

## THIRD DIVISION

**[ G.R. No. 200567, June 22, 2015 ]**

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.  
CPR PROMOTIONS AND MARKETING, INC. AND SPOUSES  
CORNELIO P. REYNOSO, JR. AND LEONIZA \* F. REYNOSO,  
RESPONDENTS.**

### D E C I S I O N

**VELASCO JR., J.:**

#### The Case

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the September 28, 2011 Decision<sup>[1]</sup> and February 13, 2012 Resolution<sup>[2]</sup> of the Court of Appeals (CA) rendered in CA-G.R. CV No. 91424. Said rulings dismissed petitioner Metropolitan Banking and Trust Company's (MBTC's) claim for deficiency payment upon foreclosing respondents' mortgaged properties and ordered the bank, instead, to return to respondent mortgagors the excess amount of PhP 722,602.22.

#### The Facts

The facts of the case, as culled from the records, are as follows:

From February to October 1997, respondent CPR Promotions and Marketing, Inc. (CPR Promotions) obtained loans from petitioner MBTC. These loans were covered by fifteen (15) promissory notes (PNs) all signed by respondents, spouses Leoniza F. Reynoso and Cornelio P. Reynoso, Jr. (spouses Reynoso), as Treasurer and President of CPR Promotions, respectively. The issued PNs are as follows:

	<b>PN No.</b>	<b>Date</b>	<b>Amount</b>
1.	277894 (BDS-143/97)	February 7, 1997	P 6,50,0,000.00
2.	281728 (BD-216/97)	July 21, 1997	P 959,034.20
3.	281735 (BD-222/97)	July 31, 1997	P 508,580.83
4.	281736 (BD-225/97)	August 12, 1997	P 291,732.50
5.	281737 (BD-226/97)	August 12, 1997	P 157,173.12
6.	281745 (BD-229/97)	August 22, 1997	P 449,812.25
7.	281747 (BDS-94854.696.00.999)	September 3, 1997	P 105,000.00
8.	281749 (BD-236/97)	September 11, 1997	P 525,233.93
9.	281750 (BD-238/97)	September 12, 1997	P 1,310,099.36
10.	473410 (BD-239/97)	September 19, 1997	P 251,725.00

11.	473414 (BD-240/97)	September 19, 1997	P 288,975.66
12.	473412 (BD-244/97)	September 26, 1997	P 62,982.53
13.	473411 (BD-245/97)	September 26, 1997	P 156,038.85
14.	473413 (BD-251/97)	October 3, 1997	P 767,512.30
15.	473431 (BD-252/97)	October 6, 1997	P 557,497.45
<b>TOTAL PRINCIPAL AMOUNT</b>			<b>12,891,397.78</b>

To secure the loans, the spouses Reynoso executed two deeds of real estate mortgage on separate dates. The first mortgage, securing the amount of PhP 6,500,000, was executed on February 2, 1996 over real estate covered by Transfer Certificate of Title (TCT) No. 624835,<sup>[3]</sup> the other was executed on July 18, 1996 over properties covered by TCT Nos. 565381,<sup>[4]</sup> 263421,<sup>[5]</sup> and 274682<sup>[6]</sup> to secure the amount of PhP 2,500,000. All of the mortgaged properties are registered under the spouses Reynoso's names, except for TCT No. 565381, which is registered under CPR Promotions.<sup>[7]</sup>

Thereafter, on December 8, 1997, the spouses Reynoso executed a continuing surety agreement<sup>[8]</sup> binding themselves solidarity with CPR Promotions to pay any and all loans CPR Promotions may have obtained from petitioner MBTC, including those covered by the said PNs, but not to exceed PhP 13,000,000.

Upon maturity of the loans, respondents defaulted, prompting MBTC to file a petition for extra-judicial foreclosure of the real estate mortgages, pursuant to Act No. 3135,<sup>[9]</sup> as amended. MBTC's request for foreclosure,<sup>[10]</sup> dated March 6, 1998, pertinently reads:

We have the honor to request your good Office to conduct/undertake extra-judicial foreclosure sale proceedings under Act No. 3135, as amended, and other applicable laws on the properties covered by two Real Estate Mortgages executed by CPR PROMOTIONS & MARKETING INC., represented by its President Mr. Cornelio P. Reynoso and Treasurer Leoniza F. Reynoso and SPOUSES CORNELIO P. REYNOSO, JR., AND LEONIZA F. REYNOSO in favour of the mortgagee, METROPOLITAN BANK AND TRUST COMPANY, to secure fifteen (15) loans with a total principal amount of **TWELVE MILLION EIGHT HUNDRED NINETY ONE THOUSAND THREE HUNDRED NINETY SEVEN PESOS AND SEVENTY EIGHT CENTAVOS (P12,891,397.78)**, for breach of the terms of said mortgage.<sup>[11]</sup>

x x x x

As **Annex "R"**, a copy of the Statement of Account, showing that the total amount due on the loans of the borrowers/mortgagers which remains unpaid and outstanding as of February 10, 1998 was **ELEVEN MILLION TWO HUNDRED SIXTEEN THOUSAND SEVEN HUNDRED EIGHTY THREE PESOS AND NINETY NINE CENTAVOS (P11,216,783.99)** x x x.<sup>[12]</sup> (emphasis in the original)

Subsequently, on May 5, 1998, the mortgaged properties covered by TCT Nos. 624835 and 565381 were sold at a public auction sale. MBTC participated therein and submitted the highest bid in the amount of PhP 10,374,000. The day after, on May 6, 1998, petitioner again participated and won in the public auction sale of the remaining mortgaged properties, having submitted the highest bid amounting to PhP 3,240,000. As a result, petitioner was issued the corresponding Certificates of Sale on July 15 and 16, 1998, covering the properties subjected to the first and second public auctions, respectively.

Notwithstanding the foreclosure of the mortgaged properties for the total amount of PhP 13,614,000, petitioner MBTC alleged that there remained a deficiency balance of PhP 2,628,520.73, plus interest and charges as stipulated and agreed upon in the PNs and deeds of real estate mortgages. Despite petitioner's repeated demands, however, respondents failed to settle the alleged deficiency. Thus, petitioner filed an action for collection of sum of money against respondents, docketed as Civil Case No. 99-230, entitled *Metropolitan Bank and Trust Company v. CPR Promotions and Marketing, Inc. and Spouses Cornelio Reynoso, Jr. and Leoniza F. Reynoso*.

### **Ruling of the Regional Trial Court**

In its Decision<sup>[13]</sup> dated October 11, 2007, the Regional Trial Court, Branch 59 in Makati City (RTC) ruled in favor of petitioner that there, indeed, was a balance of PhP 2,628,520.73, plus interest and charges, as of September 18, 1998, and that respondents are liable for the said amount, as part of their contractual obligation.

<sup>[14]</sup> The court disposed of the case in this wise:

WHEREFORE, premises considered, judgment is hereby rendered ordering [respondents], jointly and severally, to pay [petitioner] Metro bank, as follows:

a] the amount of PhP 2,628,520.73 plus stipulated interest and penalty charges stipulated in the Promissory Notes marked as Exhibits A to O until full payment thereof; and

b] the costs of the suit.

SO ORDERED.

Respondents timely moved for reconsideration of the RTC's Decision, which was denied through the trial court's February 7, 2008 Order. Aggrieved, respondents elevated the case to the CA.

### **Ruling of the Court of Appeals**

The appellate court, through the assailed Decision, reversed the court *a quo* and ruled in favor of respondents. The *fallo* of the said Decision reads:

Wherefore, in view of the foregoing, the decision appealed from is reversed, and the plaintiff-appellee Metrobank is ordered to refund or return to the defendants-appellants Cornelio and Leoniza Reynoso the amount of PhP 722,602.22 representing the remainder of the proceeds of the foreclosure sale, with legal interest of six percent per annum from

the date of filing of the answer with counterclaim on March 26, 1999, until paid.

SO ORDERED.<sup>[15]</sup>

Supporting the reversal is the CA's finding that there was a sudden change in the terminology used, from "total amount due" to "principal amount."<sup>[16]</sup> According to the CA, from February to May 1998, the amount sought to be collected ballooned from PhP 11,216,783.99 to PhP 12,891,397.78. From this apparently unexplained increase, the CA deduced that the increased amount must mean the principal and interest and other charges. Furthermore, the appellate court found that petitioner failed to prove that there was a deficiency, since the records failed to corroborate the claimed amount. As noted by the CA, "[Petitioner] did not even introduce the continuing surety agreement on which the trial court gratuitously based its decision."

On October 24, 2011, petitioner filed a motion for reconsideration of the assailed Decision, which the appellate court denied in its assailed February 13, 2012 Resolution.

### **The Issues**

Hence this recourse, on the following issues:

Whether or not the CA gravely abused its discretion when it failed to consider the continuing surety agreement presented in evidence and in ruling that petitioner MBTC failed to prove that the spouses Reynoso are solidarity liable with respondent CPR Promotions.

Whether or not the CA gravely abused its discretion when it grossly misappreciated the promissory notes, real estate mortgages, petition for extrajudicial foreclosure of mortgage, certificates of sale and statement of account marked in evidence and ruled that petitioner MBTC failed to prove that a deficiency balance resulted after conducting the extrajudicial foreclosure sales of the mortgaged properties.

### **The Arguments**

Anent the first issue, MBTC faults the appellate court for finding that it did not introduce the continuing surety agreement on which the RTC based its ruling that respondent spouses are solidarity liable with respondent CPR Promotions.<sup>[17]</sup>

As regards the second issue, petitioner asserts that the CA's grant of a refund valued at PhP 722,602.22 plus legal interest of six percent (6%) in favor of respondents is erroneous for two reasons: *first*, respondents never set up a counterclaim for refund of any amount;<sup>[18]</sup> and *second*, the total outstanding obligation as of February 10, 1998, to which the full amount of the bid prices was applied, is PhP 11,216,783.99 and not PhP 12,891,397.78, which was used by the CA in its computation.<sup>[19]</sup>

Lastly, petitioner claims that respondents should be made to answer for certain specific expenses connected with the foreclosure, i.e., filing fees, publication

expense, Sheriffs Commission on Sale, stipulated attorney's fee, registration fee for the Certificate of Sale, insurance premium and other miscellaneous expenses, in the amounts of PhP 1,373,238 and PhP 419,166.67 for the first and second foreclosure sales, respectively.<sup>[20]</sup>

In their Comment,<sup>[21]</sup> respondents maintained the propriety of the CA's grant of a refund, arguing that in their Answer with Compulsory Counterclaim, they laid-down in detail the excess of the prices of the foreclosed properties over their obligation.<sup>[22]</sup> Respondents then went on and argued that "from the beginning of the instant case in the trial court, [they] have already raised in issue the fact of [petitioner's] taking-over of [their] lands with values over and above the latter's financial liabilities."<sup>[23]</sup> Thus, they postulate that the CA did right when it touched on the issue and ruled thereon.<sup>[24]</sup>

Furthermore, respondents insist that there is actually no difference between the PhP 12,891,397.78 and the PhP 11,261,783.99 amounts except for the accumulated interest, penalties, and other charges.<sup>[25]</sup> Too, according to them, this is the reason why what respondent CPR owed petitioner at that time increased substantially from that on February 10, 1998, when the amount was just PhP 11,216,783.99.<sup>[26]</sup>

### **The Court's Ruling**

We **partially grant** the petition. While We fully agree with the CA that MBTC was not able to prove the amount claimed, We however, find that neither were respondents able to timely setup their claim for refund.

### **Respondents belatedly raised their compulsory counterclaim**

Rule 6 of the Rules of Court defines a compulsory counterclaim follows:

Section 7. Compulsory counterclaim. — A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount.

Accordingly, a counterclaim is compulsory if: (a) it arises out of or is necessarily connected with the transaction or occurrence which is the subject matter of the opposing party's claim; (b) it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (c) the court has jurisdiction to entertain the claim both as to its amount and nature, except that in an original action before the RTC, the counterclaim may be considered compulsory regardless of the amount.<sup>[27]</sup>

In determining whether a counterclaim is compulsory or permissive, We have, in several cases, utilized the following tests:<sup>[28]</sup>