

FIRST DIVISION

[G.R. Nos. 155217 & 156393, July 30, 2003]

GATEWAY ELECTRONICS CORPORATION, PETITIONER, VS. LAND BANK OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

Before the Court are consolidated petitions (1) for review of the decision of the Court of Appeals in CA-G.R. SP No. 62658,^[1] which set aside the Order dated October 18, 2000 of the Regional Trial Court of Makati City, Branch 133, in Civil Case No. 98-782;^[2] and (2) to cite Landbank President Margarito Teves, and Landbank's counsel, in contempt of Court.

The undisputed facts are as follows: In 1995, petitioner Gateway Electronics Corporation applied for a loan in the amount of one billion pesos with respondent Landbank to finance the construction and acquisition of machineries and equipment for a semi-conductor plant at Gateway Business Park in Javalera, General Trias, Cavite. However, Landbank was only able to extend petitioner a loan in the amount of six hundred million pesos (P600,000,000.00). Hence, it offered to assist petitioner in securing additional funding through its investment banking services, which offer petitioner accepted. Thereafter, Landbank released to petitioner the initial amount of P250,000,000.00, with the balance of P350,000,000.00 to be released in June 1996. As security for the said loans, petitioner mortgaged in favor of Landbank two parcels of land^[3] located in Barangay Jalavera, General Trias, Cavite, the movable properties as well as the machineries to be installed therein.^[4]

After petitioner's acceptance of Landbank's financial banking services, the latter prepared an Information Memorandum which it disseminated to various banks to attract them into providing additional funding for petitioner. The Information Memorandum stated that the security for the proposed loan syndication will be the "Mortgage Trust Indenture (MTI) on the project assets including land, building and equipment."^[5] In a letter dated July 30, 1996, Landbank informed petitioner of its willingness to share the loan collateral which the latter constituted in its favor as part of the collateral for the syndicated loan from the other banks.^[6] On August 20, 1996, Landbank confirmed its undertaking to share the said collateral with the other creditor banks, to wit:

In case of failure of syndication of the loan, allow the banks that have granted loans to GEC [Gateway Electronics Corporation] in anticipation of the loan syndication to have a registered *pari passu* mortgage with you over the property, the intention being that all banks, including Landbank, shall be on equal footing where the aforesaid collateral is concerned.^[7]

Consequently, Philippine Commercial International Bank (PCIB), Union Bank of the Philippines, (UBP), Rizal Commercial Banking Corporation-Trust Investment Division (RCBC), and Asia Trust Bank (Asia Trust) joined the loan syndication and released various loans to petitioner. On October 10, 1996, a Memorandum of Understanding (MOU)^[8] was executed by Landbank, PCIB, UBP, RCBC, Asiatruster and the petitioner, with RCBC as the trustee of the loan syndication. Under the Memorandum of Understanding, the said signatories agreed to -

enter into a Mortgage Trust Indenture (herein, the "MTI"), under which GEC will constitute a mortgage over the land, building, other land improvements, machinery and equipment of GEC located within Gateway Business Park, Crisanto de Los Reyes Avenue, Javalera, General Trias, Cavite as well as the assets to be acquired by GEC under the Project (as hereinafter defined) in favor of RCBC-TID as trustee, for the benefit of the Creditors (as defined in the MTI), to secure the payment by GEC of its loan obligations.^[9]

Meanwhile, the negotiations for the execution of an MTI failed because Landbank and the petitioner were unable to agree on the valuation of the equipment and machineries to be acquired by the latter. The petitioner insisted on a 70% valuation, while the former wanted a 50% valuation. To break the impasse, PCIB, RCBC, UBP, and Asiatruster proposed, subject to the approval of their respective Executive Committees or Board of Directors, to execute a Joint Real Estate Mortgage (JREM)^[10] as the "new mode to secure [their] respective loan vis-à-vis [petitioner's] collaterals."^[11] Under the proposed JREM, the six hundred million peso-loan granted by Land Bank shall be secured up to 94.42%, while the loans granted by PCIB, RCBC, and UBP would be similarly secured up to 75.22%.^[12] Land Bank, however, refused to agree to the said proposal unless 100% of its loan exposure is secured, pursuant to the Loan Agreement it executed with petitioner.^[13]

On February 27, 1998, Land Bank informed petitioner of its intention not to share collaterals with the other banks. In the meantime, petitioner's loan with PCIB became due because of its failure to comply with the collateral requirement under the MTI or JREM, or to provide acceptable substitute collaterals. Hence, petitioner filed with the Regional Trial Court of Makati City, Branch 133, a complaint against Land Bank for specific performance and damages with prayer for the issuance of preliminary mandatory injunction.

After hearing, the trial court issued an order on October 18, 2000 granting petitioner's prayer for the issuance of a writ of preliminary mandatory injunction, the dispositive portion of which reads:

Wherefore, in view of the foregoing, the application for a writ of preliminary mandatory injunction is granted, conditioned upon the filing of a bond in the amount of three hundred thousand pesos (P300,000.00).

Defendant is hereby directed to accede to the terms of the draft MTI and/or to agree to share collaterals under a joint real estate mortgage [JREM] with long-term creditors of plaintiff (including PCIB) as joint mortgagees and with defendant as custodian of the titles.

SO ORDERED.^[14]

With the denial of its motion for reconsideration, respondent filed a petition for certiorari with the Court of Appeals, on the ground that the trial court gravely abused its discretion in issuing the assailed writ of preliminary mandatory injunction. On March 23, 2001, the Court of Appeals, on motion of Landbank, issued a temporary restraining order enjoining the trial court from enforcing the October 18, 2000 Order.^[15]

In a decision rendered on April 12, 2002, the Court of Appeals annulled the assailed order of the trial court.^[16] It ruled that petitioner failed to prove the requisite clear and legal right that would justify the issuance of the writ of preliminary mandatory injunction; and that respondent cannot be compelled to accede to the terms of the MTI and/or JREM which was supposed to cover the syndicated loan of petitioner inasmuch as the said schemes were never executed nor approved by the petitioner and the participating banks.

Hence, the instant petition for review filed by petitioner which was docketed as G.R. No. 155217. On December 10, 2002, petitioner filed an omnibus motion seeking, *inter alia*, the issuance of a temporary restraining order enjoining Landbank from proceeding and completing the foreclosure proceedings over its mortgaged properties.^[17] On January 22, 2003, the Court denied said motion for lack of merit.^[18] Petitioner's motion for reconsideration was likewise denied on March 26, 2003.^[19]

Meanwhile, on January 10, 2003, petitioner filed a petition to cite Landbank President Margarito Teves and Landbank's lawyer in contempt of Court for proceeding and concluding the foreclosure proceedings and public auction sale.^[20] Petitioner contended that Landbank's acts constitute improper conduct which directly or indirectly impede, obstruct, or degrade the administration of justice. The petition was docketed as G.R. No. 156393.

On March 12, 2003, the consolidation of G.R. No. 156393 and G.R. No. 155217 was ordered.^[21]

The issues to be resolved in this petition are as follows: (1) Is Landbank bound to share the properties mortgaged to it by respondent with the other creditor banks in the loan syndication? (2) If the answer is in the affirmative, can Landbank be compelled at this point to agree with the terms of the MTI or JREM?

Anent the first issue, the Court finds that Landbank is bound by a perfected contract to share petitioner's collateral with the participating banks in the loan syndication. Article 1305 of the Civil Code defines a contract as a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. A contract undergoes three distinct stages -- (1) preparation or negotiation; (2) perfection; and (3) consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. The perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. The last stage is the consummation of the contract wherein the

parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof. Article 1315 of the Civil Code, on the other hand, provides that a contract is perfected by mere consent, which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.^[22]

In the case at bar, a perfected contract for the sharing of collaterals is evident from the exchange of communications between Landbank and petitioner and the participating banks, as well as in the Memorandum of Understanding executed by petitioner and the participating banks, including Landbank. In its July 31, 1996 letter to petitioner, Landbank stated that it is "willing to submit the properties covered by the real estate mortgage (REM) in its favor as part of [petitioner's] assets that will be covered by a Mortgage Trust Indenture (MTI)." Thus, the Information Memorandum distributed by Landbank to entice other banks to participate in the loan syndication, expressly stated that the security for the syndicated loan will be the "MTI on project assets including land, building and equipment."^[23] Finally, on October 10, 1996, petitioner, Landbank, PCIB, RCBC, UBP, and Asiatruster executed a Memorandum of Understanding confirming the said collateral sharing agreement. To effect said sharing, they decided to enter into a Mortgage Trust Indenture (MTI) which will be secured by the same properties previously mortgaged by petitioner to Landbank, or more specifically, to -

enter into a Mortgage Trust Indenture (herein, the "MTI"), under which GEC will constitute a mortgage over the land, building, other land improvements, machinery and equipment of GEC located within Gateway Business Park, Crisanto de Los Reyes Avenue, Javalera, General Trias, Cavite as well as the assets to be acquired by GEC under the Project (as hereinafter defined) in favor of RCBC-TID as trustee, for the benefit of the Creditors (as defined in the MTI), to secure the payment by GEC of its loan obligations.^[24]

Clearly, there was an acceptance by petitioner and by PCIB, RCBC, UBP, and Asiatruster of Landbank's offer to share collaterals, culminating in the execution of the Memorandum of Understanding. We agree with petitioner that the MTI and/or the JREM belong to the realm of consummation of said Memorandum of Understanding, being the proposed vehicles or modes to effect the sharing agreement. Thus, in the JREM which was approved by Landbank, except for its loan security coverage, the participating banks expressly acknowledged that "[t]he Joint Real Estate Mortgage [is] pursued by [them] as **a new mode** to secure [their] respective loans vis-à-vis GEC's collateral."^[25] Verily, the perfection of the collateral sharing agreement is not dependent upon the execution of the MTI or the JREM. The failure to execute said schemes did not affect the perfected and binding collateral sharing contract.

With respect, however, to the second issue, we find that the issuance by the trial court of the writ of preliminary mandatory injunction directing Landbank to agree with the terms of the MTI or JREM was premature. This is so because the MTI and/or JREM that were supposed to consummate the perfected collateral sharing agreement have not yet come into existence. As correctly held by the Court of Appeals, Landbank cannot be compelled to agree with the terms of the MTI considering that no such terms were finalized and approved by the petitioner and the participating banks. Simply stated, Landbank cannot be forced to give its conformity to an inexistent contract. So, also, the proposed JREM was never