<sup>[7]</sup> over their respective properties.

On 16 December 1988, petitioner and Dr. Lim executed a Deed of Assumption,<sup>[8]</sup> to the effect that petitioner assumed the loan obligation of Dr. Lim due respondent with the condition that Dr. Lim shall first secure the respondent's consent to and approval of the said Deed of Assumption. However, the conformity of respondent to the said Deed of Assumption was not obtained by Dr. Lim. When the loan obligation became

due and demandable on 10 January 1989, respondent demanded payment from the petitioner, Dr. Lim and Atty. Tabalingcos, but they failed and refused to pay the same. Respondent then made a demand in writing and through telephone calls to Atty. Tabalingcos. Atty. Tabalingcos just told respondent that he would talk first to the petitioner and Dr. Lim and he will then inform the respondent of their response, but Atty. Tabalingcos never called back.

After painstaking efforts to collect the loan from the petitioner, Dr. Lim and Atty. Tabalingcos, respondent requested Atty. Tabalingcos, who happened to be his legal adviser at that time, to foreclose the Real Estate Mortgages executed by the petitioner and Dr. Lim over their respective properties. Atty. Tabalingcos failed to do so. Instead, he made a proposal to respondent that the petitioner had certain properties in Parañaque City which he was willing to sell to the respondent to cover the obligation of the petitioner, Dr. Lim and Atty. Tabalingcos. Out of respondent's desperation to collect the loan that he had extended to the petitioner, Dr. Lim and Atty. Tabalingcos, respondent agreed to the aforesaid proposal. Thus, on 24 February 1989, a Deed of Sale,<sup>[9]</sup> over certain parcels of land located in Parañaque City and covered by Transfer Certificates of Title (TCTs) No. 467734 and 332355 in the name of petitioner, was executed in favor of the respondent for a total consideration of P1,630,750.00, paid *via a dacion en pago* arrangement.

After the execution of the Deed of Sale, all the parties agreed that there was still a balance of P2,240,000.00 owed to the respondent. In a Certification<sup>[10]</sup> dated 27 February 1989, which the petitioner and Dr. Lim considered as another Deed of Assumption, petitioner assumed the P1,500,000.00 obligation of Dr. Lim. The consideration for the said assumption of obligation is the transfer<sup>[11]</sup> of the shares of stocks of the Rural Bank of Parañaque to the respondent to offset the obligation. Petitioner thus offered the said shares of stocks to the respondent. Atty. Tabalingcos, for his part and in his capacity as Chairman of the Board of the said bank, issued a certification<sup>[12]</sup> to the effect that the respondent holds P1,250,000.00 worth of shares of stocks, equivalent to 20% shareholdings in the Rural Bank of Parañaque. However, during that time, the Rural Bank of Parañaque must first increase its authorized capital stock subject to the approval of the Securities and Exchange Commission (SEC) because the original shares had already been fully subscribed and fully paid. Because of this and of the information provided by his then counsel, the late Atty. Bayani M. Timario, Jr. (Atty. Timario, Jr.), that a foreigner cannot be a stockholder of a rural bank, the respondent absolutely refused to accept the shares of stocks and demanded instead an outright payment of the loan obligation. As the shares of stocks were already assigned to the respondent *via* a certification issued by Atty. Tabalingcos, the latter then issued a check<sup>[13]</sup> in the amount of P2,240,000.00 to the order of the respondent, dated 25 December 1989, to buy the said shares in behalf of an interested buyer. When the respondent presented the check to the bank, it was dishonored for having been drawn against insufficient funds.

Subsequently, the respondent sent a demand letter<sup>[14]</sup> to each of the borrowers -- the petitioner, Dr. Lim and Atty. Tabalingcos -- for the full payment of their outstanding obligation; but, to no avail. This prompted the respondent to file with the RTC a Complaint for Sum of Money with Damages and with Prayer for a Writ of Preliminary Attachment against the petitioner, Dr. Lim and Atty. Tabalingcos. On 23

April 1990, the trial court issued an Order<sup>[15]</sup> granting the writ of preliminary attachment applied for by the respondent upon his filing of a bond fixed at P2,240,000.00. By virtue of the said writ, several lots of the petitioner, and the house and lot of Dr. Lim located in Quezon City, were attached. Petitioner filed a Motion to Dissolve Writ of Attachment which was granted by the trial court in its Order dated 7 October 1992<sup>[16]</sup> conditioned upon petitioner's posting of a counter-bond in the amount of P2,240,000.00. Petitioner moved for the reduction of his counter-bond to P770,000.00 considering that the respondent made an admission that the petitioner partially paid the loan obligation in the amount of P1,630,750.00. The said motion was granted by the court *a quo* in its Order dated 1 August 1995.  
<sup>[17]</sup>

On 30 August 1996, the trial court rendered a Decision in favor of the respondent and against the petitioner, Dr. Lim and Atty. Tabalingcos, the decretal portion of which reads as follows:

WHEREFORE, premises considered, and finding that [herein respondent] has fully established not only by preponderance of evidence by competent proof of his entitlement to his claims in the [C]omplaint, judgment is hereby rendered in favor of [respondent] and against [herein petitioner, together with Dr. Lim and Atty. Tabalingcos]. Ordering [the petitioner, Dr. Lim and Atty. Tabalingcos] to jointly and severally pay the [respondent] the following:

- (1) The amount of P2,240,000.00 plus interest of 21% per annum as of April, 1990, the time of the filing of the [C]omplaint;
- (2) The sum equivalent to 20% of P2,240,000.00 plus P500.00 per appearance in the case, for and as attorney's fees.
- (3) Costs of the suit.

The cross-claim filed by [Atty. Tabalingcos] against the [petitioner] is hereby DISMISSED for reasons stated above.

Costs against [petitioner, Dr. Lim and Atty. Tabalingcos].<sup>[18]</sup>

Aggrieved by the aforesaid Decision of the trial court, the petitioner, Dr. Lim and Atty. Tabalingcos appealed to the Court of Appeals. However, Atty. Tabalingcos did not file his appellant's brief. On 5 January 2004, the Court of Appeals rendered a Decision affirming *in toto* the Decision of the trial court. The petitioner moved for its reconsideration, but it was denied in a Resolution dated 11 June 2004 issued by the appellate court.

Hence, this petition by petitioner. However, Dr. Lim and Atty. Tabalingcos did not appeal before this Court.

Petitioner submits the following issues for this Court's resolution:

- I. Whether or not the obligation of petitioner to pay respondent has already (sic) fully extinguished.

- II. Whether or not the offer to purchase shares of stock of Rural Bank of Parañaque amounting to P1,250,000.00 extinguished petitioner Bulos' obligation to pay the balance of the loan with (sic) respondent.
- III. Whether or not petitioner Bulos is entitled to claim for damages.
- IV. Whether or not [the] imposition of 21% interest on P2,240,000.00 and 20% of the said amount as attorney's fees has no legal and factual basis (sic)

Petitioner argues that despite the partial payment made by him in the amount P1,630,750.00, and in spite of the respondent's unequivocal admission of the same, still, the respondent did not deduct the said amount from the total amount of the obligation due him. Instead, the respondent continuously claimed the amount of P2,240,000.00 as of 25 December 1989, plus interest at the rate of 4% per month from 25 December 1989 when he filed his Complaint on 7 April 1990.

The petitioner likewise avers that his obligation to pay the balance of the loan to the respondent had already been extinguished when he offered to the respondent the shares of stocks of the Rural Bank of Parañaque amounting to P1,250,000.00. Respondent's assertion that he did not accept the offer of the shares of stocks because of his nationality deserves scant consideration as in fact, he had religiously followed up with petitioner and Atty. Tabalingcos the issuance of the certificate for the said shares of stocks.

Petitioner further alleges that he is entitled to claim damages for he had been subjected to ridicule, mental anguish, besmirched reputation, and extreme anxiety as a result of the respondent's unfounded and malicious suit. Petitioner lost business opportunities as a consequence of the attachment made on his real properties in Tarlac; thus, respondent should be made liable for the payment of damages for all that he had suffered. As to the imposition of 21% interest on the P2,240,000.00 outstanding loan obligation and 20% of the said amount as attorney's fees, petitioner asserts that the same has no legal and factual bases. The imposition of the said interest is highly excessive and exorbitant in light of the *dacion en pago* arrangement and the assignment of shares of stocks of the Rural Bank of Parañaque.

It is well-settled that the findings of fact of the trial court, especially when affirmed by the Court of Appeals, are accorded the highest degree of respect, and generally will not be disturbed on appeal. Such findings are binding and conclusive to the Court. Furthermore, it is not the Court's function under Rule 45 of the 1997 Revised Rules of Civil Procedure to review, examine and evaluate or weigh the probative value of the evidence presented. The jurisdiction of the Court in a Petition for Review under Rule 45 is limited to reviewing only errors of law.<sup>[19]</sup> Unless the case falls under the recognized exceptions,<sup>[20]</sup> the rule shall not be disturbed.

The following findings of fact, properly supported by evidence, made by both the trial court and the appellate court can no longer be modified and are binding on this Court: (1) the original loan obtained by the petitioner, together with Dr. Lim and Atty. Tabalingcos, from the respondent amounted to P2,500,000.00 with 4% interest for three months, or from 11 October 1988 up to 10 January 1989, and in case of

extension of the loan, the interest of 5% per month will be imposed; (2) the obligation of the petitioner, Dr. Lim and Atty. Tabalingcos was joint and solidary as evidenced by the following acts:

(a) the promissory note was solely signed by Dr. Lim per agreement among the parties;

(b) the act of Dr. Lim in executing a Deed of Real Estate Mortgage in favor of respondent to cover the amount of the promissory note;

(c) the act of the petitioner in executing a second Deed of Real Estate Mortgage as additional security to the loan; and

(d) the act of Atty. Tabalingcos in issuing a check in the amount of P2, 240,000.00 to cover the balance of the obligation;

(3) petitioner failed to pay the loan by 10 January 1989; thus, from 11 October 1988 up to February 1989, the loan obligation, including interest, reached a total amount of P2,700,000.00; (4) petitioner made a partial payment via a *dacion en pago*, amounting to P1,630,750.00, which was deducted from the total loan obligation of P2,700,000.00 leaving a balance of P1,069,000.00 as of 24 February 1989; (5) by March 1989, the balance of the loan began earning a 5% interest per month after all the parties agreed to an increase in the interest rate during the extended period; (6) taking into consideration the outstanding loan balance of P1,069,000.00, plus interest, and minus a discount granted by respondent, the amount still due respondent was determined by the parties to be P2,240,000.00; and (7) to pay the remaining indebtedness, Atty. Tabalingcos issued a check covering the amount but it was dishonored, therefore, **the indebtedness remains at P2,240,000.00.**

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.<sup>[21]</sup> In the present case, the petitioner failed to prove that indeed, his liability to pay the remaining balance of his obligation with the respondent had been extinguished by his offer to transfer to respondent his shares of stocks in the Rural Bank of Parañaque.

The defense of the petitioner that the offer he made to respondent of his shares of stocks in Rural Bank of Parañaque amounting to P1,250,000.00 had already extinguished his obligation to pay the balance of the loan stands on hollow ground.

Section 4, Republic Act No. 7353, otherwise known as "The Rural Banks Act of 1992," provides:

Section. 4. x x x. With the exception of shareholdings of corporations organized primarily to hold equities in rural banks as provided for under Section 12-C of Republic Act No. 337, as amended, and of Filipino-controlled domestic banks, the **capital stock of any rural bank shall be fully owned and held directly or indirectly by citizens of the Philippines** or corporations, associations or cooperatives qualified under