

## THIRD DIVISION

[ G.R. No. 191174, June 07, 2017 ]

**PARADIGM DEVELOPMENT CORPORATION OF THE PHILIPPINES,  
PETITIONER, V. BANK OF THE PHILIPPINES ISLANDS,  
RESPONDENT.**

### D E C I S I O N

**REYES, J.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> filed under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated November 25, 2009 and Resolution<sup>[3]</sup> dated February 2, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 89755, which granted respondent Bank of the Philippine Islands' (BPI) appeal and accordingly dismissed the complaint filed by petitioner Paradigm Development Corporation of the Philippines (PDCP).

#### **The Facts**

Sometime in February 1996, Sengkon Trading (Sengkon), a sole proprietorship owned by Anita Go, obtained a loan from Far East Bank and Trust Company (FEBTC) under a credit facility denominated as Omnibus Line in the amount of P100 Million on several sub-facilities with their particular sub-limits denominated as follows: (i) Discounting Line for P20 Million; (ii) Letter of Credit/Trust Receipt (LC-TR) Line for P60 Million; and (iii) Bills Purchased Line for P8 Million. This was embodied in the document denominated as "Agreement for Renewal of Omnibus Line."<sup>[4]</sup>

On April 19, 1996, FEBTC again granted Sengkon another credit facility, denominated as Credit Line, in the amount of P60 Million as contained in the "Agreement for Credit Line." Two real estate mortgage (REM) contracts were executed by PDCP President Anthony L. Go (Go) to partially secure Sengkon's obligations under this Credit Line. One REM, acknowledged on April 22, 1996, was constituted over Transfer Certificate of Title (TCT) No. RT-55259 (354583) and secured the amount of P8 Million. The other REM, acknowledged on December 19, 1997, was constituted over TCT Nos. RT-58281, RT-54993 (348989) and RT-55260 (352956) and secured the amount of P42,400,000.00.<sup>[5]</sup>

In a letter dated September 18, 1997, FEBTC informed Sengkon regarding the renewal, increase and conversion of its P100 Million Omnibus Line to P150 Million LC-TR Line and P20 Million Discounting Line, the renewal of the P60 Million Credit Line and P8 Million Bills Purchased Line.<sup>[6]</sup>

In the same letter, FEBTC also approved the request of Sengkon to change the account name from SENGKON TRADING to SENGKON TRADING, INC. (STI).<sup>[7]</sup>

Eventually, Sengkon defaulted in the payment of its loan obligations.<sup>[8]</sup> Thus, in a letter dated September 8, 1999, FEBTC demanded payment from PDCP of alleged

Credit Line and Trust Receipt availments with a principal balance of P244,277,199.68 plus interest and other charges which Sengkon failed to pay. PDCP responded by requesting for segregation of Sengkon's obligations under the Credit Line and for the pertinent statement of account and supporting documents.<sup>[9]</sup>

Negotiations were then held and PDCP proposed to pay approximately P50 Million, allegedly corresponding to the obligations secured by its property, for the release of its properties but FEBTC pressed for a comprehensive repayment scheme for the entirety of Sengkon's obligations.<sup>[10]</sup>

Meanwhile, the negotiations were put on hold because BPI acquired FEBTC and assumed the rights and obligations of the latter.<sup>[11]</sup>

When negotiations for the payment of Sengkon's outstanding obligations, however, fell, FEBTC, on April 5, 2000, initiated foreclosure proceedings against the mortgaged properties of PDCP before the Regional Trial Court (RTC) of Quezon City.<sup>[12]</sup> In its Bid for the mortgaged properties, FEBTC's counsel stated that:

On behalf of our client, [FEBTC], we hereby submit its Bid for the Real Properties including all improvements existing thereon covered by [TCT] Nos. RT - 55259 (354583), 58281, RT - 54993 (348989) and RT- 55260 (352956) which are the subject of the Auction Sale scheduled on June, 20, 2000 in the amount of:

**SEVENTY[-]SIX MILLION FIVE HUNDRED THOUSAND PESOS ONLY**  
**(P76,500,000.00), Philippine Currency.**

Please note that the aforesaid Bid is only in PARTIAL SETTLEMENT of the obligation of [PDCP], x x x.<sup>[13]</sup>

Upon verification with the Registry of Deeds, PDCP discovered that FEBTC extra-judicially foreclosed on June 20, 2000 the first and second mortgage without notice to it as mortgagor and sold the mortgaged properties to FEBTC as the lone bidder.<sup>[14]</sup> Thereafter, on August 8, 2000, the corresponding Certificate of Sale was registered.<sup>[15]</sup>

Consequently, on July 19, 2001, PDCP filed a Complaint for Annulment of Mortgage, Foreclosure, Certificate of Sale and Damages<sup>[16]</sup> with the RTC of Quezon City, against BPI, successor-in-interest of FEBTC, alleging that the REMs and their foreclosure were null and void.<sup>[17]</sup>

In its Amended Complaint,<sup>[18]</sup> PDCP alleged that FEBTC assured it that the mortgaged properties will only secure the Credit Line sub-facility of the Omnibus Line. With this understanding, PDCP President Go allegedly agreed to sign on two separate dates a pro-forma and blank REM, securing the amount of P42.4 Million and P8 Million, respectively. PDCP, however, claimed that it had no intent to be bound under the second REM, which was not intended to be a separate contract, but only a means to reduce registration expenses.<sup>[19]</sup>

Moreover, PDCP averred that sometime in September 1997, FEBTC allegedly requested it to sign a document which would effectively extend the liability of the properties covered by the mortgage beyond the Credit Line. Because of its refusal to

sign said document, it surmised that this must have been the reason why, as it later discovered, FEBTC registered not only the first but also the second REM, contrary to the parties' agreement.<sup>[20]</sup>

In asking for the nullity of the REMs and the foreclosure proceeding, PDCP alleged:

a.) THAT although the [REM] of April 22, 1996 for Php 8.0 Million was not a separate security but was merely intended to reduce registration expenses, FEBTC, [BPI's] predecessor-in-interest, fraudulently and in violation of the original intent and agreement of the parties, made it appear that said [REM] of April 22, 1996 was separate and distinct from that of December 18, 1997 and caused the registration of both mortgages with separate considerations totaling Php 50.4 Million;

b.) THAT the subject [REMs] were foreclosed to answer not only for obligations incurred under SENGKON's Credit Line but also for other obligations of SENGKON and other companies which were not secured by said mortgages;

c.) THAT no notice was given to or received by [PDCP] of the projected foreclosure x x x since the notice of said foreclosure was sent by defendant SHERIFF to an address (333 EDSA, Quezon City) other than [PDCP's] known address as stated in the [REMs] themselves (333 EDSA Caloocan City) x x x;

d.) THAT, contrary to the then prevailing Supreme Court Circular AM 99-10-05-0 x x x, only one (1) bidder was present and participated at the foreclosure sale[; and]

e.) THAT, without the knowledge and consent of [PDCP], obligation of SENGKON has been transferred to STI[,], a juridical personality separate and distinct from SENGKON, a single proprietorship. This substitution of SENGKON as debtor by STI x x x effectively novated the obligation of [PDCP] to FEBTC. x x x.<sup>[21]</sup> (Underlining ours)

### **Ruling of the RTC**

On April 16, 2007, the RTC rendered its Decision<sup>[22]</sup> nullifying the REMs and the foreclosure proceedings. It also awarded damages to PDCP. The dispositive portion of the decision reads:

WHEREFORE, premises considered the Court renders judgment in favor of [PDCP] and against defendants [BPI], Sheriff and the Register of Deeds of Quezon City in the following manner:

1) Declaring null and void and of no further force and effect the following:

- (a) the [REMs] (Annexes "F" and "F-1" hereof);
- (b) the foreclosure thereof;
- (c) the Certificate of Sale; and
- (d) the entries relating to said [REMs] and Certificate of Sale annotated on TCT Nos. 58281, RT-54993 (348989), RT-55260

(352956) and RT-55259 (354583) covering the mortgaged properties;

2) Ordering defendant Registrar of Deeds to cancel all the annotations of the [REMs] and the Certificate of Sale on the above stated TCTs covering the mortgaged properties and otherwise to clear said TCTs of any liens and encumbrances annotated thereon relating to the invalid [REMs] aforesaid;

3) Ordering defendant [BPI] to return to [PDCP] the owner's duplicate copies of the TCTs covering the mortgaged properties free from any and all liens and encumbrances; and,

4) Ordering the defendant BPI to pay [PDCP] the following sums:

- (a) Php 150,000.00 as attorney's fees; and,
- (b) Php 50,000.00 as litigation expenses.

The Writ of Preliminary Injunction is hereby made FINAL and PERMANENT.

Costs against defendant [BPI].

SO ORDERED.<sup>[23]</sup>

The RTC observed that the availments under the Credit Line, secured by PDCP's properties, may be made only within one year, or from April 19, 1996 to April 30, 1997. While BPI claimed that the period of said credit line was extended up to July 31, 1997, PDCP was not notified of the extension and thus could not have consented to the extension. Anyhow, said the RTC, "no evidence had been adduced to show that Sengkon availed of any loan under the credit line up to July 31, 1997." Thus, in the absence of any monetary obligation that needed to be secured, the REM cannot be said to subsist.<sup>[24]</sup>

Further, the RTC agreed with PDCP that novation took place in this case, which resulted in discharging the latter from its obligations as third-party mortgagor. In addition, it also nullified the foreclosure proceedings because the original copies of the promissory notes (PNs), which were the basis of FEBTC's Petition for Extrajudicial Foreclosure of Mortgage, were not presented in court and no notice of the extrajudicial foreclosure sale was given to PDCP.<sup>[25]</sup>

Lastly, the RTC ruled that the shorter period of redemption under Republic Act No. 8791<sup>[26]</sup> cannot apply to PDCP considering that the REMs were executed prior to the effectivity of said law. As such, the longer period of redemption under Act No. 3135<sup>[27]</sup> applies.<sup>[28]</sup>

Aggrieved, BPI appealed to the CA.<sup>[29]</sup>

### **Ruling of the CA**

In its Decision<sup>[30]</sup> dated November 25, 2009, the CA reversed the RTC's ruling on all points. The CA found PDCP's contentions incredible for the following reasons: (i) the fact that PDCP surrendered the titles to the mortgaged properties to FEBTC only shows that PDCP intended to mortgage all of these properties; (ii) if it were true

that FEBTC assured PDCP that it would be registering only one of the two REMs in order to reduce registration expenses, then each of the two REMs should have covered the four properties but it was not. On the contrary, the four properties were spread out with one REM covering one of the four properties and the other REMs covering the remaining three properties; and (iii) PDCP never complained to FEBTC regarding the registration of the two REMs even after it discovered the same.<sup>[31]</sup>

Also, the CA ruled that novation could not have taken place from FEBTC's mere act of approving Sengkon's request to change account name from Sengkon to STI.<sup>[32]</sup>

Moreover, it held that the fact that FEBTC failed to submit the original copies of the PNs that formed the basis of its Petition for Extrajudicial Foreclosure of Mortgage cannot affect the validity of foreclosure because the validity of the obligations represented in those PNs was never denied by Sengkon nor by PDCP.<sup>[33]</sup>

The CA added that even if the obligations of Sengkon in credit facilities (other than the Credit Line) were included, since the REMs contain a dragnet clause, these other obligations were still covered by PDCP's REMs.<sup>[34]</sup> Lastly, the CA ruled that the failure to send a notice of extrajudicial foreclosure sale to PDCP did not affect the validity of the foreclosure sale because personal notice to the mortgagor is not even generally required.<sup>[35]</sup>

Hence, this present petition, where PDCP presented the following arguments:

- I. THE FINDINGS IN THE CA DECISION WHICH DEVIATED ON ALMOST ALL POINTS FROM THOSE OF THE RTC ARE NOT IN ACCORD WITH THE RULES ON THE ASSESSMENT OF THE CREDIBILITY AND WEIGHT OF THE EVIDENCE;
- II. THE VALIDITY OF THE REMs, AS UPHOLD BY THE CA, IS VITIATED BY THE FACT THAT BPI'S PREDECESSOR-IN-INTEREST VIOLATED THE TRUE INTENT AND AGREEMENT OF THE PARTIES THERETO;
- III. THE CA DECISION'S REJECTION OF PDCP'S NOVATION THEORY BASED ON THE ABSENCE OF AN EXPRESS RELEASE OF THE OLD DEBTOR AND THE SUBSTITUTION IN ITS PLACE OF A NEW DEBTOR IS MISPLACED AND ERRONEOUS;
- IV. THE FORECLOSURE OF THE REMs WAS VITIATED NOT ONLY BY THE INADMISSIBILITY OF THE PNs UPON WHICH IT IS BASED BUT ALSO BECAUSE IT VIOLATED THE THERETO APPLICABLE RULES; and
- V. THE APPLICATION BY THE CA OF THE SHORTENED PERIOD OF REDEMPTION IN THIS CASE VIOLATED THE NON-IMPAIRMENT AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTION.<sup>[36]</sup>

### **Ruling of the Court**

The Court finds the petition meritorious.

***The registration of the REMs, even if contrary to the supposed intent of the parties, did not affect the validity of the mortgage contracts***