

## SIXTEENTH DIVISION

[ CA-G.R. CV NO. 82329, August 15, 2006 ]

**BANK OF THE PHILIPPINE ISLANDS, AS SUBSTITUTED BY  
PHILIPPINE ASSET MANAGEMENT, INC., PLAINTIFF-APPELLEE,  
VS. SPS. JERRY AND ASUNCION JARDIOLIN, DEFENDANTS-  
APPELLANTS.**

### D E C I S I O N

#### DE LOS SANTOS, J.:

This is an appeal interposed by defendant-appellant Jerry Asuncion, questioning the decision<sup>[1]</sup> of the Regional Trial Court of Makati City, Branch 60, in Civil Case No. 02-1438, pertinent portion of which reads:

"WHEREFORE then, judgment is rendered in plaintiff's favor and against defendant-spouses Jerry and Asuncion Jardiolin.

"As a consequence of this, defendants are held jointly and solidarily liable to pay plaintiff the amount of P3,541,444.45 with legal interest of 12% per annum computed from November 29, 2002 until fully paid. Apart from this, defendants are also liable to pay plaintiff attorney's fees equivalent to 10% of the total amount due plus litigation expenses amounting to P50,000.00

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

The factual background of the case is as follows:

Spouses Jardiolin borrowed a total of FOUR MILLION FIVE HUNDRED THOUSAND (P4,500,000.00) PESOS from Far East Bank & Trust Company (FEBTC) on two (2) different dates. The loans are evidenced by three (3) promissory notes executed by Spouses Jardiolin, to wit:

- a. BDO569/97 dated February 16 1998 in the amount of ONE MILLION (P1,000,000.00) PESOS;<sup>[3]</sup>
- b. 2-056-980347 dated August 17, 1998 in the amount of TWO MILLION (P2,000,000.00) PESOS;<sup>[4]</sup> and
- c. 2-056-980346 dated August 17, 1998 in the amount of ONE MILLION FIVE HUNDRED THOUSAND (P1,500,000.00) PESOS.<sup>[5]</sup>

On March 23, 2000, FEBTC and the BPI merged pursuant to a duly approved Articles of Merger<sup>[6]</sup> issued by the Banko Sentral ng Pilipinas, constituting the latter as the surviving corporation. As a result, BPI acquired all the assets and liabilities of

FEBTC.

Accordingly, after the merger, BPI handled the past due accounts of FEBTC.<sup>[7]</sup> After evaluating all the accounts, it discovered that Spouses Jardiolin failed to pay their obligations as they fell due. BPI alleged that they sent a demand letter.<sup>[8]</sup> For failure of Spouses Jardiolin to heed the demand, BPI filed the complaint.

In his Answer<sup>[9]</sup>, defendant Jerry Jardiolin claimed that:

"8. Plaintiff BPI has no cause of action against the herein Defendant;

"9. Defendant had been paying its obligation with the former Far East Bank and Trust Company (FEBTC) and if ever there are balances in the promissory notes he issued in favor of FEBTC, the same could not be in the amount as demanded by Plaintiff BPI;

"10. Defendant and FEBTC had a good business relationship with Defendant servicing his loan obligations with FEBTC and complying with all the conditions of the obligations, however, the said good business relationship was put to an abrupt halt without any notification on the part of FEBTC or plaintiff BPI that the account was already transferred to Plaintiff;

"11. Plaintiff upon acquisition of Defendant's account from the former FEBTC imposed additional burden and condition on Defendant in a manner that their previous agreement with FEBTC was set aside or modified."<sup>[10]</sup>

Thereafter, upon motion of BPI, the case was set for pre-trial.<sup>[11]</sup> The parties then filed their respective pre-trial briefs. After several postponements and resetting of the pre-trial, the lower court issued an Order<sup>[12]</sup> on August 12, 2003, referring the case for mediation after the counsels for both parties manifested their intention to settle the case. The mediation was set on September 9, 2003<sup>[13]</sup> while the pre-trial was tentatively set on October 20, 2003.<sup>[14]</sup> During the said hearing, the counsel for the defendants informed the court that defendant Asuncion Jardiolin already died in 2000.<sup>[15]</sup> On October 14, 2003, the lower court received from the defendant a *Motion for Leave to File Amended Answer*<sup>[16]</sup> with the attached Amended Answer.<sup>[17]</sup>

During the pre-trial on October 20, 2003, plaintiff's counsel prayed that for failure of the defendants to appear both at the scheduled pre-trial and mediation proceedings despite notice, they should be allowed to present evidence *ex parte* against the defendants. The court, in an Order<sup>[18]</sup> dated October 20, 2003, set the case for the presentation of plaintiff's evidence *ex parte* on November 10, 2003.

Defendant filed a *Motion for Reconsideration with ex parte Prayer for Deferment of Reception of Plaintiff's Evidence until Resolution of the Motion*<sup>[19]</sup> explaining that they were absent at the pre-trial because they have a pending motion for leave to amend the answer and it is expensive for them to appear there for a motion for leave considering that they are based in Iloilo City.<sup>[20]</sup> They further explain that

their failure to appear in the mediation conference was due to the physical condition of defendant Jerry Jardiolin.<sup>[21]</sup> The lower court, in denying the motion for reconsideration, explained:

"After (c)onsidering the arguments raised, the Court sees no reason to reconsider its previous Order.

"Firstly, the Court notes from the records that when this case was initially called for pre-trial last 30 June, defendant and his counsel also failed to appear in court. Over the objection interposed by plaintiff's counsel, the court chose to show some leniency towards the defendants and allowed a resetting of the pre-trial. Again, the 12 August 2003 setting was also reset to give the parties an opportunity to settle the case during the mediation proceedings which defendants or their counsel also failed to attend despite notice.

"Defendants' absence again when the case was called anew on 30 October cannot help but convince the Court that these persistent absences are but attempts made to delay the proceedings of this case.

"It cannot be argued by the defendants that the pendency of the Motion for Leave to Amend Answer would result in the automatic cancellation of the Pre-Trial Conference. Precisely because of plaintiff's observation that the intended amendments to the Answer do not refer to substantial matters, had defendants and their counsel appeared at the scheduled pre-trial, the matter of whether to grant (the) leave to admit the amended answer could have been acted upon immediately after which the pre-trial could have proceeded thereafter.

"Defendant's claim that it is expensive for defendant or counsel to appear in Makati City for the motion considering that they are residents of Iloilo (City) also does not deserve merit.

"Defendants and/or their counsel were already set to travel to Manila to attend the scheduled pre-trial on October 20, 2003, they having received the Notice of Pre-trial through counsel as early as September 2, 2003.

"They cannot presume the pre-trial would be cancelled merely because they saw it fit to file a Motion for Leave to File Amended Answer a week before the scheduled pre-trial especially since the Motion itself does not state they would not appear to have it submitted for resolution and is set on the same date as the scheduled pre-trial.

"Hence, having failed to appear at the scheduled pre-trial despite notice and the defendants already having failed to participate in the mediation proceedings taken to arrive at a mutually acceptable settlement of this case, there is sufficient basis to act favorably on the plaintiff's oral motion to allow the latter to present evidence ex-parte against the defendants.

"Accordingly then, in view of all the foregoing, defendant's Motion for Reconsideration is herein DENIED for lack of merit."<sup>[22]</sup>