

THIRD DIVISION

[G.R. No. 211519, August 14, 2017]

BANK OF COMMERCE, PETITIONER, VS. HEIRS OF RODOLFO DELA CRUZ, RESPONDENT.

DECISION

BERSAMIN, J.:

The terms of merger between two corporations, when determinative of their joint or respective liabilities towards third parties, cannot be assumed. The party alleging the corporations' joint liabilities should establish the allegation. Otherwise, the liabilities of each of them shall be separate.

The Case

We review the decision promulgated on August 29, 2013,^[1] whereby the Court of Appeals (CA) dismissed the appeal of the petitioner and affirmed the judgment rendered on April 28, 2010 in Civil Case No. C-19332 by the Regional Trial Court (RTC), Branch 13, in Caloocan City adjudging the petitioner and Panasia Banking, Inc. (Panasia) jointly and severally liable to pay to the respondents the amount of P56,223,066.00, less P27,150,000.00 by way of a legal set-off, and attorney's fees.^[2]

Antecedents

The CA summarized the factual and procedural antecedents, to wit:

This case has its roots from a *Complaint* for collection of sum of money and damages with prayer for a writ of preliminary injunction and/or temporary restraining order filed by the late plaintiff Rodolfo Dela Cruz (Dela Cruz) against defendant Panasia Banking, Inc. (Panasia). The complaint was lodged with the Regional Trial Court of Caloocan City, docketed as RTC Case No. C-19332, and raffled off to Branch 131.

However, this complaint was amended to include defendant-appellant Bank of Commerce (Bank of Commerce) as additional defendant. Thereafter, Dela Cruz filed an Urgent Motion to Re-Amend Complaint and for Issuance of a Temporary Restraining Order to amend anew the complaint so as to include the Clerk of Court and Ex-officio Sheriff of the Regional Trial Court of Manila, Jesusa P. Maningas and her Deputy, Eufrazio B. Pilipina as additional defendants, which was granted by the court *a quo* in its order dated March 28, 2001. The re-amended complaint was admitted and as prayed for, the court *a quo* ordered the issuance of a temporary restraining order against the defendants Panasia, Bank of Commerce, the Clerk of Court and Ex-Officio Sheriff of

Manila, Jesusa P. Maningas and her deputy, Eufrazio B. Pilipina, and all persons claiming rights under them, to refrain from committing or pursuing any and all acts which will bring about the auction sale scheduled on March 29, 2001 of the mortgaged parcels of land covered by TCT No. 194509 mentioned in the Notice of Extra-Judicial Sale bearing the date March 1, 2001 and also of TCT Nos. 291630 and 262200 of the Registry of Deeds of Caloocan City, until the issue of the issuance of preliminary injunction shall have been duly heard and determined by the court *a quo*. In its order dated April 23, 2001, the court *a quo* ordered the issuance of a writ of preliminary injunction upon posting by Dela Cruz of an injunctive bond in the amount of P1.5 million executed in favor of defendant-appellant Bank of Commerce.

Defendant Panasia has been declared in default in the order of December 15, 2000 and again, it has been declared in default for failure to file the pre-trial brief in the order dated April 5, 2002.

On July 21, 2003, plaintiff Dela Cruz died and he was substituted by his surviving spouse Perla Pulgar Dela Cruz, his children namely: Leewardo P. Dela Cruz, Allan P. Dela Cruz and Joan P. Dela Cruz. His heirs are represented by Leewardo P. Dela Cruz.

As gleaned from the records, the antecedents are as follows:

Plaintiff Dela Cruz is the sole owner and proprietor of the Mamertha General Merchandising (Mamertha), an entity engaged in sugar trading since 1970. He maintained a bank account with defendant Panasia, in its branch in Grace Park, Caloocan City, in the name of Mamertha General Merchandising under Savings Account No. 002-004-00008-1.

Sometime in October 1998, Dela Cruz discovered that Panasia allowed his son, Allan Dela Cruz to withdraw money from the said bank account/deposit without his consent and/or authority. Upon discovery, he immediately instructed Panasia not to allow his son to make any withdrawals from his bank account and even sent a letter dated October 5, 1998 to Panasia, stating therein that his son, Allan Dela Cruz is neither authorized to make any withdrawal from his bank account nor sign any check drawn against the bank account unless with his written/expressed consent or authority. The said letter was personally received by Panasia's Grace Park Branch Manager and Operation Officer, Vicky Nubla and Lorraine de Leon, respectively, on October 16, 1998.

Despite said instruction and receipt of the letter dated October 5, 1998 Panasia still allowed and continued to allow Dela Cruz's son, Allan Dela Cruz to withdraw from the said bank account/deposit without his knowledge and consent. The unauthorized withdrawals amounted to Fifty Six Million Two Hundred Twenty Three Thousand Sixty Six Pesos and 7/100 (P56,223,066.07) as evidenced by Panasia's banking counter checks.

Dela Cruz demanded from Panasia the restoration of the said amount to his bank account/deposit. However, despite said demand, Panasia failed

to do so. Hence, through a letter sent to Panasia, Dela Cruz made a formal demand from Panasia to pay and/or re-deposit the amount of Fifty Six Million Two Hundred Twenty Three Thousand Sixty Six Pesos and 7/100 (P56,223,066.07) to his bank account/deposit within five (5) days from receipt hereof. Still, Panasia failed to heed the said demand of Dela Cruz, claiming that all transactions were pursuant to the existing banking policies and procedures.

On August 7, 2000, Dela Cruz instituted a suit for collection of sum of money against Panasia to collect the amount of the unauthorized withdrawals on his bank account/deposit. In the meantime, sometime in September, 2000, the Bank of Commerce demanded payment from Dela Cruz the amount of Twenty Seven Million One Hundred Fifty Thousand Pesos (P27,150,000.00). Not having any knowledge of obtaining or having obtained a loan from the Bank of Commerce, Dela Cruz upon verification from the said bank discovered that the loan payment demanded by the bank refers to the loan he obtained from Panasia and that pursuant to a Purchase and Sale Agreement entered into between Panasia and Bank of Commerce on July 27, 2000, Panasia has been acquired by Bank of Commerce transferring to the latter the former's assets and liabilities on bank deposits.

As a consequence thereof, Dela Cruz demanded from the Bank of Commerce to pay the liability of Panasia to him and offered to compensate/set off his secured loan obligation with Panasia in the amount of P27,150,000.00 by deducting the same from his outstanding claim of P56,223,066.07. Dela Cruz claimed that he is entitled to legal compensation or set-off and therefore, the Bank of Commerce had no right to foreclose the mortgaged properties since the principal obligation has already been extinguished.

The Bank of Commerce claimed that it purchased from Panasia only selected accounts and liabilities. Dela Cruz's loan account who does business under the name and style of Mamertha General Merchandising was among those acquired by it from Panasia by virtue of the Purchase and Sale Agreement dated July 27, 2000 and Deed of Assignment dated September 18, 2000, both entered into by and between Panasia and Bank of Commerce. Dela Cruz obtained loans in the principal amount of P16,650,000.00 and P2,850,000.00 from Panasia secured by Real Estate Mortgage dated September 2, 1998 and April 17, 2000 using Transfer Certificate of Title (TCT) Nos. 262200 and 291630. Likewise, Dela Cruz executed six (6) promissory notes which became past due and demandable and the former refused to settle his outstanding obligations. Hence, it filed a petition for extra-judicial foreclosure of real estate mortgage under Act. 3135, as amended. It had to foreclose on the mortgage when Dela Cruz refused to pay his obligation and maintained that Dela Cruz cannot ask for set-off or legal compensation.^[3]

Judgment of the RTC

After trial, the RTC declared the petitioner and Panasia jointly and severally liable to the late Rodolfo dela Cruz. It concluded that dela Cruz had successfully established

the negligence of Panasia in its fiduciary relationship with him by allowing his son to withdraw from his account despite the lack of authority to withdraw, and, worse, despite the express instructions of dela Cruz himself; and that the petitioner's defense that it had not assumed the liability of Panasia was unworthy of consideration because common sense dictated that the petitioner, by taking over Panasia, had absorbed all the assets and liabilities of Panasia.

The RTC disposed:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants Panasia Banking, Inc., and Bank of Commerce to:

1. Jointly and severally pay plaintiff the amount of FIFTY SIX MILLION TWO HUNDRED TWENTY THREE THOUSAND SIXTY SIX and 7/100 (P56,223,066.00) PESOS and therefrom the amount of P27,150,000.00 loan obligation of the herein plaintiffs from defendant PANASIA Banking Inc., the payment of which has been demanded by the defendant Bank of Commerce;
2. Jointly and severally to pay plaintiff the amount of P50,000.00 as and for attorney's fees;
3. The cost of suit.

SO ORDERED.^[4]

Decision of the CA

On appeal, the CA concurred with the RTC's conclusion, and affirmed the judgment of the RTC,^[5] pointing out that the failure of the petitioner to formally offer the documents denominated as Purchase and Sale Agreement and the Deed of Assignment was fatal to the petitioner's defense of not having assumed Panasia's liabilities; and that the factual findings by the RTC on the negligence on the part of Panasia were correct. The *fallo* of the CA's decision reads:

WHEREFORE, for all the foregoing considerations, the appeal is **DISMISSED**. Accordingly, the decision dated April 28, 2010 of the Regional Trial Court of Caloocan, Branch 131 in Civil Case No. C-19332 is **AFFIRMED**.

SO ORDERED.^[6]

The CA denied the petitioner's motion for reconsideration on February 25, 2014.^[7]

Issue

Hence, this appeal, whereby the petitioner seeks the reversal of the decision of the CA. It argues that its failure to formally offer the documents that would prove that it had acquired from Panasia only selected assets and liabilities was not fatal to its defense because the genuineness and due execution of the documents had been alleged to have been admitted by dela Cruz in his amended complaint and pre-trial brief; that there was no evidence on which to base its solidary liability for the negligence of Panasia; and that Panasia had not been negligent in allowing dela

Cruz's son to withdraw from his account because such withdrawals had been authorized.^[8]

In response, respondent dela Cruz, now represented by his heirs, submits that the fact that he had mentioned the documents in his pleadings did not dispense with the requirement for the petitioner to still make a formal offer of the documents.

Did the CA and the RTC err in pronouncing the petitioner solidarily liable with Panasia for the latter's negligence?

Ruling of the Court

The appeal has merit.

An appeal by petition for review on *certiorari* is limited to questions of law because the Court is not a trier of facts. In this regard, the dichotomy between questions of law and questions of fact is jurisprudentially settled. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted. In contrast, a question of fact exists when a doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.^[9]

Generally, the Court shuns away from delving into questions of fact, the same being outside the ambit of an appeal under Rule 45 of the *Rules of Court*. However, there are recognized instances wherein the Court may settle factual disputes that a party raises, and such instances include the following, namely: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both the appellant and the appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and G) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.^[10]

The petitioner raises the following errors herein, to wit:

I.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT THE FAILURE OF PETITIONER TO OFFER THE PURCHASE AND SALE AGREEMENT WITH PANASIA AS EVIDENCE WAS