

FIRST DIVISION

[G.R. No. 169407, March 25, 2015]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. AMADOR DOMINGO, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, filed by petitioner Bank of the Philippine Islands (BPI), seeking the reversal and setting aside of the Decision^[1] dated July 11, 2005 and Resolution^[2] dated August 19, 2005 of the Court of Appeals in CA-G.R. SP No. 88836.

The Petition arose from the following facts:

On September 27, 1993, respondent Amador Domingo (Amador) and his wife, the late Mercy Maryden Domingo (Mercy),^[3] (collectively referred to as the spouses Domingo) executed a Promissory Note^[4] in favor of Makati Auto Center, Inc. in the sum of P629,856.00, payable in 48 successive monthly installments in the amount of P13,122.00 each. They simultaneously executed a Deed of Chattel Mortgage^[5] over a 1993 Mazda 323 (subject vehicle) to secure the payment of their Promissory Note. Makati Auto Center, Inc. then assigned, ceded, and transferred all its rights and interests over the said Promissory Note and chattel mortgage to Far East Bank and Trust Company (FEBTC).

On April 7, 2000, the Securities and Exchange Commission (SEC) approved and issued the Certificate of Filing of the Articles of Merger and Plan of Merger executed on January 20, 2000 by and between BPI, the surviving corporation, and FEBTC, the absorbed corporation. By virtue of said merger, all the assets and liabilities of FEBTC were transferred to and absorbed by BPI.^[6]

The spouses Domingo defaulted when they failed to pay 21 monthly installments that had fallen due consecutively from January 15, 1996 to September 15, 1997. BPI, being the surviving corporation after the merger, demanded that the spouses Domingo pay the balance of the Promissory Note including accrued late payment charges/interests or to return the possession of the subject vehicle for the purpose of foreclosure in accordance with the undertaking stated in the chattel mortgage. When the spouses Domingo still failed to comply with its demands, BPI filed on November 14, 2000 a Complaint^[7] for Replevin and Damages (or in the alternative, for the collection of sum of money, interest and other charges, and attorney's fees) which was raffled to the Metropolitan Trial Court (MeTC) of Manila, Branch 9, and docketed as Civil Case No. 168949-CV. BPI included a John Doe as defendant because at the time of filing of the Complaint, BPI was already aware that the subject vehicle was in the possession of a third person but did not yet know the

identity of said person.

In their Answer,^[8] the spouses Domingo raised the following affirmative defenses:

4. [BPI] has no cause of action against the [spouses Domingo].
5. The Honorable Court has no jurisdiction over this case,
6. As per the allegations in the complaint, JOHN DOE is an indispensable party to this case so with his whereabouts unknown, service by publication should first be made before proceeding with the trial of this case;
7. Defendant Maryden Domingo once obtained a car loan from Far East Bank and Trust Company but the car was later sold to Carmelita S. Gonzales with the bank's conformity and the buyer subsequently assumed payment of the balance of the mortgaged loan.

During trial, the prosecution presented as witness Vicente Magpusao, a former employee of FEBTC and now an Account Analyst of BPI. His testimony was summed up by the MeTC as follows:

Vicente Magpusao, [BPI's] Account Analyst and formerly connected with Far East Bank and Trust Company testified that on September 27, 1993, [the spouses Domingo] for consideration executed and delivered to Makati Auto Center, Inc. a Promissory Note in the sum of P629,856.00 payable in monthly installments in accordance with the schedule of payment indicated in said Promissory Note. In order to secure the payment of the obligation, the [spouses Domingo] executed in favor of said Makati Auto Center, Inc. on the same date a Chattel Mortgage over one (1) unit of 1993 Mazda (323) with Motor No. B6-270146 and with Serial No. BG1062M9100287. With notice to [the spouses Domingo], said Makati Auto Center, Inc. assigned to Far East Bank and Trust Co. the Chattel Mortgage as shown by the Deed of Assignment executed by [Makati Auto Center, Inc.]. Far East Bank and Trust Co. on the other hand, has been merged with and/or absorbed by herein plaintiff [BPI]. The [spouses Domingo] defaulted in complying with the terms and conditions of the Promissory Note with Chattel Mortgage by failing to pay twenty[-one] (21) successive installments which fell due on January 15, 1996 up to September 15, 1997. [BPI] sent a demand letter [to] defendant Mercy Domingo thru registered mail demanding payment of the whole balance of the Promissory Note plus the stipulated interest and other charges or return to [BPI] the possession of the above-described motor vehicle. There were some negotiations made by the [spouses Domingo] to their In House Legal Assistant but the same did not materialize. Based on the Statement of Account dated October 31, 2000, [the spouses Domingo have] an outstanding balance of P275,562.00 exclusive of interest and other charges.

On cross-examination, the witness explained that the first time he came to handle [the spouses Domingo's] account was in 1997. Despite the fact that he was not yet employed with the bank in 1993, he knew exactly

what happened in this particular transaction because of his experience in auto financing. He also has an access [to] the Promissory Note, Chattel Mortgage and other records of payment made by the bank. Based on the records, the [spouses Domingo] issued several postdated checks but not for the entire term. There were payments made from October 30, 199[3] up to September 14, 1994. He was not the one who received payments for the auto finance. If there were receipts issued, they will only ride for the account of Mrs. Domingo. He was not sure if these receipts are kept in the warehouse or probably disposed of by the bank since the transaction was made in 1997. They already have a computer records of all payments made by their client. Based on the subsidiary ledger, there were three (3) checks that bounced and these are payments from the new buyer. They only have one (1) photocopy of these checks in the amount of P325,431.60 while the other two (2) are missing. He was not aware who owns Cargo and Hardware Corporation but the check was issued by a certain Miss Gonzales. The witness further testified that anyone can pay the monthly amortization as long as the payment is for the account of Maryden Domingo. They cannot include Carmelita Gonzales as one of the defendants in this case because they don't have a document executed by the latter in behalf of Far East Bank and Trust Co. The bank did not approve the Deed of Sale with Assumption of Mortgage.

Witness further testified that he found the photocopy of the Deed of Sale in the records of Maryden Domingo. The Promissory Note and Chattel Mortgage were executed by the defendants Maryden and Amador Domingo. There was no assumption of obligation of the [spouses Domingo]. Witness however admitted that Far East Bank did not turn over to [BPI] all the records pertaining to the account of the [spouses Domingo].^[9] (Citations omitted.)

Amador himself testified for the defense. The MeTC provided the following summary of Amador's testimony:

For his defense, defendant Amador Domingo testified that his wife and co-defendant Mercy Maryden Domingo died on November 27, 2003. He admitted that his wife bought a car and was mortgaged to Far East Bank and Trust Company. He identified the Chattel Mortgage and the Promissory Note he executed together with his wife. In connection with the execution of this Promissory Note, he recalled that his wife issued forty-eight (48) checks. The twelve (12) checks were cleared by the bank and his wife was able to obtain a discount for prompt payments up to October 1994. While they were still paying for the car, Carmelita Gonzales got interested to buy the car and is willing to assume the mortgage. After furnishing the bank [with] the Deed of Sale duly notarized, Carmelita Gonzales subsequently issued a check payable to Far East Bank and Trust Company and the remaining postdated checks were returned to them. Based on the application of payment prepared by [BPI's] witness, Carmelita Gonzales made payments from November 14, 1995 to December 1995. Aside from these payments on May 19, 1997, Carmelita Gonzales issued a check to Far East Bank in the amount of P385,431.60. In 1996, he received a phone call from a certain Marvin Orence asking for their assistance to locate the car which Carmelita

Gonzales bought from them. His lawyer went to Land Transportation Office for assistance. From the time Ms. Gonzales started to pay, they never received any demand letter from Far East Bank. Thereafter, on February 29, 1997, they received a demand letter from Espino Law Office [on] behalf of [FEBTC]. His lawyer made a reply on March 31, 1997 stating therein that the motor vehicle for which the loan was obtained had been sold to Carmelita Gonzales as of July 5, 1994 with the knowledge and approval of their client. After three years, they received another demand letter dated October 31, 2000 from Labaguiz Law Office. His lawyer made the same reply on March 7, 2000 and another letter on November 24, 2000.

Witness further testified that this malicious complaint probably triggered the early demise of his wife who has a high blood pressure. His wife died of aneurism. As damages, he is asking for the amount of P200,000.00 as moral damages, P75,000.00 as attorney's fees and P5,000.00 appearance fee.

On cross-examination, witness elaborates that when his wife presented to Far East Bank the Deed of Sale with Assumption of Mortgage, the bank made no objection and returned all their postdated checks. His wife was the one who deal[t] with Carmelita Gonzales but he always provide[d] assistance with respect to paper works. Aside from the aforesaid Deed of Sale, there is no other document which shows the conformity of the bank. They were only verbally assured by Mr. Orence that their papers are in order.^[10]

On June 10, 2004, the MeTC rendered a Decision in favor of BPI as the bank was able to establish by preponderance of evidence a valid cause of action against the spouses Domingo. According to the MeTC, novation is never presumed and must be clearly shown by express agreement or by acts of equal import. To effect a subjective novation by a change in the person of the debtor, it is necessary that the old debtor be released expressly from the obligation and the third person or new debtor assumes his place. Without such release, there is no novation and the third person who assumes the debtor's obligation merely becomes a co-debtor or surety. The MeTC found Amador's bare testimony as insufficient evidence to prove that he and his wife Mercy had been expressly released from their obligations and that Carmelita Gonzales (Carmelita) assumed their place as the new debtor within the context of subjective novation; and if at all, Carmelita only became the spouses Domingo's co-debtor or surety. While finding that BPI was entitled to the reliefs prayed for, the MeTC made no adjudication as to the entitlement of the bank to the Writ of Replevin, and instead awarded monetary reliefs as were just and equitable. The dispositive portion of the MeTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [BPI], ordering defendant Amador Domingo:

1. To pay [BPI] the sum of P275,562.00 plus interest thereon at the rate of 36% per annum from November 15, 2000 until fully paid;
2. To pay [BPI] the sum equivalent to 25% of the total amount due as attorney's fees; and

3. To pay the costs of suit.^[11]

Acting on Amador's Motion for Reconsideration, the MeTC issued an Order^[12] dated September 6, 2004 affirming its earlier judgment but reducing the attorney's fees awarded, thus:

WHEREFORE, premises considered the Decision of this Court dated June 10, 2014 stands, subject to the modification that the attorney's fees of twenty-five percent (25%) is ordered reduced to ten percent (10%) of the total amount due.^[13]

Dissatisfied, Amador appealed his case before the Regional Trial Court (RTC) of Manila, Branch 26, wherein it was docketed as Civil Case No. 04-111100. In its Decision dated February 10, 2005, the RTC held that in novation, consent of the creditor to the substitution of the debtor need not be by express agreement, it can be merely implied. The consent is not required to be in any specific or particular form; the only requirement being that it must be given by the creditor in one way or another. To the RTC, the following circumstances demonstrated the implied consent of BPI to the novation: (1) BPI had knowledge of the Deed of Sale and Assumption of Mortgage executed between Mercy and Carmelita, but did not interpose any objection to the same; and (2) BPI (through FEBTC) returned the personal checks of the spouses Domingo and accepted the payments made by Carmelita. The RTC also noted that BPI made a demand for payment upon the spouses Domingo only after 30 months from the time Carmelita assumed payments for the installments due. The RTC reasoned that if the spouses Domingo truly remained as debtors, BPI would not have wasted time in demanding payments from them. Ultimately, the RTC decreed:

WHEREFORE, premises considered, the judgment appealed from is hereby reversed. The complaint filed by [BPI] before [MeTC] Branch 9, Manila, is hereby DISMISSED and ordering [BPI] to pay defendant/appellant Amador Domingo the following, to wit:

- a) One Hundred Thousand (P100,000.00) Pesos as moral damages;
- b) Fifty Thousand (P50,000.00) Pesos as exemplary damages;
- c) Fifty Thousand (P50,000.00) Pesos as attorney's fees;
- d) Twenty-Five Thousand (P25,000.00) [Pesos] as litigation expenses;
- e) Costs of this suit.^[14]

Aggrieved by the foregoing RTC judgment, BPI filed a Petition for Review with the Court of Appeals, docketed as CA-G.R. SP No. 88836. The Court of Appeals promulgated its Decision on July 11, 2005, affirming the finding of the RTC that novation took place. The Court of Appeals, relying on the declaration in *Babst v. Court of Appeals*^[15] that consent of the creditor to the substitution of debtors need not always be express and may be inferred from the acts of the creditor, ruled that: