

## FIRST DIVISION

[ G.R. No. 195546, March 14, 2012 ]

**GOODLAND COMPANY, INC., PETITIONER, VS. ASIA UNITED BANK, CHRISTINE T. CHAN, FLORANTE DEL MUNDO, ENGRACIO M. ESCASINAS, JR., IN HIS OFFICIAL CAPACITY AS CLERK OF COURT & EX-OFFICIO SHERIFF IN THE REGIONAL TRIAL COURT OF MAKATI CITY, NORBERTO B. MAGSAJO, IN HIS OFFICIAL CAPACITY AS SHERIFF IV OF THE REGIONAL TRIAL COURT OF MAKATI CITY, AND RONALD A. ORTILE, IN HIS OFFICIAL CAPACITY AS THE REGISTER OF DEEDS FOR MAKATI CITY, RESPONDENTS.**

[G.R. NO. 195561]

**GOODLAND COMPANY, INC., PETITIONER, VS. ASIA UNITED BANK, ABRAHAM CO, ATTY. JOEL T. PELICANO AND THE REGISTER OF DEEDS OF MAKATI CITY, RESPONDENTS.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

These consolidated petitions for review on certiorari filed under Rule 45 by one and the same party (Goodland Company, Inc.) both assail the Decision<sup>[1]</sup> dated September 15, 2010 and Resolution<sup>[2]</sup> dated January 31, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 90418.

#### **Factual Antecedents**

Sometime in July 1999, petitioner Goodland Company, Inc. (petitioner) mortgaged its two parcels of land situated in Sta. Rosa, Laguna and covered by Transfer Certificate of Title (TCT) Nos. 321672 and 321673 ("Laguna Properties"). The Third Party Real Estate Mortgage (REM) secured the loans extended by respondent Asia United Bank ("AUB") to Radio Marine Network (Smartnet), Inc. (RMNSI), doing business as Smartnet Philippines,<sup>[3]</sup> under the latter's Php250 million Omnibus Credit Line with AUB.

In addition to the aforesaid collaterals, petitioner executed a Third Party REM over its 5,801-square meter property located at Pasong Tamo St., Makati City ("Makati Property") covered by TCT No. 114645. The REMs, both signed by Gilbert G. Guy, President of Goodland Company, Inc., were duly registered by AUB with the Registry of Deeds for Calamba, Laguna and Registry of Deeds for Makati City, and annotated on the said titles.

Subsequently, however, petitioner repudiated the REMs by claiming that AUB and its officers unlawfully filled up the blank mortgage forms and falsified the entries

therein. The Laguna properties were the subject of two suits filed by petitioner to forestall their imminent foreclosure, and similar actions were likewise instituted by petitioner involving the Makati property which is the subject of the present case.

### **Laguna Properties<sup>[4]</sup>**

On January 16, 2003, petitioner filed a complaint for annulment of mortgage before the Regional Trial Court (RTC) of Biñan, Laguna, Branch 25, docketed as **Civil Case No. B-6242**, on the ground that said REM was falsified and in contravention of the parties' agreement that the blank mortgage form would merely serve as "comfort document" and not to be registered by AUB. While said case was pending, RMNSI/Smartnet defaulted on its loan obligation, which prompted AUB to exercise its right under the REM by filing on October 19, 2006 an application for extrajudicial foreclosure of real estate mortgage under Act 3135, as amended, with the Office of the Executive Judge of the RTC of Biñan, Laguna. In the public auction sale, AUB emerged as the highest bidder and was issued a Certificate of Sale which was registered with the Registry of Deeds of Calamba on November 23, 2006.

Prior to the consolidation of title in the foreclosing mortgagee (AUB), petitioner commenced a second suit on November 28, 2006 in the RTC of Biñan, Branch 25, docketed as **Civil Case No. B-7110**. The complaint sought to annul the foreclosure sale and enjoin the consolidation of title in favor of AUB, on the ground of alleged falsification of the REM.

On December 11, 2006, respondents moved to dismiss Civil Case No. B-7110, calling the attention of the RTC to petitioner's forum shopping in view of the pendency of Civil Case No. B-6242. They argued that the two cases were anchored on the alleged falsification of the REM as basis for the reliefs sought. The RTC granted the said motion on March 15, 2007 and dismissed with prejudice Civil Case No. B-7110 on grounds of forum shopping and *litis pendentia*. Said court explained that the injunction case (B-7110) and annulment case (B-6242) were founded on the same transactions, same essential facts and circumstances, and raise substantially the same issues. That petitioner additionally prayed for a writ of preliminary injunction did not affect the similarity of the two cases; petitioner could have prayed for injunctive relief as ancillary remedy in the annulment case. It was also stated that the judgment in the annulment case on the validity of the REM would constitute *res judicata* on the injunction case.

On March 15, 2007, the RTC granted AUB a writ of possession over the foreclosed properties. The writ was issued on March 26, 2007 and AUB obtained possession of the properties on April 2, 2007.

On August 16, 2007, the RTC dismissed Civil Case No. B-6242 on motion of respondents. Said court likewise noted that the allegations and reliefs sought by petitioner were identical with those in Civil Case No. B-7110, and that petitioner did not inform the court that it filed Civil Case No. B-7110.

Petitioner appealed both dismissals to the CA, the separate appeals it filed were docketed as **CA-G.R. CV No. 90114** (injunction case) and **CA-G.R. CV No. 91269** (annulment case).

On June 5, 2009, the CA granted the appeal in CA-G.R. CV No. 90114 and reversed

the RTC's order dated March 15, 2007. It ordered the reinstatement of petitioner's complaint in Civil Case No. B-7110.<sup>[5]</sup> Respondents filed a motion for reconsideration which was denied in a resolution<sup>[6]</sup> dated February 17, 2010.

In a decision dated August 11, 2009, petitioner's appeal in CA-G.R. CV No. 91269 was likewise granted, which effectively reinstated Civil Case No. B-6242. Respondents moved for reconsideration but the same was denied in a resolution dated November 10, 2009.

Respondents elevated to this Court the CA's reversal of the RTC's dismissal orders, in separate petitions for review under Rule 45, docketed as **G.R. No. 190231** (CA-G.R. CV No. 91269) and **G.R. No. 191388** (CA-G.R. CV No. 90114).

On December 8, 2010, this Court's First Division granted the petition in **G.R. No. 190231**, reversing and setting aside the decision dated August 11, 2009 and resolution dated November 10, 2009 of the CA, and reinstating the August 16, 2007 and December 5, 2007 orders of the RTC which dismissed Civil Case No. B-6242. Petitioner filed a motion for reconsideration but the same was denied with finality in the Court's Resolution<sup>[7]</sup> dated January 19, 2011.

On March 9, 2011, this Court's First Division likewise granted the petition in **G.R. No. 191388** (CA-G.R. CV No. 90114), reversing and setting aside the decision dated June 5, 2009 and resolution dated February 17, 2010 of the CA. The Court ordered the reinstatement of the March 15, 2007 order of the RTC dismissing Civil Case No. B-7110.

### ***Makati Property***

Petitioner filed the first suit assailing the REM over its property covered by TCT No. 114645 on January 17, 2003, docketed as **Civil Case No. 03-045** of the RTC of Makati City, Branch 56. The Complaint<sup>[8]</sup> against AUB, Abraham Co (AUB President), Atty. Joel T. Pelicano and the Register of Deeds of Makati City alleged that sometime in March 2000, in compliance with the requirements of AUB, and by way of accommodation as security for the loan of Smartnet Philippines, Inc. (SPI), Mr. Gilbert G. Guy signed the blank REM deed with the understanding that the document shall not be completed and not to be registered with the Register of Deeds as it would only serve as comfort document to prove petitioner's willingness to execute a REM in the future if so demanded by AUB and agreed upon by Smartnet. In contravention of such agreement and despite the fact that no notary public was present when Mr. Guy signed the REM, AUB and its officers made it appear that the REM dated February 29, 2000 with the stated consideration of Php202 million was duly completed and notarized, and was subsequently registered with the Register of Deeds. Disparities in the copy of the REM on file with the Office of the Clerk of Court of Pasig City were likewise discovered by petitioner (community tax certificates used were issued in 2001). On January 29, 2002, petitioner sent its written objections to the spurious REM and demanded from AUB its immediate cancellation. Upon request of petitioner, the National Bureau of Investigation also investigated the falsification and found forgery in the signature of respondent Pelicano (Notary Public).

Petitioner further claimed that it learned from Smartnet that the latter never

obtained any peso-denominated loan from AUB, as all its loans for working capital were in clean Japanese Yen loans. Being a falsified document, the subsequent annotation of the REM on the title of petitioner subjected the latter to an encumbrance never intended nor consented to by petitioner as owner, and consequently to the risk of foreclosure at the behest of AUB. Petitioner also alleged bad faith on the part of AUB and Co in the fraudulent execution and registration of the REM without its knowledge and consent, while respondent Pelicano's acknowledgment on the spurious REM is a violation of his duties as a notary public and made him a party to the fraudulent act.

Petitioner thus prayed for the following reliefs:

1. the Deed of Real Estate Mortgage dated February 29, 2000 be declared null and void, and accordingly cancelled;
2. the annotation of real estate mortgage on TCT-114645 under Entry No. 53584 be cancelled, and that defendants AUB and Co be ordered to surrender the said titles to plaintiff Goodland;
3. defendants AUB, Abraham Co, and Joel T. Pelicano be adjudged jointly and severally liable to plaintiff Goodland the sum of PhP5,000,000.00 as actual damages, PhP1,000,000.00 as attorney's fees and PhP1,000,000.00 as expenses of litigation;
4. defendants AUB and Abraham Co be adjudged jointly and severally liable to pay plaintiff Goodland the sum of PhP2,000,000.00 as exemplary damages; and
5. defendant Joel T. Pelicano, be adjudged liable to pay plaintiff Goodland the sum of P1,000,000.00 as exemplary damages;

Plaintiff prays for cost of suit and for such further or other reliefs and remedies just or equitable under the premises.<sup>[9]</sup>

On November 30, 2006, petitioner filed the second case against herein respondents AUB and its officers Christine T. Chan, Florante Del Mundo, Engracio M. Escasinas, Jr. (RTC of Makati City Clerk of Court and Ex-Officio Sheriff), Norberto B. Magsajo (Sheriff IV) and Ronald A. Ortile (Register of Deeds for Makati City), docketed as Civil Case No. 06-1032 of RTC of Makati City, Branch 145. Whereas the earlier case (Civil Case No. 03-045) sought the annulment of the REM based on alleged irregularities in its execution, Civil Case No. 06-1032 prayed for injunctive relief and/or nullification of the extrajudicial foreclosure sale which petitioner alleged to be procedurally and legally defective on account of the following:

1. The annotation of the falsified Third Party MORTGAGE was contrary to and in violation of the express agreement of defendant AUB and plaintiff GOODLAND;

2. The Extra-Judicial Foreclosure is **null and void** as it is based on a null and void registration/annotation of a **falsified** Real Estate Mortgage;
3. Defendant AUB's insistence on conducting the foreclosure despite the pendency of the annulment case betrays the utter bad faith and malicious intent of defendant AUB;
4. The foreclosure is for an alleged unpaid obligation of RMNI which is **not secured** by the subject Third Party MORTGAGE;
5. **No demands** for payment were made by defendant AUB on SPI;
6. The publication of the subject "*Notice of Sheriff's Sale*" in "*The Foreign Post*", which is not a "*newspaper of general circulation*", is **null and void** as it does not comply with the strict and mandatory requirements of the law (Section 3 Act No. 3135, as amended).
7. The provision on redemption in the General Banking Law of 2000 (R.A. No. 8791), that is, Section 47 (par. 2) thereof, is unconstitutional on the ground that it violates the constitutional right of plaintiff GOODLAND to equal protection of the laws under Sec. 1, Art. III of the Constitution. It also violates the prohibition against impairment of the obligations of contracts stipulated in Sec. 10, Art. III of the Constitution because it takes away from plaintiff GOODLAND the vested one-year redemption period under the existing law (Sec. 6 of Act No. 3135) at the time of the delivery of the subject Third Party MORTGAGE to defendant AUB in June 1999. The one (1) year redemption period of plaintiff GOODLAND under Sec. 6 of Act No. 3135 was drastically reduced to a maximum of three (3) months only to as short as twenty-four (24) hours, as what happened in the other foreclosure conducted by defendant AUB on the Sta. Rosa, Laguna properties of plaintiff GOODLAND.<sup>[10]</sup> (Emphasis and italics in the original.)

In addition to the issuance of a temporary restraining order (TRO) and writ of preliminary injunction to be made permanent after trial, petitioner specifically prayed that judgment be rendered in its favor and against the respondents, as follows:

- (1) Declaring the *annotation* and *registration* of the subject Third Party MORTGAGE with the Registry of Deeds of Makati City as null and void and of no legal force and effect;
- (2) In the event that a valid and legal auction sale be already conducted, declaring that the foreclosure proceeding/sale of the subject mortgaged property and/or the Certificate of Sale issued in favor of the winning bidder, as null and void and of no legal force and effect;
- (3) In the event that plaintiff GOODLAND's title to the subject property be already cancelled and the title was already consolidated or a new title already issued in favor of the