

FIRST DIVISION

[G.R. NO. 167724, June 27, 2006]

BPI FAMILY SAVINGS BANK, INC., PETITIONER, VS. MARGARITA VDA. DE COSCOLLUELA, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

Assailed before this Court is a Petition for Review under Rule 45 of the Rules of Court of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69732 granting respondent's petition for *certiorari*, and its resolution denying petitioner's motion for reconsideration.

The Antecedents

Respondent Margarita Coscolluela and her husband Oscar Coscolluela obtained an agricultural sugar crop loan from the Far East Bank & Trust Co. (FEBTC) Bacolod City Branch (later merged with petitioner Bank of the Philippine Islands) for crop years 1997 and 1998.^[2] However, in the book of FEBTC, the loan account of the spouses was treated as a single account,^[3] which amounted to P13,592,492.00 as evidenced by 67 Promissory Notes^[4] executed on various dates, from August 29, 1996 to January 23, 1998, to wit:

	Promissory Note No.	Date	Amount (in Phil. Peso)
1.	02-052-960971	29 August 1996	148,000
2.	02-052-961095	23 September 1996	1,200,000
3.	02-052-961122	27 September 1996	550,000
4.	02-052-961205	11 October 1996	180,000
5.	02-052-961231	18 October 1996	155,000
6.	02-052-961252	24 October 1996	190,000
7.	02-052-961274	30 October 1996	115,000
8.	02-052-961310	8 November 1996	90,000
9.	02-052-961373	21 November 1996	125,000
10.	02-052-961442	6 December 1996	650,000
11.	02-052-961464	12 December 1996	240,000
12.	02-052-961498	19 December 1996	164,000
13.	02-052-961542	27 December 1996	200,000
14.	02-052-970018	3 January 1997	120,000
15.	02-052-970052	10 January 1997	185,000
16.	02-052-970078	15 January 1997	80,000
17.	02-052-970087	17 January 1997	170,000
18.	02-052-970131	23 January 1997	180,000
19.	02-052-970163	31 January 1997	220,000
20.	02-052-970190	7 February 1997	110,000

21.	02-052-970215	13 February 1997	170,000
22.	02-052-970254	20 February 1997	140,000
23.	02-052-970293	28 February 1997	130,000
24.	02-052-970345	7 March 1997	90,000
25.	02-052-970367	13 March 1997	50,000
26.	02-052-970402	21 March 1997	160,000
27.	02-052-970422	26 March 1997	190,000
28.	02-052-970453	4 April 1997	82,000
29.	02-052-970478	11 April 1997	150,000
30.	02-052-970502	17 April 1997	80,000
31.	02-052-970539	25 April 1997	145,000
32.	02-052-970558	30 April 1997	135,000
33.	02-052-970589	8 May 1997	54,000
34.	02-052-970770	25 June 1997	646,492
35.	02-052-970781	27 June 1997	160,000
36.	02-052-970819	4 July 1997	250,000
37.	02-052-970852	11 July 1997	350,000
38.	02-052-970926	1 August 1997	170,000
39.	02-052-970949	5 August 1997	200,000
40.	02-052-970975	8 August 1997	120,000
41.	02-052-970999	15 August 1997	150,000
42.	02-052-971028	22 August 1997	110,000
43.	02-052-971053	29 August 1997	130,000
44.	02-052-971073	4 September 1997	90,000
45.	02-052-971215	12 September 1997	160,000
46.	02-052-971253	19 September 1997	190,000
47.	02-052-971280	26 September 1997	140,000
48.	02-052-971317	2 October 1997	115,000
49.	02-052-971340	10 October 1997	115,000
50.	02-052-971351	15 October 1997	700,000
51.	02-052-971362	16 October 1997	90,000
52.	02-052-971394	24 October 1997	185,000
53.	02-052-971407	29 October 1997	170,000
54.	02-052-971449	6 November 1997	105,000
55.	02-052-971464	13 November 1997	170,000
56.	02-052-971501	20 November 1997	150,000
57.	02-052-971527	25 November 1997	620,000
58.	02-052-971538	28 November 1997	130,000
59.	02-052-971569	4 December 1997	140,000
60.	02-052-971604	12 December 1997	220,000
61.	02-052-971642	18 December 1997	185,000
62.	02-052-971676	23 December 1997	117,000
63.	02-052-971688	29 December 1997	100,000
64.	02-052-980019	7 January 1998	195,000
65.	02-052-980032	8 January 1998	170,000
66.	02-052-980064	15 January 1998	225,000
67.	02-052-980079	23 January 1998	176,000

The promissory notes listed under Nos. 1 to 33 bear the maturity date of February 9, 1998, with a 30-day extension of up to March 11, 1998, while those listed under Nos. 34 to 67 bear December 28, 1998 as maturity date.

Meanwhile, on June 13, 1997, the spouses Coscolluela executed a real estate mortgage in favor of FEBTC over their parcel of land located in Bacolod City covered by Transfer Certificate of Title (TCT) No. T-109329 as security of loans on credit accommodation obtained by the spouses from FEBTC and those that may be obtained by the mortgagees which was fixed at P7,000,000.00, as well as those that may be extended by the mortgagor to the mortgagees.^[5]

Under the terms and conditions of the real estate mortgage, in the event of failure to pay the mortgage obligation or any portion thereof when due, *the entire principal, interest, penalties and other charges then outstanding*, shall become immediately due; upon such breach or violation of the terms and conditions thereof, FEBTC may, at its absolute discretion foreclose the same extrajudicially in accordance with the procedure prescribed by Act No. 3135, as amended, and for the purpose appointed FEBTC as its attorney-in-fact with full power and authority to enter the premises where the mortgaged property is located and to take actual possession and control thereof without need of any order of any court, nor written permission from the spouses, and with special power to sell the mortgaged property at a public or private sale at the option of the mortgagee; and that the spouses expressly waived the term of 30 days or any other terms granted by law as the period which must elapse before the mortgage agreement may be foreclosed and, in any case, such period has already lapsed.

The mortgage was registered with the Registry of Deeds of Bacolod and was annotated in the title of the land on June 20, 1997.^[6] Meantime, Oscar died intestate and was survived by his widow, herein respondent.

For failure to settle the outstanding obligation on the maturity dates, FEBTC sent a final demand letter^[7] to respondent on March 10, 1999 demanding payment, within five days from notice, of the principal of the loan amounting to P13,481,498.68, with past due interests and penalties or in the total amount of P19,482,168.31 as of March 9, 1999.^[8] Respondent failed to settle her obligation.

On June 10, 1999, FEBTC filed a petition for the extrajudicial foreclosure of the mortgaged property, significantly only for the total amount of P4,687,006.68 exclusive of balance, interest and penalty, covered by promissory notes from 1 to 33, except nos. 2 and 10.^[9]

While the extrajudicial foreclosure proceeding was pending, petitioner FEBTC filed a complaint^[10] with the Regional Trial Court (RTC) of Makati City, Branch 64, against respondent for the collection of the principal amount of P8,794,492.00 plus interest and penalty, or the total amount of P12,672,000.31, representing the amounts indicated in the rest of the promissory notes, specifically Promissory Note Nos. 34 to 67, as well as those dated December 6, 1996 and September 23, 1996:

PN No.	Date	Amount	Annex
2-052-980079	January 02, 1998	176,000.00	A
2-052-980064	January 15, 1998	225,000.00	B
2-052-980032	January 08, 1998	170,000.00	C
2-052-980019	January 07, 1998	195,000.00	D
2-052-971688	December 29, 1997	100,000.00	E
2-052-971676	December 23, 1997	117,000.00	F

2-052-971642	December 18, 1997	185,000.00	G
2-052-971604	December 12, 1997	220,000.00	H
2-052-971569	December 04, 1997	140,000.00	I
2-052-971538	November 28, 1997	130,000.00	J
2-052-971527	November 25, 1997	620,000.00	K
2-052-971501	November 20, 1997	150,000.00	L
2-052-971464	November 13, 1997	170,000.00	M
2-052-971449	November 06, 1997	105,000.00	N
2-052-971407	October 29, 1997	170,000.00	O
2-052-971394	October 24, 1997	185,000.00	P
2-052-971362	October 16, 1997	90,000.00	Q
2-052-971351	October 15, 1997	700,000.00	R
2-052-971340	October 15, 1997	115,000.00	S
2-052-971317	October 02, 1997	115,000.00	T
2-052-971280	September 26, 1997	140,000.00	U
2-052-971253	September 19, 1997	190,000.00	V
2-052-971215	September 12, 1997	160,000.00	W
2-052-971073	September 04, 1997	90,000.00	X
2-052-971053	August 29, 1997	130,000.00	Y
2-052-971028	August 22, 1997	110,000.00	Z
2-052-970999	August 15, 1997	150,000.00	AA
2-052-970975	August 08, 1997	120,000.00	BB
2-052-970949	August 05, 1997	200,000.00	CC
2-052-970926	August 01, 1997	170,000.00	DD
2-052-970852	July 11, 1997	350,000.00	EE
2-052-970819	July 04, 1997	250,000.00	FF
2-052-970781	June 27, 1997	160,000.00	GG
2-052-970770	June 25, 1997	646,492.00	HH
2-052-961442	December 06, 1996	650,000.00	II
2-052-961095	September 23, 1996	1,200,000.00	JJ [11]

Petitioner prayed that, after due proceedings, judgment be rendered in its favor, thus:

WHEREFORE, it is respectfully prayed that, after trial, judgment be rendered in its favor and against defendants ordering them to pay the following:

- a. The amount TWELVE MILLION SIX HUNDRED SEVENTY-TWO THOUSAND PESOS and 31/100 (P12,672,000.31), with additional stipulated interest and penalty equivalent to one (1%) percent of the amount due for every thirty (30) days or fraction thereof, until fully paid;
- b. Expense of litigation amounting to P50,000.00;
- c. The amount of P500,000.00 as attorney's fees.

Other reliefs just and equitable in the premises are similarly prayed for.

[12]

In her answer, respondent alleged, by way of special and affirmative defense, that the complaint was barred by *litis pendentia*, specifically, the pending petition for the

extrajudicial foreclosure of the real estate mortgage, thus:

8) That plaintiff is guilty of forum shopping, in that some of the promissory notes attached to plaintiff's complaint are also the same promissory notes which were made the basis of the plaintiff in their extrajudicial foreclosure of mortgage filed against the defendant-spouses and also marked in evidence in support of their opposition to the issuance of the preliminary injunction in Civil Case No. 99-10864;

9) That plaintiff-bank has not only charged but over charged the defendant-spouses with excessive and exorbitant interest over and above those authorized by law. And in order to add more injury to the defendants, plaintiff also included other charges not legally collectible from the defendant-spouses;

10) That the act of the plaintiff-bank in seeking to collect twice on the same promissory notes is not only unfair and unjust but also condemnable as plaintiff seek to unjustly enrich itself at the expense of the defendants;

11) That there is another action pending between the same parties for the same cause;

12) That the claim or demand set forth in the plaintiff's complaint has either been waived, abandoned or otherwise extinguished.^[13]

Petitioner presented Emmanuel Ganuelas, its loan officer in its Bacolod City Branch, as sole witness. He testified that the spouses Coscolluela were granted an agricultural sugar loan which is designed to finance the cultivation and plantation of sugar farms of the borrowers.^[14] Borrowers were allowed to make successive drawdowns or availments against the loan as their need arose. Each drawdown is covered by a promissory note with uniform maturity dates.^[15] The witness also testified that the loan account of the spouses was a "single loan account."^[16]

After petitioner rested its case, respondent filed a demurrer to evidence^[17] contending, among others, that, with Ganuelas' admission, there is only one loan account secured by the real estate mortgage, that the promissory notes were executed as evidence of the loans. Plaintiff was thus barred from instituting a personal action for collection of the drawdowns evidenced by Promissory Note Nos. 2, 10, and 34 to 67 after instituting a petition for extrajudicial foreclosure of the real estate mortgage for the amount covered by Promissory Note Nos. 1, 3 to 9, and 11 to 33. Respondent insisted that by filing a complaint for a sum of money, petitioner thereby split its cause of action against her; hence, the complaint must perforce be dismissed on the ground of *litis pendentia*.

Petitioner opposed the demurrer arguing that while the loans were considered as a single account, each promissory note executed by respondent constituted a separate contract. It reiterated that its petition for the extrajudicial and foreclosure of the real estate mortgage before the Ex-Oficio Provincial Sheriff involves obligations different and separate from those in its action for a sum of money before the court. Thus, petitioner could avail of the personal action for the collection of the amount