

THIRD DIVISION

[G.R. No. 172651, October 02, 2007]

UNITED OVERSEAS BANK OF THE PHILIPPINES (FORMERLY WESTMONT BANK), PETITIONER, VS. ROSEMOOR MINING AND DEVELOPMENT CORPORATION AND DRA. LOURDES S. PASCUAL, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45, of the Revised Rules of Court, filed by petitioner United Overseas Bank of the Philippines (Overseas Bank), seeking the reversal and the setting aside of the Decision,^[1] dated 10 May 2005, and the Resolution,^[2] dated 16 May 2006 of the Court of Appeals in CA-G.R. CV No. 78583. The appellate court, in its assailed Decision and Resolution, affirmed the Decision of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 16, declaring, *inter alia*, as null and void the Real Estate Mortgage executed by Rosemoor Mining and Development Corporation (Rosemoor Mining) in favor of Overseas Bank, with the modification that the award of moral and exemplary damages and attorney's fees were deleted.

Overseas Bank is a banking institution duly authorized to engage in banking business under Philippine laws.^[3]

Rosemoor Mining, on the other hand, is a domestic corporation, likewise duly authorized by Philippine laws to engage in mining operation.^[4]

In order to raise the necessary funds for the importation of machineries needed for its operations, Rosemoor Mining, through its President, Lourdes Pascual (Pascual), M.D., obtained a loan from Overseas Bank in the amount of ₱80,000,000.00. The loan was secured by two Real Estate Mortgage Contracts over six parcels of land situated at San Miguel, Bulacan, and registered under the name of Rosemoor Mining, and another two parcels of land situated at Gapan, Nueva Ecija, registered under Pascual's name.^[5]

The arrangement agreed to by the parties was for Overseas Bank to handle, on behalf of Rosemoor Mining, the amount of ₱50,000,000.00 to be used for the importation of machineries, while the loan balance of ₱30,000,000.00 will be released by Overseas Bank to Rosemoor Mining as a revolving credit line.^[6]

Pursuant to such agreement, Rosemoor Mining executed four irrevocable Letters of Credit in the total amount US\$1,943,508.11 for the importation of machineries. To answer for the 20% advance payment of the total amount of the Letters of Credit, Rosemoor Mining proceeded to draw against its ₱50,000,000.00 credit facility with

the Overseas Bank specifically allocated for the acquisition of machineries and executed promissory notes in favor of the bank in the amount of ₱49,82,682.50. Rosemoor Mining also partially availed itself of the remaining ₱30,000,000.00 credit line for which it executed two promissory notes in Overseas Bank's favor in the amounts of ₱10,000,000.00 and ₱3,500,000.00

Subsequently, Rosemoor Mining defaulted in the payment of its various drawings of Letters of Credit and promissory notes which prompted Overseas Bank to cause the extrajudicial foreclosure of the mortgaged Nueva Ecija properties on 22 May 1998, and the similarly mortgaged Bulacan properties on 10 August 1998, and the sale thereof by public auction. The Overseas Bank was the highest bidder on both occasions.^[7]

In order to prevent the impending consolidation of ownership of the mortgaged properties in the name of Overseas Bank, Rosemoor Mining instituted two separate complaints against the bank, the procedural incidents of which were litigated all the way up to this Court on four occasions, three of which were already decided with finality, leaving the instant petition for our resolution.

One of the two cases was filed before the RTC of Manila and the other one before the RTC of Bulacan.

Manila Case

Civil Case No. 98-90089

RTC of Manila, Branch 33

On 5 August 1998, Rosemoor Mining instituted an action for damages, accounting, release of the balance of the loan and machinery and annulment of foreclosure sales against Overseas Bank before the RTC of Manila, Branch 33.^[8]

In its Complaint docketed as Civil Case No. 98-90089, Rosemoor Mining alleged that it obtained a loan from Overseas Bank in the amount of ₱80,000,000.00, secured by Real Estate Mortgages over parcels of land located in Bulacan and Nueva Ecija, but the proceeds of the loan did not redound to its benefit because it was allegedly mishandled by Overseas Bank causing serious financial injury to Rosemoor Mining. To further aggravate its injury, Rosemoor Mining claimed that Overseas Bank hastily foreclosed the mortgaged properties without previous notice to Rosemoor Mining.^[9]

On 10 August 1998, Overseas Bank filed an Urgent Motion to Dismiss the above complaint on the ground of improper venue since one of the prayers therein included the nullification of the foreclosure of real estate mortgages, a real action which must be lodged before the RTC of the place where the property or one of the properties is situated. Considering that none of the mortgaged properties was located in Manila, the filing of the Complaint before the RTC of Manila was, therefore, invalid. Consequently, Rosemoor Mining amended its Complaint deleting the prayer for nullification of foreclosure sale. Hence, Overseas Bank's Urgent Motion to Dismiss was denied by the RTC of Manila for lack of merit in an Omnibus Resolution dated 24 January 2000.^[10]

Subsequently, Overseas Bank filed its Answer with Counterclaim. After the pre-trial was conducted, trial on the merits ensued.

Bulacan Case
Civil Case No. 215-M-202
RTC of Malolos, Bulacan, Branch 16

On 11 March 2002, Rosemoor Mining filed another action denominated as Petition for Injunction with Damages^[11] before the RTC of Malolos, Bulacan, docketed as Civil Case No. 215-M-02. The Complaint prayed for the annulment of Real Estate Mortgage foreclosures that Rosemoor Mining executed in favor of Overseas Bank on the ground of fraud.

In order to prevent the threatened consolidation of titles over the mortgaged properties in Overseas Bank's name, Rosemoor Mining moved for the issuance of a Writ of Preliminary Injunction. During the hearing for the issuance of the said writ, the Bulacan RTC found merit in Rosemoor Mining's Motion and thus ordered that the scheduled consolidation of titles be temporarily enjoined pending the determination of the merits of the pending case.^[12]

On 26 March 2002, Overseas Bank, instead of filing an Answer, filed a Motion to Dismiss Civil Case No. 215-M-02 on the ground of forum-shopping in view of the pendency of the other case involving the same parties and the same issues before the RTC of Manila.^[13]

On 13 May 2002, the Bulacan RTC denied the Motion to Dismiss filed by Overseas Bank on the ground that the arguments raised therein were not applicable in the present case. The court *a quo* then directed Overseas Bank to file an Answer within five days from the receipt of the Order denying its Motion to Dismiss.^[14]

Again, instead of filing an Answer, Overseas Bank filed a Motion for Reconsideration^[15] of the Bulacan RTC Order denying its Motion to Dismiss Civil Case No. 215-M-02. On the other hand, Rosemoor Mining filed a Motion to Declare Overseas Bank in Default^[16] for failure to timely file an Answer.

Acting on the Motions filed by the parties, the Bulacan RTC, in an Order dated 10 September 2002, denied the Motion for Reconsideration of Overseas Bank and granted the motion of Rosemoor Mining to declare the bank in default.^[17]

Aggrieved by the Bulacan RTC Orders, dated 13 May 2002 and 10 September 2002, which respectively denied Overseas Bank's Motion to Dismiss Civil Case No. 215-M-02 and declared it in default, Overseas Bank assailed the same before the Court of Appeals on the ground that they were issued with grave abuse of discretion.^[18]

In its Petition for *Certiorari* docketed as CA-G.R. SP No. 73358, Overseas Bank, in addition to the issues of forum shopping and propriety of the default order, likewise raised the issue of the venue for Civil Case No. 215-M-02 before the RTC of Bulacan. Overseas Bank argued that the venue of the action for nullification of the foreclosure sales of the mortgaged properties which were located in Bulacan and Nueva Ecija, were improperly lodged before the Bulacan RTC.^[19]

For lack of merit, the Court of Appeals in its Decision dated 20 June 2004, dismissed

the Petition and declared that no forum-shopping existed in the filing of Civil Case No. 98-90089 before the RTC of Manila and Civil Case No. 215-M-02 before the RTC of Bulacan; and upholding the validity of the default order against Overseas Bank and the propriety of venue.

Dissatisfied, Overseas Bank elevated the matter before this Court *via* a Petition for Review on *Certiorari* of the 20 June 2004 Decision of the Court of Appeals. The Petition was docketed as **G.R. No. 159669**.^[20]

In the meantime, just as the Overseas Bank moved for the dismissal of Civil Case No. 215-M-02 before the RTC of Bulacan on the ground of forum-shopping, Overseas Bank also filed a Motion to Dismiss Civil Case No. 98-90089 before the RTC of Manila on the same ground.^[21]

In an Order dated 23 October 2002, the Manila RTC denied the Motion to Dismiss the case before it for lack of merit. The subsequent Motion for Reconsideration filed by Overseas Bank was also denied by the lower court.^[22]

On *Certiorari*, the Court of Appeals, in its Decision dated 26 February 2004, affirmed the Order dated 23 October 2002 of the Manila RTC, for failure by the Overseas Bank to establish that the court *a quo* gravely erred in ruling that no forum shopping attended the actions filed by Rosemoor Mining. The Motion for Reconsideration filed by Overseas Bank was also denied by the appellate court in a Resolution dated 30 April 2004.^[23]

Undaunted, Overseas Bank again raised the issue before this Court in **G.R. No. 163521**, advancing that Rosemoor Mining was guilty of forum shopping in instituting both the Bulacan and the Manila Cases.^[24]

Both petitions, **G.R. No. 163521** and **G.R. No. 159669**, were consolidated and jointly resolved by the Second Division of this Court, since the issues raised therein were interrelated.^[25]

On 12 March 2007, this Court put to rest the issue of forum-shopping by declaring that Rosemoor Mining is not guilty of forum shopping in filing Civil Case No. 275-M-02 before the Bulacan RTC, after it had instituted Civil Case No. 98-90089 before the Manila RTC. This Court ratiocinated that there was no identity of parties involved and the rights asserted in both actions were different from each other.^[26]

On the issue of improper venue, this Court ruled that the action to nullify the foreclosure sales of the Nueva Ecija properties, along with the Bulacan properties were properly instituted before the Bulacan RTC, thus:

[T]he venue of real actions affecting properties found in different provinces is determined by the singularity or plurality of the transactions involving said parcels of land. Where said parcels are the object of one and the same transaction, the venue is in the court of any of the provinces wherein a parcel of land is situated.^[27]

This Court further upheld the validity of the Order dated 13 May 2002, of the Bulacan RTC declaring Overseas Bank in default in Civil Case No. 215-M-02, ruling in

this wise:

The motion for reconsideration could not have tolled the running of the period to answer for two reasons. One, it was filed late, nine days after the due date of the answer. Two, it was a mere rehash of the motion to dismiss; hence, *pro forma* in nature. Thus, the Malolos RTC did not err in declaring the Bank in default.^[28]

In sum, this Court in **G.R. No. 163521** and **G.R. No. 159669**, denied the Petitions for Review on *Certiorari* filed by Overseas Bank and affirmed the assailed Decisions, dated 26 February 2004 and 20 June 2003 of the Court of Appeals, in CA-G.R. No. 76934 and CA-G.R. No. 73358, respectively.

In the interregnum, the Bulacan RTC, after its declaration that Overseas Bank was in default, proceeded with the *ex-parte* reception of evidence offered by Rosemoor Mining in Civil Case No. 215-M-02.

On 24 October 2002, the RTC of Bulacan, rendered a Decision^[29] in favor of Rosemoor Mining granting its prayers, among which was its declaration that the Real Estate Mortgage executed by Rosemoor Mining in favor of Overseas Bank is null and void. The dispositive portion of the Bulacan RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of petitioners and against respondents, to wit:

1. The Writ of Preliminary Injunction issued by this Court on March 25, 2002, is hereby made permanent.
2. Declaring as null and void the Real Estate Mortgages executed by [Rosemoor Mining] in favor of [Overseas Bank] (Exhibits "D" and "E") and the subsequent foreclosures of such mortgages;
3. Ordering the [Overseas Bank], to pay unto [Rosemoor Mining] as follows:
 1. ₱2,000,000.00 as moral and exemplary damages unto [Pascual] (₱1,000,000.00 as exemplary damages),
 2. ₱13,000,000.00 unto [Rosemoor Mining] as moral and exemplary damages (₱3,000,000.00 as moral damages and ₱10,000,000.00 as exemplary damages), and
 3. ₱100,000.00 unto petitioner as attorney's fees, plus cost of litigation.^[30]

On appeal, the Court of Appeals in a Decision dated 10 May 2005, in CA-G.R. No. 78583 affirmed the Bulacan RTC Decision with the modification, that the award of moral and exemplary damages, as well as the attorney's fees, was deleted. The Motions for Reconsideration interposed by both Overseas Bank and Rosemoor Mining were denied by the appellate court in its Resolution dated 16 May 2006.

Hence, this instant Petition for Review on *Certiorari* filed by Overseas Bank raising the following issues: