

SECOND DIVISION

[G.R. No. 150197, July 28, 2005]

PRUDENTIAL BANK, PETITIONER, VS. DON A. ALVIAR AND GEORGIA B. ALVIAR, RESPONDENTS.

D E C I S I O N

TINGA, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner Prudential Bank seeks the reversal of the *Decision*^[1] of the Court of Appeals dated 27 September 2001 in CA-G.R. CV No. 59543 affirming the *Decision* of the Regional Trial Court (RTC) of Pasig City, Branch 160, in favor of respondents.

Respondents, spouses Don A. Alviar and Georgia B. Alviar, are the registered owners of a parcel of land in San Juan, Metro Manila, covered by Transfer Certificate of Title (TCT) No. 438157 of the Register of Deeds of Rizal. On 10 July 1975, they executed a deed of real estate mortgage in favor of petitioner Prudential Bank to secure the payment of a loan worth P250,000.00.^[2] This mortgage was annotated at the back of TCT No. 438157. On 4 August 1975, respondents executed the corresponding promissory note, PN BD#75/C-252, covering the said loan, which provides that the loan matured on 4 August 1976 at an interest rate of 12% per annum with a 2% service charge, and that the note is secured by a real estate mortgage as aforementioned.^[3] Significantly, the real estate mortgage contained the following clause:

That for and in consideration of certain loans, overdraft and other credit accommodations obtained from the Mortgagee by the Mortgagor and/or _____ hereinafter referred to, irrespective of number, as DEBTOR, and to secure the payment of the same and those that may hereafter be obtained, the principal or all of which is hereby fixed at Two Hundred Fifty Thousand (P250,000.00) Pesos, Philippine Currency, as well as those that the Mortgagee may extend to the Mortgagor and/or DEBTOR, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary as appears in the accounts, books and records of the Mortgagee, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its successors or assigns, the parcels of land which 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 incumbrances. . . .^[4]

On 22 October 1976, Don Alviar executed another promissory note, PN BD#76/C-345 for P2,640,000.00, secured by D/A SFDX #129, signifying that the loan was

secured by a "hold-out" on the mortgagor's foreign currency savings account with the bank under Account No. 129, and that the mortgagor's passbook is to be surrendered to the bank until the amount secured by the "hold-out" is settled.^[5]

On 27 December 1976, respondent spouses executed for Donalco Trading, Inc., of which the husband and wife were President and Chairman of the Board and Vice President,^[6] respectively, PN BD#76/C-430 covering P545,000.000. As provided in the note, the loan is secured by "Clean-Phase out TOD CA 3923," which means that the temporary overdraft incurred by Donalco Trading, Inc. with petitioner is to be converted into an ordinary loan in compliance with a Central Bank circular directing the discontinuance of overdrafts.^[7]

On 16 March 1977, petitioner wrote Donalco Trading, Inc., informing the latter of its approval of a straight loan of P545,000.00, the proceeds of which shall be used to liquidate the outstanding loan of P545,000.00 TOD. The letter likewise mentioned that the securities for the loan were the deed of assignment on two promissory notes executed by Bancom Realty Corporation with Deed of Guarantee in favor of A.U. Valencia and Co. and the chattel mortgage on various heavy and transportation equipment.^[8]

On 06 March 1979, respondents paid petitioner P2,000,000.00, to be applied to the obligations of G.B. Alviar Realty and Development, Inc. and for the release of the real estate mortgage for the P450,000.00 loan covering the two (2) lots located at Vam Buren and Madison Streets, North Greenhills, San Juan, Metro Manila. The payment was acknowledged by petitioner who accordingly released the mortgage over the two properties.^[9]

On 15 January 1980, petitioner moved for the extrajudicial foreclosure of the mortgage on the property covered by TCT No. 438157. Per petitioner's computation, respondents had the total obligation of P1,608,256.68, covering the three (3) promissory notes, to wit: PN BD#75/C-252 for P250,000.00, PN BD#76/C-345 for P382,680.83, and PN BD#76/C-340 for P545,000.00, plus assessed past due interests and penalty charges. The public auction sale of the mortgaged property was set on 15 January 1980.^[10]

Respondents filed a complaint for damages with a prayer for the issuance of a writ of preliminary injunction with the RTC of Pasig,^[11] claiming that they have paid their principal loan secured by the mortgaged property, and thus the mortgage should not be foreclosed. For its part, petitioner averred that the payment of P2,000,000.00 made on 6 March 1979 was not a payment made by respondents, but by G.B. Alviar Realty and Development Inc., which has a separate loan with the bank secured by a separate mortgage.^[12]

On 15 March 1994, the trial court dismissed the complaint and ordered the Sheriff to proceed with the extra-judicial foreclosure.^[13] Respondents sought reconsideration of the decision.^[14] On 24 August 1994, the trial court issued an *Order* setting aside its earlier decision and awarded attorney's fees to respondents.^[15] It found that only the P250,000.00 loan is secured by the mortgage on the land covered by TCT No. 438157. On the other hand, the P382,680.83 loan is secured by the foreign currency deposit account of Don A. Alviar, while the P545,000.00

obligation was an unsecured loan, being a mere conversion of the temporary overdraft of Donalco Trading, Inc. in compliance with a Central Bank circular. According to the trial court, the "blanket mortgage clause" relied upon by petitioner applies only to future loans obtained by the mortgagors, and not by parties other than the said mortgagors, such as Donalco Trading, Inc., for which respondents merely signed as officers thereof.

On appeal to the Court of Appeals, petitioner made the following assignment of errors:

- I. The trial court erred in holding that the real estate mortgage covers only the promissory note BD#75/C-252 for the sum of P250,000.00.
- II. The trial court erred in holding that the promissory note BD#76/C-345 for P2,640,000.00 (P382,680.83 outstanding principal balance) is not covered by the real estate mortgage by expressed agreement.
- III. The trial court erred in holding that Promissory Note BD#76/C-430 for P545,000.00 is not covered by the real estate mortgage.
- IV. The trial court erred in holding that the real estate mortgage is a contract of adhesion.
- V. The trial court erred in holding defendant-appellant liable to pay plaintiffs-appellees attorney's fees for P20,000.00.^[16]

The Court of Appeals affirmed the *Order* of the trial court but deleted the award of attorney's fees.^[17] It ruled that while a continuing loan or credit accommodation based on only one security or mortgage is a common practice in financial and commercial institutions, such agreement must be clear and unequivocal. In the instant case, the parties executed different promissory notes agreeing to a particular security for each loan. Thus, the appellate court ruled that the extrajudicial foreclosure sale of the property for the three loans is improper.^[18]

The Court of Appeals, however, found that respondents have not yet paid the P250,000.00 covered by PN BD#75/C-252 since the payment of P2,000,000.00 adverted to by respondents was issued for the obligations of G.B. Alviar Realty and Development, Inc.^[19]

Aggrieved, petitioner filed the instant petition, reiterating the assignment of errors raised in the Court of Appeals as grounds herein.

Petitioner maintains that the "blanket mortgage clause" or the "dragnet clause" in the real estate mortgage expressly covers not only the P250,000.00 under PN BD#75/C-252, but also the two other promissory notes included in the application for extrajudicial foreclosure of real estate mortgage.^[20] Thus, it claims that it acted within the terms of the mortgage contract when it filed its petition for extrajudicial foreclosure of real estate mortgage. Petitioner relies on the cases of *Lim Julian v. Lutero*,^[21] *Tad-Y v. Philippine National Bank*,^[22] *Quimson v. Philippine National*

Bank,^[23] *C & C Commercial v. Philippine National Bank*,^[24] *Mojica v. Court of Appeals*,^[25] and *China Banking Corporation v. Court of Appeals*,^[26] all of which upheld the validity of mortgage contracts securing future advancements.

Anent the Court of Appeals' conclusion that the parties did not intend to include PN BD#76/C-345 in the real estate mortgage because the same was specifically secured by a foreign currency deposit account, petitioner states that there is no law or rule which prohibits an obligation from being covered by more than one security.^[27] Besides, respondents even continued to withdraw from the same foreign currency account even while the promissory note was still outstanding, strengthening the belief that it was the real estate mortgage that principally secured all of respondents' promissory notes.^[28] As for PN BD#76/C-345, which the Court of Appeals found to be exclusively secured by the Clean-Phase out TOD 3923, petitioner posits that such security is not exclusive, as the "dragnet clause" of the real estate mortgage covers all the obligations of the respondents.^[29]

Moreover, petitioner insists that respondents attempt to evade foreclosure by the expediency of stating that the promissory notes were executed by them not in their personal capacity but as corporate officers. It claims that PN BD#76/C-430 was in fact for home construction and personal consumption of respondents. Thus, it states that there is a need to pierce the veil of corporate fiction.^[30]

Finally, petitioner alleges that the mortgage contract was executed by respondents with knowledge and understanding of the "dragnet clause," being highly educated individuals, seasoned businesspersons, and political personalities.^[31] There was no oppressive use of superior bargaining power in the execution of the promissory notes and the real estate mortgage.^[32]

For their part, respondents claim that the "dragnet clause" cannot be applied to the subsequent loans extended to Don Alviar and Donalco Trading, Inc. since these loans are covered by separate promissory notes that expressly provide for a different form of security.^[33] They reiterate the holding of the trial court that the "blanket mortgage clause" would apply only to loans obtained jointly by respondents, and not to loans obtained by other parties.^[34] Respondents also place a premium on the finding of the lower courts that the real estate mortgage clause is a contract of adhesion and must be strictly construed against petitioner bank.^[35]

The instant case thus poses the following issues pertaining to: (i) the validity of the "blanket mortgage clause" or the "dragnet clause"; (ii) the coverage of the "blanket mortgage clause"; and consequently, (iii) the propriety of seeking foreclosure of the mortgaged property for the non-payment of the three loans.

At this point, it is important to note that one of the loans sought to be included in the "blanket mortgage clause" was obtained by respondents for Donalco Trading, Inc. Indeed, PN BD#76/C-430 was executed by respondents on behalf of Donalco Trading, Inc. and not in their personal capacity. Petitioner asks the Court to pierce the veil of corporate fiction and hold respondents liable even for obligations they incurred for the corporation. The mortgage contract states that the mortgage covers "as well as those that the Mortgagee may extend to the Mortgagor and/or DEBTOR, including interest and expenses or any other obligation owing to the

Mortgagee, whether direct or indirect, principal or secondary." Well-settled is the rule that a corporation has a personality separate and distinct from that of its officers and stockholders. Officers of a corporation are not personally liable for their acts as such officers unless it is shown that they have exceeded their authority.^[36] However, the legal fiction that a corporation has a personality separate and distinct from stockholders and members may be disregarded if it is used as a means to perpetuate fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.^[37] PN BD#76/C-430, being an obligation of Donalco Trading, Inc., and not of the respondents, is not within the contemplation of the "blanket mortgage clause." Moreover, petitioner is unable to show that respondents are hiding behind the corporate structure to evade payment of their obligations. Save for the notation in the promissory note that the loan was for house construction and personal consumption, there is no proof showing that the loan was indeed for respondents' personal consumption. Besides, petitioner agreed to the terms of the promissory note. If respondents were indeed the real parties to the loan, petitioner, a big, well-established institution of long standing that it is, should have insisted that the note be made in the name of respondents themselves, and not to Donalco Trading Inc., and that they sign the note in their personal capacity and not as officers of the corporation.

Now on the main issues.

A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed."^[38] Mortgages of this character enable the parties to provide continuous dealings, the nature or extent of which may not be known or anticipated at the time, and they avoid the expense and inconvenience of executing a new security on each new transaction.^[39] A "dragnet clause" operates as a convenience and accommodation to the borrowers as it makes available additional funds without their having to execute additional security documents, thereby saving time, travel, loan closing costs, costs of extra legal services, recording fees, *et cetera*.^[40] Indeed, it has been settled in a long line of decisions that mortgages given to secure future advancements are valid and legal contracts,^[41] and the amounts named as consideration in said contracts do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.^[42]

The "blanket mortgage clause" in the instant case states:

That for and in consideration of certain loans, overdraft and other credit accommodations obtained from the Mortgagee by the Mortgagor and/or _____ hereinafter referred to, irrespective of number, as DEBTOR, and **to secure the payment** of the same and **those that may hereafter be obtained**, the principal or all of which is hereby fixed at Two Hundred Fifty Thousand (P250,000.00) Pesos, Philippine Currency, **as well as those that the Mortgagee may extend to the Mortgagor and/or DEBTOR, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary** as appears in the accounts, books and records