

SECOND DIVISION

[G.R. No. 217356, September 07, 2016]

**DOROTEO C. GAERLAN, (DECEASED) SUBSTITUTED BY HIS SON,
RAYMOND G. GAERLAN, PETITIONER, VS. PHILIPPINE
NATIONAL BANK, RESPONDENT.**

DECISION

MENDOZA, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the December 18, 2014 Decision^[1] and the March 16, 2015 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 101297, which reversed and set aside the April 16, 2013 Decision^[3] of the Regional Trial Court, Branch 96, Quezon City (RTC-QC), in Civil Case No. Q-02-45873, a case for nullification of contract of loan, real estate mortgage and extrajudicial foreclosure of sale.

The Antecedents

In March 1997, Supreme Marine Company, Inc. (SMCI) and MGG Marine Services, Inc. (MGG) obtained from Philippine National Bank (PNB) a 5-year FCDU^[4] term loan of not exceeding US\$4,000,000.00 and a domestic bills purchase line (DBP line) not exceeding P10,000,000.00. This agreement was embodied in a Credit Agreement,^[5] signed by Robert S. Jaworski (*Jaworski*), President of SMCI and petitioner Doroteo Gaerlan (*Gaerlan*), President and General Manager of MGG, as borrowers, and Inocencio Deza, Jr., Executive Vice-President of PNB, as lender. The loan had an annual interest rate equivalent to 90-day London inter-bank offered rate plus spread of 2.5% from initial drawdown until its full payment. The loan proceeds would be utilized to finance the construction of a double hull oil tanker called Arabian Horse II, a joint business venture of SMCI and MGG.

To secure the loan, Gaerlan and Jaworski executed the Chattel Mortgage with Power of Attorney^[6] over the vessel and, as additional security and by way of payment to the loan, Gaerlan, as president of MGG, executed the Deed of Assignment^[7] in favor of PNB, pertaining to its monthly income of at least P6,000,000.00 arising from the proceeds of the Consecutive Voyage Charter Party between Petron Corporation (*Petron*) and MGG. To personally guarantee the loan, Jaworski and his wife, Evelyn (*Spouses Jaworski*), together with Gaerlan and his wife Marilen (*Spouses Gaerlan*), executed the Joint and Solidary Agreement (JSA),^[8] whereby the parties absolutely, unconditionally and irrevocably bound themselves, jointly and severally, to pay PNB in case the principal debtors defaulted in the payment of the loan.

On May 29, 1998, SMCI and MGG obtained another P40,000,000.00 one-year omnibus line and a grace period to pay the loan for six (6) months.^[9] As additional

security for the loan, Spouses Gaerlan, as accommodation mortgagor, executed in favor of PNB, the Real Estate Mortgage^[10] over their parcel of land located on Arguelles Street, Sta. Mesa, Manila, covered by TCT No. RT-10565 (247945).

On January 4, 1999, PNB again granted SMCI and MGG an additional three (3) year and six (6) month term loan in the amount of Ten Million Pesos (P10,000,000.00) which would be secured continuously by the existing Real Estate Mortgage, the JSA and the 5-year Consecutive Voyage Contract.^[11]

When SMCI and MGG defaulted in the payment of their loan obligation, PNB sent a demand letter but it was unheeded.

To protect its interest, PNB instituted a petition for the extrajudicial foreclosure sale of Spouses Gaerlan's real property. The public auction sale was held on February 20, 2001, with PNB as the winning and highest bidder. The bid price amounting to P35,875,000.00 was applied as partial payment of the loan obligation of SMCI and MGG, which amounted to P520,647,758.55^[12] as of February 13, 2001. Thereafter, the Certificate of Sale was issued and recorded on February 13, 2002.

On January 3, 2002, Gaerlan filed a complaint^[13] before the RTC-QC for the nullification of contracts of loan, real estate mortgage and extrajudicial foreclosure sale, which was docketed as Civil Case No. Q-02-45873. In his complaint, Gaerlan alleged, among others, that as of February 13, 2001, the account secured by the real estate mortgage had a principal amount of P239,168,222.87, interest charges of P108,431,111.64, and penalty charges of P119,353,328.17; that the auction sale of the property amounting to P35,875,000.00, which would only cover part of the accrued interests and penalties and would not reduce the principal obligation, was unjust and inequitable; that the stipulated interests and penalties were much higher than 12% per annum; that all the loans secured by the promissory notes and real estate mortgage were null and void as they violated the Usury Law; and that in view of the nullity of the contracts of loan and the promissory notes, the real estate mortgage and the extrajudicial foreclosure sale were likewise null and void. Gaerlan also questioned the legality of the extrajudicial foreclosure sale contending that it was made without notice, posting and publication. He asserted that the extrajudicial foreclosure sale was published in the Philippine Star, a newspaper edited and published in the City of Manila, and not in Quezon City, where the property was located.

In its Answer with Compulsory Counterclaim,^[14] PNB moved for the dismissal of the complaint for lack of cause of action because Gaerlan neither denied his liability under the loan contracts, promissory notes and real estate mortgage nor questioned the genuineness and due execution of the said notes and contract. PNB further averred that with the suspension of the Usury Law, the lender and the borrower could validly agree on any interest that could be charged on the loan. With respect to the publication in the Philippine Star, it was valid as it was a newspaper of general circulation with a nationwide coverage.

Meanwhile, Spouses Jaworski filed an action for declaratory relief before the RTC, Branch 24, Manila (*RTC-Manila*), docketed as Civil Case No. 02-104294, contending that in August 1998, Jaworski and Gaerlan had executed a Memorandum of Agreement (*MOA*) whereby the parties had entered into a "business divorce" and

agreed that the ownership of the vessel, Arabian Horse II, would be transferred to Gaerlan in favor of the latter's assumption of all the loans extended by PNB to finance the construction of the said vessel; and that PNB had been informed of the said agreement. Spouses Jaworski prayed that their liability under the JSA executed on February 25, 1997 be extinguished by reason of the said business divorce.

In an Order,^[15] the RTC-Manila granted the action for declaratory relief and released the spouses Jaworski from their duties and responsibilities under the Joint and Solidary Agreement. The RTC-Manila explained that the business divorce and the agreement of Jaworski and Gaerlan which was conveyed and approved by PNB per Board Resolution, dated May 13, 1999, had the effect of extinguishing the liability of Spouses Jaworski in their personal capacities and as principal officers of SMCI. On appeal, the said order was affirmed *in toto* by the CA in its Decision^[16] dated June 23, 2005. The said CA decision became final and executory and the Entry of Judgment^[17] was issued on July 20, 2005.

Consequently, Gaerlan filed his Supplemental Complaint^[18] asserting that the nullification of the JSA in Civil Case No. 02-104294, which was the principal obligation undertaken by Spouses Gaerlan, in effect, nullified the real estate mortgage covering their property as the mortgage was merely an accessory of the said agreement.

On May 3, 2011, Gaerlan died.^[19] Thereafter, he was substituted by his son, Raymond G. Gaerlan (*petitioner*).^[20]

Ruling of the RTC

On April 16, 2013, the RTC-QC rendered its judgment^[21] in Civil Case No. Q-02-45873, declaring the contracts of loan and extrajudicial foreclosure sale null and void and releasing Gaerlan from liability. The RTC-QC stated that because the JSA was declared void in the January 13, 2004 Order of the RTC-Manila, the principal obligation, guaranteed by the said agreement, and the real estate mortgage were likewise void pursuant to the principle of *res judicata* in the concept of conclusiveness of judgment. Thus, the dispositive portion reads:

WHEREFORE, in light of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant. Accordingly:

1. the contracts of loan between the Spouses Gaerlan and co-obligors and the defendant, as well as the promissory notes relative thereto is nullified or declared null and void;
2. the real estate mortgage executed by the spouses Gaerlan in favor of defendant is likewise nullified;
3. the extrajudicial foreclosure sale and the certificate of sale issued by the Clerk of Court and the *Ex Officio* Sheriff are declared null and void;

4. the plaintiff, wife and co-obligors are relieved with their obligations to pay the principal, interests and penalties of the loans obtained from the defendant, since the subject contracts of loan and the promissory notes are declared null and void.

SO ORDERED.^[22]

The Ruling of the CA

On appeal, the CA *reversed* and *set aside* the April 16, 2013 Decision of the RTC-QC. The CA held that the JSA remained valid and enforceable considering that only certain stipulations and clauses were declared void by the RTC-Manila in Civil Case No. 02-104294. It likewise explained that the contract of loan was the principal contract while the JSA was merely an accessory to the contract that guaranteed the payment of the principal obligation. The CA further ruled that even assuming that the JSA was void, Gaerlan's liability subsisted because after the business divorce, the loan was restructured and Gaerlan substituted SMC as principal borrower.

Petitioner filed a motion for reconsideration but it was denied in the CA Resolution, dated March 16, 2015.

Hence, this petition raising the following

ISSUES

A. WHETHER OR NOT THE REAL ESTATE MORTGAGE IS AN ACCESSORY CONTRACT OF THE JOINT AND SOLIDARY AGREEMENT DATED 05 MARCH 1997.

B. WHETHER OR NOT THE DECISION OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 24, NULLIFIED THE JOINT AND SOLIDARY AGREEMENT DATED 05 MARCH 1997 IN ITS ENTIRETY.

C. WHETHER OF NOT THE NULLIFICATION OF THE JOINT AND SOLIDARY AGREEMENT DATED 05 MARCH 1997 BY THE REGIONAL TRIAL COURT OF MANILA, BRANCH 24 AFFECTED OR REDOUNDED TO THE BENEFIT OF THE PETITIONER.

D. WHETHER OR NOT DOCUMENTS AND ISSUES WHICH WERE NOT PRESENTED AND RAISED IN THE HONORABLE TRIAL COURT MAY CONSIDERED IN RESOLVING AN APPEAL.

E. WHETHER OR NOT THE INTEREST RATE AGREED UPON BY THE PARTIES IS USURIOUS.^[23]

Petitioner contends that the prior judgment, rendered in Civil Case No. 02-104294, releasing Spouses Jaworski from liability under the JSA constitutes *res judicata* in the present case. He insists that the declaration of the nullity of the JSA in the said case renders the real estate mortgage and other loan documents without force and effect because these documents were executed pursuant to the JSA. He rationalizes that if Spouses Jaworski were released from their liability under the JSA. the same pronouncement should likewise apply to him and his spouse as they were a

party/signatory to the said agreement; otherwise, it would be a clear violation of their constitutional right to equal protection of laws and would cause undue prejudice to their rights.

Petitioner alleges that the CA erred when it used the May 13, 1999 Board Resolution of the PNB and the Omnibus Agreement as basis for resolving the appeal, as these documents were neither presented in court nor were the contents thereof litigated.

Finally, petitioner avers that the interest rate imposed by PNB on the loan was so excessive that it led to the hemorrhaging of his assets.

In its Comment,^[24] PNB argued that petitioner mistakenly invoked the principles of *res judicata* and conclusiveness of judgment. It reiterated its position before the CA that the JSA was not the principal contract or obligation; it was a security contract or a surety contract and, as such, was also an accessory contract like the real estate mortgage. The PNB further posited that the January 13, 2004 Order of the RTC-Manila in Civil Case No. 02-104294 did not invalidate or declared void *ab initio* the entire JSA but only the specified paragraphs that pertained to the obligations and liabilities of Spouses Jaworski. Thus, "the obligations and liabilities of the Spouses Jaworski alone and not that of, or together with, the Gaerlans were the ones that were extinguished."^[25]

The Court's Ruling

Essentially, the issue to be resolved is whether the decision of the RTC-Manila, which released Spouses Jaworski from liability, constitutes *res judicata* redounding to the benefit of petitioner.

It does not.

The doctrine of *res judicata* provides that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It embraces two concepts as enunciated in Section 47, Rule 39 of the Revised Rules of Court, namely: (1) bar by prior judgment and (2) conclusiveness of judgment.^[26] Both concepts are founded on public "(1) policy and necessity which makes it to the interest of the State that there should be an end to litigation, interest *reipublicae ut sit finis litium*, and (2) the hardship on the individual that he should be vexed twice for the same cause, *nemo debet bis vexari et eadem causa*."^[27]

There is bar by former judgment when, between the first case where the judgment was rendered and the second case where such judgment was invoked, there was identity of parties, subject matter and cause of action.^[28] But where there is identity of parties and subject matter in the first and second cases, but no identity of causes of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed conclusiveness of judgment.^[29] Bar by prior judgment is the effect of a judgment barring to the prosecution of a second action upon the same claim, demand or cause of action while conclusiveness of judgment precludes the relitigation of a particular fact of issue in another action