

THIRD DIVISION

[G.R. No. 143264, April 23, 2012]

LISAM ENTERPRISES, INC. REPRESENTED BY LOLITA A. SORIANO, AND LOLITA A. SORIANO, PETITIONERS, VS. BANCO DE ORO UNIBANK, INC. (FORMERLY PHILIPPINE COMMERCIAL INTERNATIONAL BANK), [*] LILIAN S. SORIANO, ESTATE OF LEANDRO A. SORIANO, JR., REGISTER OF DEEDS OF LEGASPI CITY, AND JESUS L. SARTE, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Resolution^[1] of the Regional Trial Court of Legaspi City (RTC), dated November 11, 1999, dismissing petitioners' complaint, and its Order^[2] dated May 15, 2000, denying herein petitioners' Motion for Reconsideration and Motion to Admit Amended Complaint, be reversed and set aside.

The records reveal the following antecedent facts.

On August 13, 1999, petitioners filed a Complaint against respondents for Annulment of Mortgage with Prayer for Temporary Restraining Order & Preliminary Injunction with Damages with the RTC of Legaspi City. Petitioner Lolita A. Soriano alleged that she is a stockholder of petitioner Lisam Enterprises, Inc. (LEI) and a member of its Board of Directors, designated as its Corporate Secretary. The Complaint also alleged the following:

4. Sometime in 1993, plaintiff LEI, in the course of its business operation, acquired by purchase a parcel of residential land with improvement situated at Legaspi City, covered by Transfer Certificate of Title No. 37866, copy attached as Annex "A," which property is more particularly described as follows:

x x x x

5. On or about 28 March 1996, defendant Lilian S. Soriano and the late Leandro A. Soriano, Jr., as husband and wife (hereafter "Spouses Soriano"), in their personal capacity and for their own use and benefit, obtained a loan from defendant PCIB (Legaspi Branch) (now known as Banco de Oro Unibank, Inc.) in the total amount of P20 Million;

6. That as security for the payment of the aforesaid credit accommodation, the late Leandro A. Soriano, Jr. and defendant Lilian S. Soriano, as president and treasurer, respectively of plaintiff LEI, but

without authority and consent of the board of said plaintiff and with the use of a falsified board resolution, executed a real estate mortgage on 28 March 1996, over the above-described property of plaintiff LEI in favor of defendant PCIB, and had the same registered with the Office of the Registry of Deeds, Legaspi City, copy of the Real Estate Mortgage is hereto attached and marked as Annex "B," and made part hereof, to the prejudice of plaintiffs;

7. That specifically, the Spouses Soriano, with intent to defraud and prejudice plaintiff LEI and its stockholders, falsified the signatures of plaintiff Lolita A. Soriano as corporate secretary and director of plaintiff LEI, in a document denominated as board resolution purportedly issued by the board of plaintiff LEI on 6 November 1995, making it appear that plaintiff LEI's Board met and passed a board resolution on said date authorizing the Spouses Soriano to mortgage or encumber all or substantially all of the properties of plaintiff LEI, when in fact and in truth, no resolution of that nature was ever issued by the board of plaintiff LEI, nor a meeting was called to that effect, copy of the resolution in question is hereto attached and marked as Annex "C," and made part hereof;

8. That plaintiff Lolita A. Soriano as Corporate Secretary of plaintiff LEI, had never signed a board resolution nor issued a Secretary's Certificate to the effect that on 6 November 1995 a resolution was passed and approved by plaintiff LEI authorizing the Spouses Soriano as president and treasurer, respectively, to mortgage the above-described property of plaintiff LEI, neither did she appear personally before a notary public on 28 March 1996 to acknowledge or attest to the issuance of a supposed board resolution issued by plaintiff LEI on 6 November 1995;

9. That defendant PCIB, knowing fully well that the property being mortgaged by the Spouses Soriano belongs to plaintiff LEI, a corporation, negligently and miserably failed to exercise due care and prudence required of a banking institution. Specifically, defendant PCIB failed to investigate and to delve into the propriety of the issuance of or due execution of subject board resolution, which is the very foundation of the validity of subject real estate mortgage. Further, it failed to verify the genuineness of the signatures appearing in said board resolution nor to confirm the fact of its issuance with plaintiff Lolita A. Soriano, as the corporate secretary of plaintiff LEI. Furthermore, the height of its negligence was displayed when it disregarded or failed to notice that the questioned board resolution with a Secretary's Certificate was notarized only on 28 March 1996 or after the lapse of more than four (4) months from its purported date of issue on 6 November 1995. That these circumstances should have put defendant PCIB on notice of the flaws and infirmities of the questioned board resolution. Unfortunately, it negligently failed to exercise due care and prudence expected of a banking institution;

10. That having been executed without authority of the board of plaintiff LEI said real estate mortgage dated 28 March 1996 executed by

the Spouses Soriano, as officers of plaintiff LEI in favor of defendant PCIB, is the null and void and has no legal effect upon said plaintiff. Consequently, said mortgage deed cannot be used nor resorted to by defendant PCIB against subject property of plaintiff LEI as no right or rights whatsoever were created nor granted thereunder by reason of its nullity;

11. Worst, sometime in August 1998, in order to remedy the defects in the mortgage transaction entered by the Spouses Soriano and defendant PCIB, the former, with the unlawful instigation of the latter, signed a document denominated as "Deed of Assumption of Loans and Mortgage Obligations and Amendment of Mortgage"; wherein in said document, plaintiff LEI was made to assume the P20 Million personal indebtedness of the Spouses Soriano with defendant PCIB, when in fact and in truth it never so assumed the same as no board resolution duly certified to by plaintiff Lolita A. Soriano as corporate secretary was ever issued to that effect, copy of said Deed is hereto attached and marked as Annex "D," and made part hereof;

12. Moreover, to make it appear that plaintiff LEI had consented to the execution of said deed of assumption of mortgage, the Spouses Soriano again, through the unlawful instigation and connivance of defendant PCIB, falsified the signature of plaintiff Lolita A. Soriano as corporate secretary of plaintiff LEI in a document denominated as "Corporate Resolution to Borrow," to make it appear that plaintiff LEI so authorized the Spouses Soriano to perform said acts for the corporation, when in fact and in truth no such authority or resolution was ever issued nor granted by plaintiff LEI, nor a meeting called and held for said purpose in accordance with its By-laws; copy of which is hereto attached and marked as Annex "E" and made part hereof;

13. That said irregular transactions of defendant Lilian S. Soriano and her husband Leandro A. Soriano, Jr., on one hand, and defendant PCIB, on the other, were discovered by plaintiff Lolita A. Soriano sometime in April 1999. That immediately upon discovery, said plaintiff, for herself and on behalf and for the benefit of plaintiff LEI, made demands upon defendants Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr., to free subject property of plaintiff LEI from such mortgage lien, by paying in full their personal indebtedness to defendant PCIB in the principal sum of P20 Million. However, said defendants, for reason only known to them, continued and still continue to ignore said demands, to the damage and prejudice of plaintiffs;

14. Hence, on 25 June 1999, plaintiffs commenced a derivative suit against defendants Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr., before the Securities and Exchange Commission, docketed as SEC Case No. 06-99-6339 for "Fraudulent Scheme and Unlawful Machination with Damages" in order to protect and preserve the rights of plaintiffs, copy of said complaint is hereto attached as Annex "F";

15. That plaintiffs, in order to seek complete relief from the unauthorized mortgage transaction between the Spouses Soriano and

defendant PCIB, were further compelled to institute this instant case to seek the nullification of the real estate mortgage dated 28 March 1999. Consequently, plaintiffs were forced to retain the services of a lawyer with whom they contracted to pay P100,000.00 as and for attorney's fee;

16. That unfortunately, the plaintiffs learned that on 30 July 1999, defendant Sarte, in his capacity as Notary Public of Daraga, Albay and upon application of defendant PCIB, issued a notice of Auction/Foreclosure Sale of the property subject of the mortgage in question and has set the auction sale on 7 September 1999 x x x;

17. That by reason of the fraudulent and surreptitious schemes perpetrated by defendant Lilian S. Soriano and her husband, the late Leandro A. Soriano, Jr., in unlawful connivance and through the gross negligence of defendant PCIB, plaintiff Lolita A. Soriano, as stockholder, suffered sleepless nights, moral shock, wounded feeling, hurt pride and similar injuries, hence, should be awarded moral damages in the amount of P200,000.00.

After service of summons on all defendants, the RTC issued a temporary restraining order on August 25, 1990 and, after hearing, went on to issue a writ of preliminary injunction enjoining respondent PCIB (now known as Banco de Oro Unibank, Inc.) from proceeding with the auction sale of the subject property.

Respondents Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr. filed an Answer dated September 25, 1999, stating that the Spouses Lilian and Leandro Soriano, Jr. were duly authorized by LEI to mortgage the subject property; that proceeds of the loan from respondent PCIB were for the use and benefit of LEI; that all notarized documents submitted to PCIB by the Spouses Soriano bore the genuine signature of Lolita Soriano; and that although the Spouses Soriano indeed received demands from petitioner Lolita Soriano for them to pay the loan, they gave satisfactory explanations to the latter why her demands could not be honored. It was, likewise, alleged in said Answer that it was respondent Lilian Soriano who should be entitled to moral damages and attorney's fees.

On September 28, 1999, respondent PCIB filed a Motion to Dismiss the Complaint on grounds of lack of legal capacity to sue, failure to state cause of action, and *litis pendencia*. Petitioners filed an Opposition thereto, while PCIB's co-defendants filed a Motion to Suspend Action.

On November 11, 1999, the RTC issued the first assailed Resolution dismissing petitioners' Complaint. Petitioners then filed a Motion for Reconsideration of said Resolution. While awaiting resolution of the motion for reconsideration, petitioners also filed, on January 4, 2000, a Motion to Admit Amended Complaint, amending paragraph 13 of the original complaint to read as follows:

13. That said irregular transactions of defendant Lilian S. Soriano and her husband Leandro A. Soriano, Jr., on one hand, and defendant PCIB, on the other, were discovered by plaintiff Lolita A. Soriano sometime in April 1999. That immediately upon discovery, said plaintiff, for herself

and on behalf and for the benefit of plaintiff LEI, made demands upon defendant Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr., to free subject property of plaintiff LEI from such mortgage lien, by paying in full their personal indebtedness to defendant PCIB in the principal sum of P20 Million. However, said defendants, for reason only known to them, continued and still continue to ignore said demands, to the damage and prejudice of plaintiffs; that plaintiff Lolita A. Soriano likewise made demands upon the Board of Directors of Lisam Enterprises, Inc., to make legal steps to protect the interest of the corporation from said fraudulent transaction, but unfortunately, until now, no such legal step was ever taken by the Board, hence, this action for the benefit and in behalf of the corporation;

On May 15, 2000, the trial court issued the questioned Order denying both the Motion for Reconsideration and the Motion to Admit Amended Complaint. The trial court held that no new argument had been raised by petitioners in their motion for reconsideration to address the fact of plaintiffs' failure to allege in the complaint that petitioner Lolita A. Soriano made demands upon the Board of Directors of Lisam Enterprises, Inc. to take steps to protect the interest of the corporation against the fraudulent acts of the Spouses Soriano and PCIB. The trial court further ruled that the Amended Complaint can no longer be admitted, because the same absolutely changed petitioners' cause of action.

Petitioners filed the present petition with this Court, alleging that what are involved are pure questions of law, to wit:

FIRST, WHETHER OR NOT THE COURT COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED THE ACTION ON THE GROUND THAT PETITIONER LOLITA A. SORIANO HAS NO LEGAL CAPACITY TO SUE AS SHE IS NOT A REAL PARTY-IN-INTEREST;

SECOND, WHETHER OR NOT THE COURT COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED THE ACTION ON THE GROUND THAT THERE IS ANOTHER ACTION PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE;

THIRD, WHETHER OR NOT THE COURT COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED THE ACTION ON THE GROUND THAT THE COMPLAINT STATES NO CAUSE OF ACTION;

FOURTH, WHETHER OR NOT THE COURT COMMITTED A REVERSIBLE ERROR WHEN IT DENIED THE ADMISSION OF PETITIONERS' AMENDED COMPLAINT FILED AS A MATTER OF RIGHT, AFTER THE ORDER OF DISMISSAL WAS ISSUED BUT BEFORE ITS FINALITY.

FIFTH, WHETHER OR NOT THE COURT ERRED IN DISMISSING THE ACTION, INSTEAD OF MERELY SUSPENDING THE SAME FOLLOWING THE DOCTRINE LAID DOWN IN *UNION GLASS*. [3]