

## THIRD DIVISION

**[ G.R. No. 106795, November 16, 1999 ]**

**STATE INVESTMENT HOUSE, INC. PETITIONER, VS. COURT OF APPEALS AND ALLIED BANKING CORPORATION, RESPONDENTS.**

### DECISION

**GONZAGA-REYES, J.:**

Petitioner State Investment House, Inc. ("SIHI") appeals from the Decision dated June 11, 1992 and the Resolution dated August 21, 1992 rendered by the Court of Appeals in CA-G.R. SP No. 27142 entitled "Allied Banking Corp. vs. Hon. Martin S. Villarama, Jr., et al."

SIHI is the plaintiff in Civil Case No. 59449 entitled "State Investment House, Inc. vs. Cheng Ban Yek Co., Inc. et al.", an action for foreclosure of mortgage.

The antecedents are recited in the questioned decision as follows:

"(1) Defendant CBY is a domestic corporation engaged in the business of manufacturing edible oil bearing the brand "Baguio Oil", and in the conduct of its business, it has incurred millions of pesos of obligations with plaintiff SIHI and many other creditors, including defendant Allied Banking Corporation (ALLIED for short) who is the creditor of SIHI in the principal amount of P10 million, exclusive of interests, service charges, penalties, and attorney's fees.

(2) On December 28, 1982, defendant CBY , plaintiff SIHI, and other creditors of CBY entered into an Agreement for the restructuring of CBY's existing obligations to its creditors, but excluding defendant ALLIED and several other creditors who did not sign said Agreement (pp. 72-72, Rollo).

(3) To secure the prompt and full payment of all amounts owed by CBY to its creditors who participated in said Agreement and as required thereunder, the parties thereto executed a Mortgage Indenture dated December 28, 1982 with CBY and FOUR SEAS as Mortgagors and SIHI and 15 other creditors of CBY as mortgagees involving 23 parcels of registered lands and the improvements therein (pp. 17-19, *id.*), which Mortgage Indenture was subsequently modified several times (pp. 19-20, *id.*). Moreover, as additional security to said Agreement, the parties also agreed that the Existing Comprehensive Surety Agreement previously executed by defendant Alfredo Ching would continue to subsist and that he would remain jointly and severally liable with CBY for the payment of the amounts owed by the latter to the creditors who were parties to the aforesaid Agreement (p. 20, *id.*).

(4) On June 28, 1986, CBY defaulted in the payment of its obligations, and in a letter dated August 8, 1988, the CBY Creditors' Committee, pursuant to the aforesaid Agreement and Mortgage Indenture, declared all of CBY's obligations due and payable (p. 24, id.). This letter was followed by a letter dated August 9, 1989 of plaintiff SIHI likewise declaring all of CBY's particular obligations to it immediately due and payable (id.). Then on April 16, 1990, SIHI notified the Creditors' Committee of CBY that it would institute proceedings for the enforcement of the remedies granted under the Mortgage Indenture earlier mentioned, and in a resolution dated April 20, 1990, said Creditors' Committee authorized SIHI to institute the appropriate foreclosure proceedings provided that the proceeds of the foreclosure sale would be distributed and applied to all of CBY's obligations under the terms of the Agreement previously mentioned (p. 25, id.).

(5) Hence, plaintiff SIHI filed on May 10, 1990, C.C. No. 59559 with the respondent court against CBY, FOUR SEAS, and Alfredo Ching, and impleading twenty-two (22) other creditors of CBY including herein petitioner ALLIED, allegedly because they hold inferior or subordinate mortgage rights to the properties sought to be foreclosed (pp. 8-28, id.).

(6) On January 31, 1991, defendant ALLIED filed its Answer to the complaint, denying that its interests in the mortgaged properties in question are subordinate in right to that of plaintiff SIHI; alleging that it was not a party to the Agreement attached to the complaint as Annex "B" and, therefore, not bound by its provisions; likewise denying that it was a party to the Fourth Amendatory Agreement also attached to the complaint as its Annex "S" which it claimed "was never valid, binding and effective for lack of consent on the part of the other creditors as shown by the fact that they did not sign the same"; claiming that defendant CBY owes it the principal amount P10 million, exclusive of interest, service charges, penalties, and attorney's fees; alleging that as defendant CBY's biggest, single, creditor, plaintiff SIHI "was able to work its way and secure for its representatives/nominees/designees key positions in defendant CBY, including but not limited to seats with full voting rights in defendant CBY's Board of Directors, Executive Committee, and Creditors' Committee, and that in taking control and management of CBY's operations, it "committed irregularities, abuses, excesses, and other acts inimical to defendant CBY draining its resources and driving the latter to the financial quagmire it now faces, to the prejudice of herein defendant creditors", as a consequence of which acts, CBY allegedly suffered losses of not less than P50 million or such amount as may be proved at the trial, which losses it claims represent assets of CBY answerable to its creditors other than plaintiff SIHI; and that plaintiff should be held liable for such losses, as well as for defendant ALLIED's moral damages and attorney's fees which it alleged in its counterclaim (pp. 29-33, id.). Defendant ALLIED thus prayed for the dismissal of the complaint or, in the alternative, for plaintiff to be ordered to pay CBY's creditors including ALLIED the amount of P50 million to be deducted from the proceeds of the foreclosure sale of the mortgaged properties in question to be distributed among CBY's creditors, and that plaintiff be also ordered to pay ALLIED moral damages and attorney's fees (29-34, id.).

(7) However, on January 31, 1991, plaintiff SIHI, for the consideration of P33 million, entered into a Deed of Assignment with FIL-NIPPON transferring to the latter all its rights, interests, claims, and causes of action arising out of the Agreement mentioned in and annexed to its complaint in C. C. No. 59449 and certain promissory notes and mortgages contracts upon which said civil case was brought, and in which Deed of Assignment FIL-NIPPON also agreed to assume all the obligations of SIHI as party-plaintiff in said civil case (pp. 40-44, 64, id.).

(8) Thereafter, FIL-NIPPON filed in C. C. No. 59449 on April 16, 1991 a "Motion for Substitution of Party Plaintiff" in lieu of plaintiff SIHI (pp. 35-39, id.), which motion was opposed by defendant ALLIED on the grounds that it has a counterclaim against SIHI arising from irregularities, excesses, abuses and inimical acts committed by it in managing defendant CBY; that as long as said counterclaim has not been finally resolved, the substitution of plaintiff SIHI would be improper; and that if at all, FIL-NIPPON can intervene and be a co-plaintiff in C. C. No. 59449 (pp.45-46, id.).

(9) On July 4, 1991, the respondent court, finding no legal basis for the objections of ALLIED and another defendant, Producers Bank of the Philippines, to the motion for substitution of movant Fil-NIPPON for plaintiff SIHI, granted the motion for substitution (p. 8, id.) and when defendant ALLIED moved for a reconsideration of said order, it denied the motion for reconsideration on August 22, 1991 (p. 9, id.)."<sup>[1]</sup>

Allied Banking Corp. ("Allied") filed a petition for *certiorari* in the Court of Appeals assailing the above mentioned orders of the Regional Trial Court granting Fil-Nippon's motion for substitution of SIHI as plaintiff in Civil Case No. 59449.

The Court of Appeals granted the petition and ordered SIHI to continue as plaintiff. The dispositive portion of the decision, now assailed in the instant petition, reads:

"WHEREFORE, the instant petition is GRANTED; the respondent court's orders of July 4, 1991 and August 22, 1991 are hereby SET ASIDE; and herein private respondent State Investment House, Inc. (SIHI) shall continue to be the plaintiff in C. C. No. 59449 before the respondent court, with the other private respondent herein Fil-Nippon Holdings, Inc. (FIL-NIPPON) ordered impleaded therein as co-plaintiff."<sup>[2]</sup>

In this petition for review on *certiorari*, SIHI submits the following grounds:

(1)

THE CA ERRED IN FINDING THAT ALLIED'S PERMISSIVE COUNTERCLAIMS CREATE A DEBTOR-CREDITOR RELATIONSHIP BETWEEN SIHI AND ALLIED; ALLIED IS NOT SIHI'S CREDITOR.

(2)

THE CA ERRED IN FINDING THAT A WITNESS WHO MAY BE CALLED TO TESTIFY HAS A MATERIAL INTEREST IN CASE AS TO MAKE HIM A PARTY-