

## SECOND DIVISION

[ G.R. No. 151280, June 10, 2004 ]

**THE PRESIDENT OF PHILIPPINE DEPOSIT INSURANCE CORPORATION AND PACIFIC BANKING CORP., PETITIONERS, VS. HON. COURT OF APPEALS, REGIONAL TRIAL COURT OF BACOLOD CITY, BRANCH 43, NELLY M. LOVINA REALTY CO., INC., REPRESENTED BY ITS PRESIDENT, VICENTE M. LOVINA, JIM ROSE, TRADING CORP., INC., FRANCISCO SAJO AND THE INTESTATE ESTATE OF ELENITA SAJO, RESPONDENTS.**

### D E C I S I O N

#### **CALLEJO, SR., J.:**

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court filed by the Philippine Deposit Insurance Corporation, through its President, and the Pacific Banking Corporation seeking to reverse and set aside the Decision<sup>[1]</sup> dated September 5, 2001 of the Court of Appeals in CA-G.R. SP No. 56868. In the assailed decision, the appellate court affirmed the Order dated November 18, 1999 of the Regional Trial Court (RTC) of Bacolod City, Branch 43, directing the reception of the respondents' evidence *ex parte* in Civil Cases Nos. 8722, 9287, 9315 and 9316. Likewise, sought to be reversed and set aside is the appellate court's Resolution dated November 28, 2001 denying the petitioners' motion for reconsideration.

The factual antecedents of the case are as follows –

The respondents, Nelly M. Lovina Realty Co., Inc., represented by its President, Vicente M. Lovina, Spouses Antonio and Lourdes Dadivas, Jim Rose Trading Co., Inc., Francisco Sajo and the Intestate Estate of Elenita Sojo, separately obtained loans from the petitioner Pacific Banking Corporation (PaBC). Their respective loans were classified as either Sugar Crop Loans or Agricultural Loans.

On July 5, 1985, the petitioner PaBC was ordered to stop operations and placed under receivership on account of insolvency. Thereafter, it was placed under liquidation and per Resolution No. 537 dated May 17, 1991 of the Monetary Board of the *Bangko Sentral ng Pilipinas* (BSP), the petitioner, Philippine Deposit Insurance Corporation (PDIC) was designated as liquidator of the petitioner PaBC.

On February 29, 1992, then President Corazon C. Aquino signed into law Republic Act No. 7202, otherwise known as The Sugar Restitution Law. Section 3 thereof provides:

...

#### Sec. 3.

- (a) Condonation of interest charged by the banks in excess of twelve percent (12%) per annum and all penalties and

surcharges;

- (b) The recomputed loans shall be amortized for a period of thirteen (13) years inclusive of a three-year grace period on principal effective upon the approval of this Act. The principal portion of the loan will carry an interest rate of twelve per cent (12%) per annum and on the outstanding balance effective when the promissory notes were signed and released to producer.

The respondents requested the petitioners that the above provision of Rep. Act. No. 7202 be applied to their loans. The petitioners denied the respondents' requests stating that Rep. Act No. 7202 applies only to sugar loans granted by government financial institutions. The petitioners then demanded payment by the respondents of their respective loans including interests, penalties and other charges.

Thereafter, the respondents, as plaintiffs, filed with the court *a quo* separate complaints against the petitioners. These complaints were consolidated and docketed as follows:

NELLY M. LOVINA  
REALTY CO.,

Civil Case No. 8722

Represented by its  
President

VICENTE M. LOVINA,  
Plaintiff,

SPOUSES ANTONIO &  
LOURDES  
DADIVAS,

Civil Case No. 9287

Plaintiffs,

JIM ROSE TRADING  
CO., INC.,

Civil Case No. 9315

Plaintiff,

FRANCISCO SAJO, ET  
AL.,

Civil Case No. 9316

Plaintiffs,

- versus -

PACIFIC BANKING  
CORP., ET AL,

Defendants.

In their respective complaints, the respondents prayed, among others, that the court *a quo* compel the petitioners PDIC and PaBC to re-compute their (respondents') loans in accordance with Section 3 of Rep. Act No. 7202.

The petitioners seasonably filed their answers to the complaints. However, on account of the repeated failure of the petitioners or their counsel to appear at the pre-trial, on August 19, 1999, the court a quo issued an Order directing the respondents to present their evidence ex parte. The petitioners filed a motion for reconsideration thereof but the court a quo denied the same in its Order dated November 18, 1999. In denying the petitioners' motion for reconsideration, the court a quo stated, thus:

The records disclose that after Civil Cases Nos. 8722 and 9274 were ordered consolidated, the pre-trial conference for the same was originally set on June 14, 1996. In view, however, of the Motion for Consolidation of Civil Cases Nos. 8722 and 9274 with Civil Cases Nos. 9263, 9287, 9315 and 9316 still pending resolution for which latter cases the defendant was not yet served with any summons, pre-trial was reset on June 20, 1996. Then again it was reset on September 27, 1996, April 25, 1997 and August 1, 1997. For failure of either the defendant or its counsel to appear, defendant was declared in default and reception of evidence for plaintiff Lovina Realty was set on September 5, 1993, while reception of evidence for plaintiffs Jim Rose Trading, Spouses Antonio Dadivas and Sajo was set on September 12, 1997.

The Court, however, lifted the Order of Default of its Order dated September 5, 1997 on the basis of a Motion for Reconsideration filed by the defendant. Thereafter, plaintiff Lovina moved to set the pre-trial again on June 25, 1998 which pre-trial was moved/cancelled again by the defendant. The Court in the interest of justice again granted the motion and set the pre-trial on June 30, 1998 and again on September 17, 1998. Thereafter, the case was set on June 10, 1999 and August 17, 1999. For failure again of defendant to appear, Atty. Jose Ma. Ciocon, counsel for plaintiff Lovina, moved to declare it in default. Hence, this present motion.

It becomes a matter of concern to this Court that while the initial pre-trial was set on June 14, 1996, the same has been continuously postponed at the instance of the defendant causing the case to drag for over three (3) years without having moved from the pre-trial stage.

WHEREFORE, the Motion for Reconsideration is hereby DENIED and the reception of ex parte evidence for the plaintiffs is set on December 6, 1999 at 8:30 in the morning.

SO ORDERED.<sup>[2]</sup>

After their second motion for reconsideration was denied, the petitioners filed with the Court of Appeals (CA) a petition for certiorari alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of Judge Florentino P. Pedronio in denying their motion to set aside order of default. The petitioners assert that (a) their counsel's failure to attend the August 19, 1999 pre-trial was due to conflict of schedule and therefore, excusable; (b) they have strong and meritorious defenses; and (c) respondents have admitted the existence and validity of their respective loans and their failure to pay the same.