

## SECOND DIVISION

[ G.R. NO. 153777, April 15, 2005 ]

### PLANTERS DEVELOPMENT BANK, PETITIONER, VS. LZK HOLDINGS AND DEVELOPMENT CORPORATION, RESPONDENT.

#### DECISION

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

This is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 61262, ordering the dismissal of the petition for *certiorari* of Planters Development Bank and its resolution dismissing the motion for reconsideration thereof.

##### The Antecedents

The LZK Holdings and Development Corporation (LHDC) is a duly-organized corporation with principal office at AGZ Building, Quezon Avenue, San Fernando City, La Union.<sup>[2]</sup> The Planters Development Bank (PDB) is a banking institution duly-organized and existing under and by virtue of the laws of the Philippines.<sup>[3]</sup>

On December 16, 1996, the LHDC, through its Chief Executive Officer, Mrs. Lourdes Z. Korshak, and the PDB entered into a "Loan Agreement"<sup>[4]</sup> whereby the former was extended a credit accommodation in the amount of P40,000,000.00. The amount was to be used to finance the ongoing construction of the seven-storey AGZ Building at Quezon Avenue, San Fernando City, La Union.

To secure the loan, the LHDC executed in favor of the PDB a real estate mortgage<sup>[5]</sup> over the 589-square-meter lot where the AGZ Building was then being constructed, covered by Transfer Certificate of Title (TCT) No. T-45337 issued under the name of the LHDC. Subsequently, the latter executed two promissory notes in favor of the PDB: (1) Promissory Note No. 97-53-029<sup>[6]</sup> dated February 24, 1997, in the amount of P35,200,000.00 payable on or before February 24, 2012; and (2) Promissory Note No. 97-53-030<sup>[7]</sup> dated February 24, 1997 in the amount of P4,800,000.00, also payable on or before February 24, 2012.

Thereafter, the LHDC executed a Deed of Assignment<sup>[8]</sup> dated October 1, 1997 in favor of the PDB, wherein it assigned to the latter all its rental incomes from its AGZ Building, the same to be applied as payment of its obligations.

For non-payment of loan, non-compliance with the terms and conditions of the Deed of Assignment, and failure to comply with the conditions of the promissory notes, the PDB caused the extra-judicial foreclosure of the real estate mortgage under Act No. 3135, before Atty. Melchor Abasolo of San Fernando City, La Union, on April 6, 1998.<sup>[9]</sup> Consequently, a Notice of Sale dated July 16, 1998 was published.<sup>[10]</sup> On

September 21, 1998, the foreclosed property was sold to the PDB as the highest bidder, and the corresponding Certificate of Sale<sup>[11]</sup> was issued in its favor.

On April 5, 1999, the PDB filed with the Regional Trial Court (RTC) of Makati City, Branch 150, a complaint against the LHDC for "Annulment of Extrajudicial Foreclosure, Mortgage Contract, Promissory Notes and for Damages," docketed as Civil Case No. 99-471.

It was alleged, *inter alia*, that the real estate mortgage was void because it was executed on December 16, 1996, a day after TCT No. T-45337 was issued by the Register of Deeds, and two months before the execution of the promissory notes; the first page was unsigned by the parties; and it never received the proceeds of the loan in the amount of P40,000,000.00. The LHDC further alleged that it never authorized the PDB to apply the proceeds of the loan to the personal obligation of Armando La'o and/or his wife Lourdes Korshak. Moreover, the extrajudicial foreclosure of the real estate mortgage was void because the LHDC did not, in any way, violate the said deed, and the PDB even failed to take into account the remittances made under the promissory note. The LHDC also averred that the PDB dealt with it in gross bad faith, and as such is liable for damages and attorney's fees, and prayed, thus:

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff LZK and against defendant-bank, as follows:

1. On the First Cause of Action, declaring as null and void, the real estate mortgage executed on 16 December 1996 by plaintiff LZK;
2. On the Second Cause of Action, declaring as a nullity, Promissory Notes Nos. 97-53-029 and 97-53-030, both dated 24 February 1997;
3. On the Third Cause of Action, ruling that the extrajudicial foreclosure of Transfer Certificate of Title No. T-45337, as being void and without legal effect, as well as the Certificate of Sale executed by Notary Public Melchor Abasolo;
4. On the Fourth Cause of Action, holding defendant-bank liable for moral damages in the amount of not less than P10,000,000.00;
5. On the Fifth Cause of Action, adjudging exemplary damages against defendant-bank, in the amount of P500,000.00;
6. On the Sixth Cause of Action, declaring defendant liable for attorney's fees and cost of litigation in favor of plaintiff LZK, in the amount of P500,000.00, and the additional amount of P5,000.00 for every court attendance of plaintiff LZK's counsel.

Other reliefs just and equitable under the premises are likewise prayed for.<sup>[12]</sup>

The PDB filed in due course its answer,<sup>[13]</sup> traversing the material allegations thereof and interposing a counterclaim for attorney's fees and costs.

After a reply<sup>[14]</sup> to the answer had been filed, the LHDC moved<sup>[15]</sup> that the case be set for a pre-trial conference,<sup>[16]</sup> after which the parties submitted their respective pre-trial briefs.<sup>[17]</sup>

On January 14, 2000, just before the scheduled pre-trial, the LHDC filed a "Motion for Leave<sup>[18]</sup> to file a Supplemental Complaint"<sup>[19]</sup> to cover occurrences subsequent to the original complaint. It alleged that after the filing of the original complaint, it agreed in principle to enter into a contract of lease with a prospective lessee, AMA Computer College, over three floors of the AGZ Building, but the latter required it to first secure the petitioner's consent. The LHDC thus wrote the PDB, requesting its consent to the said lease. However, the latter gave unreasonable conditions in its reply, thus:

(a) AMA Computer College shall remit to defendant PDB all the stipulated rental deposits and advance rentals;

(b) Plaintiff withdraws or drops the criminal complaint for falsification and perjury against Mr. Mauro Tividad, an officer of defendant PDB, then pending with the Office of the City Prosecutor of Makati; and

(c) all documents shall be subject to review by defendant-bank.<sup>[20]</sup>

This prompted the AMA Computer College to back-out from the contract. Furthermore, the PDB wrote each and every tenant of the LHDC, demanding that they directly remit their respective rentals to it. Worse still, the PDB, which was leasing a space in the same building for its branch, had ceased paying its rentals, on the pretext that it was setting-off the same against the loan deficiency of the LHDC. In fact, according to the LHDC, the PDB had ceased paying its monthly rental of P73,205.00 since November 1999, and that the total amount due in rentals was P219,615.00.

The LHDC averred that until title to the property had been consolidated to the PDB, it (the LHDC) remained its owner, and as such is entitled to exercise all the attributes of ownership, including the right to receive rentals from the tenants of the building. As such, the PDB had no authority to collect the rentals and apply the previous loan deficiency because the legality and validity of the promissory notes, the real estate mortgage, and the subsequent extrajudicial foreclosure were in question before the courts. By applying the rentals to the perceived loan deficiency, the PDB ignored the authority of the court. Moreover, imposition by the PDB of unreasonable and unfair conditions to the prospective lease of the property to AMA Computer College, the LHDC failed to realize expected rentals of P43,000,000.00. It was also alleged that as a result of the foregoing acts of the PDB, the LHDC was entitled to moral damages of not less than P1,000,000.00. The LHDC prayed that judgment be rendered on its supplemental complaint, thus:

WHEREFORE, it is respectfully prayed that this Honorable Court decide this instant case in favor of plaintiff and against defendant PDB, by rendering judgment in the following manner:

[a] holding defendant liable to pay compensatory damages in the amount of no less than One Million Two Hundred Thousand Pesos

(P1,200,000.00) in favor of plaintiff;

[b] adjudging defendant as liable to pay the amount of Two Hundred Nineteen Thousand Six Hundred Fifteen Pesos (P219,615.00), representing rental arrearages for the months of November 1999 to January 2000;

[c] ruling that defendant is liable to pay moral damages in favor of plaintiff in the amount of One Million Pesos (P1,000,000.00); and

[d] to pay the cost of suit.

Other reliefs just and equitable under the premises are, likewise, prayed for.<sup>[21]</sup>

On January 17, 2000, the LHDC filed an Urgent Motion for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction,<sup>[22]</sup> seeking to restrain the PDB from consolidating its title over the foreclosed property pending the final determination of Civil Case No. 99-471. It averred that the period for redemption had yet to expire on March 15, 1999.

On January 18, 2000, the PDB jointly opposed<sup>[23]</sup> the supplemental complaint and urgent motion, contending that the latter had "miserably failed to establish any right in this regard." As to the supplemental complaint, it argued that what goes against its admission is the fact that the supplemental matters involved therein would bring into the case new causes of action, distinct from those mentioned in the original complaint. It also pointed out the lack of verification of the said supplemental complaint.

Meanwhile, after the hearing on the issuance of a writ of preliminary injunction, the trial court issued on March 13, 2000 a Temporary Restraining Order (TRO), effective for 20 days, restraining the PDB from consolidating ownership over the foreclosed property.<sup>[24]</sup> Thereafter, the trial court issued on April 3, 2000 an Order<sup>[25]</sup> granting the issuance of the writ, and required the LHDC to file a bond of P40,000,000.00.

Despite the injunction, however, the PDB managed to consolidate its title over the foreclosed property. Consequently, TCT No. T-53253<sup>[26]</sup> was issued by the Register of Deeds of La Union under its name on May 3, 2000.

On May 9, 2000, the LHDC filed an Omnibus Motion<sup>[27]</sup> to declare invalid the consolidated title, to cite the PDB and its counsel for contempt, and to enjoin the latter from taking possession of the property. This was opposed by the PDB.<sup>[28]</sup>

On June 2, 2000, the trial court issued an Order<sup>[29]</sup> invalidating TCT No. T-53253, and enjoining the PDB from taking possession of the foreclosed property. The motion to cite the PDB and its counsel for contempt of court was, however, denied.

On July 27, 2000, over the opposition of the PDB, the trial court issued an Order,<sup>[30]</sup> admitting the supplemental complaint with this *fallo*:

Wherefore, as prayed for, plaintiff's supplemental complaint is hereby admitted upon its paying the docket fees corresponding to the amount prayed in the supplemental complaint with notice of payment to defendant. In turn, defendant is hereby ordered to plead within (10) days from receipt of said notice of payment.

SO ORDERED.<sup>[31]</sup>

In admitting the same, the trial court declared:

The Court finds the terms in plaintiff's supplemental complaint to be just and proper; hence, can be permitted by the Court. The additional causes of action are intimately and necessarily connected to the causes of action set forth in plaintiff's Complaint dated March 29, 2000 and are proper under the circumstances inasmuch as the events happened since the filing of the complaint sought to be supplemented.<sup>[32]</sup>

The PDB moved for a reconsideration of the order, but the trial court denied the motion.

Dissatisfied, the PDB sought redress in the CA *via* a petition for *certiorari*, docketed as CA-G.R. SP No. 61262,<sup>[33]</sup> ascribing to the court *a quo* grave abuse of discretion in admitting the supplemental complaint. In its petition, it insisted that the supplemental complaint was improper. It argued that "there is nothing to supplement and the additional causes of action are entirely new, independent, separate and distinct."<sup>[34]</sup> It prayed that the orders of the court *a quo* be set aside and that the supplemental complaint be stricken-off the record.<sup>[35]</sup>

On December 20, 2001, the CA rendered a Decision,<sup>[36]</sup> finding that no grave abuse of discretion was committed by the trial court in admitting the supplemental complaint of the LHDC. In dismissing the petition, the CA ratiocinated:

In the case at bench, respondent ably demonstrated the connection between the original complaint and the supplemental complaint. Thus, the original complaint for annulment of extrajudicial foreclosure, mortgage contract, promissory notes and for damages was founded on the same transaction – the loan and contract of mortgage as security for such loan – as that of the supplemental complaint. The original complaint sought the annulment of the promissory note and the contract of mortgage. On the other hand, the supplemental complaint alleged petitioner's subsequent acts in asserting its rights as such purported obligee and mortgagor. Thus, the acts complained of under the supplemental complaint, namely: that petitioner imposed unreasonable conditions in giving its consent to a pending lease agreement between respondent and a third party and that petitioner demanded that rentals on the property be made directly to it – are acts calculated to exercise petitioner's rights, validly or invalidly, as the obligee and mortgagor in the transaction sought to be annulled in the original complaint.

Conformably, we cannot subscribe to petitioner's view that the cause of action raised in the supplemental complaint substantially changed or that the theory of the case altered the causes of action contained in the