694 Phil. 392

FIRST DIVISION

[G.R. No. 195592, September 05, 2012]

MAGDIWANG REALTY CORPORATION, RENATO P. DRAGON AND ESPERANZA TOLENTINO, PETITIONERS, VS. THE MANILA BANKING CORPORATION, SUBSTITUTED BY FIRST SOVEREIGN ASSET MANAGEMENT (SPV-AMC), INC., RESPONDENT.

D E C I S I O N

REYES, J.:

This resolves the petition for review on *certiorari* filed under Rule 45 of the Rules of Court which questions. the Decision[1] dated October 11, 201 0 and Resolution[2] dated January 31, 2011 of the Court of Appeals (CA) in CA-G .R. CV No. 90098 entitled *The Manila Banking Corporation, substituted by First Sovereign Asset Management, Inc., Plaintiff-Appellee, v. Magdiwang Realty Corporation, Renata P. Dragon and Esperanza Tolentino, Defendants-Appellants.*

The Factual Antecedents

The case stems from a complaint[3] for sum of money filed on April 18, 2000 before the Regional Trial Court (RTC), Makati City by herein respondent, The Manila Banking Corporation (TMBC), against herein petitioners, Magdiwang Realty Corporation (Magdiwang), Renato P. Dragon (Dragon) and Esperanza Tolentino (Tolentino), after said petitioners allegedly defaulted in the payment of their debts under the five promissory notes[4] they executed in favor of TMBC, which contained the following terms:

	Maturity Date	Amount
Promissory Note No. 4953	December 27, 1976	Php500,000.00
Promissory Note No. 10045	March 27, 1982	Php500,000.00
Promissory Note No. 10046	March 27, 1982	Php500,000.00
Promissory Note No. 10047	March 27, 1982	Php500,000.00
Promissory Note No. 10048	March 27, 1982	Php500,000.00

All promissory notes included stipulations on the payment of interest and additional charges in case of default by the debtors. Despite several demands for payment made by TMBC, the petitioners allegedly failed to heed to the bank's demands, prompting the filing of the complaint for sum of money. The case was docketed as Civil Case No. 00-511 and raffled to Branch 148 of the RTC of Makati City.

Instead of filing a responsive pleading with the trial court, the petitioners filed on October 12, 2000, which was notably beyond the fifteen (15)-day period allowed for the filing of a responsive pleading, a Motion for Leave to Admit Attached Motion to

Dismiss[5] and a Motion to Dismiss,[6] raising therein the issues of novation, lack of cause of action against individuals Dragon and Tolentino, and the impossibility of the novated contract due to a subsequent act of the Congress. The motions were opposed by the respondent TMBC, via its Opposition[7] which likewise asked that the petitioners be declared in default for their failure to file their responsive pleading within the period allowed under the law.

Acting on these incidents, the RTC issued an Order[8] on July 5, 2001 declaring the petitioners in default given the following findings:

> The record shows that as per Officer's Return dated 19 September 2000, summons were served on even date by way of substituted service. Summons were received by a certain LINDA G. MANLIMOS, a person of sufficient age and discretion then working/residing at the address indicated in the Complaint at No. 15 Tamarind St., Forbes Park, Makati City.
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> Consequently, in accordance with the Rules, defendants should have filed an Answer or Motion to Dismiss or any responsive pleading for that matter within the reglementary period, which is [fifteen] (15) days from receipt of Summons and a copy of the complaint with attached annexes. Accordingly, defendants should have filed their responsive pleading on October 2, 2000 but no pleading was filed on the aforesaid date, not even a Motion for Extension of Time. Instead, defendant's Motion to Dismiss [found its] way into the court only on the 13th day of October, clearly beyond the period contemplated by the Rules. A perusal of the Motion for Leave to Admit the Motion to Dismiss filed by defendants reveals that the case, as claimed by the counsel for defendants, was just referred to the counsel only on October 10, and further insinuated that the Motion to Dismiss was only filed on the said date in view of the complicated factual and legal issues involved. While this Court appreciates the efforts and tenacity shown by defendants' counsel for having prepared a [lengthy] pleading for his clients in so short a time, the Court will have to rule that the Motion to Dismiss was nonetheless filed out of time, hence, there is sufficient basis to declare defendant[s] in default. x x x.[9]

The decretal portion of the Order then reads:

> **WHEREFORE**, premises considered, defendants['] Motio[n] to Dismiss is hereby treated as a pleading which has not been filed at all and cannot be ruled upon by the Court anymore for the same has been filed out of time. Plaintiff's prayer to declare defendants in default is hereby **GRANTED**, and as a consequence, defendants are hereby declared in **DEFAULT**.
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> **SO ORDERED**.[10]

The petitioners' motion for reconsideration was denied by the trial court in its Order[11] dated August 2, 2005. The *ex parte* presentation of evidence by the bank before the trial court's Presiding Judge was scheduled in the same Order.

Unsatisfied with the RTC orders, the petitioners filed with the CA a petition for *certiorari*, which was docketed as CA-G.R. SP No. 91820. In a Decision12 dated December 2, 2006, the CA affirmed the RTC orders after ruling that the trial court did not commit grave abuse of discretion when it declared herein petitioners in default. The denial of petitioners' motion for reconsideration prompted the filing of a petition for review on *certiorari* before this Court, which, through its Resolutions dated March 5, 200813 and June 25, 2008,[14] denied the petition for lack of merit.

In the meantime, TMBC's presentation of evidence *ex parte* proceeded before Presiding Judge Oscar B. Pimentel of the RTC of Makati City.

The Ruling of the RTC

On May 20, 2007, the RTC rendered its Decision[15] in favor of TMBC and against herein petitioners. The decision's dispositive portion reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of the plaintiff as against:
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> 1. Defendant Magdiwang Realty Corporation, requiring said defendant to pay plaintiff the sum of [P]500,000.00 as indicated in Promissory Note No. 4953; 2. Requiring defendant Magdiwang Realty Corporation to pay the plaintiff interest to the principal loan at the rate of 14% per annum from 27 December 1976 until the amount is paid;
> 2. Requiring the defendant Magdiwang Realty Corporation to pay plaintiff penalty charges of 4% per annum from December 27, 1976 until the whole amount is paid; [and]
> 3. Requiring defendant Magdiwang Realty Corporation to pay plaintiff attorney's fees equivalent to 10% of the total outstanding obligation.
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> Further, judgment is rendered in favor of plaintiff and against defendants Magdiwang Realty Corporation, Renato Dragon and Esperanza Tolentino ordering said defendants to jointly and severally pay the plaintiff the following:
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> 1. The principal amount of [P]500,000.00 as indicated in Promissory Note No. 10045;
> 2. To pay the principal amount of [P]500,000.00 as indicated in Promissory Note No. 10046;
> 3. To pay the principal amount of [P]500,000.00 as indicated in Promissory Note No. 10047;

4. To pay the principal amount of [P]500,000.00 as indicated in Promissory Note No. 10048;
5. To pay interest in the principal loan at the rate of sixteen (16%) percent per annum as stipulated in PN Nos. 10045, 10046, 10047 and 10048 from March 27, 1981 until the whole amount is paid;
6. To pay penalty at the rate of one percent a month (1%) on the principal amount [of] loan plus unpaid interest at the rate of 16% per annum in PN Nos. 10045, 10046, 10047 and 10048 starting from March 27, 1981 until the whole amount is paid; [and]
7. To pay 10% of the total amount due and outstanding under PN Nos. 10045, 10046, 10047 and 10048 as attorney's fees. Costs against the defendants.

SO ORDERED.[16]

The petitioners' motion for reconsideration was denied by the trial court *via* its Order[17] dated November 5, 2007. Feeling aggrieved, the petitioners appealed to the CA, imputing error on the part of the trial court in: (1) not declaring that TMBC's cause of action was already barred by the statute of limitations; (2) declaring herein petitioners liable to pay TMBC despite the alleged novation of the subject obligations; (3) declaring TMBC entitled to its claims despite the alleged failure of the bank to substantiate its claims; (4) declaring TMBC entitled to attorney's fees and litigation expenses; and (5) declaring herein petitioners in default.

While appeal was pending before the appellate court, TMBC and First Sovereign Asset Management (SPV-AMC), Inc. (FSAMI) filed a Joint Motion for Substitution, asking that TMBC be substituted by FSAMI after the former executed in favor of the latter a Deed of Assignment covering all of its rights, title and interest over the loans subject of the case.

The Ruling of the CA

On October 11, 2010, the CA rendered its Decision18 dismissing the petitioners' appeal. The decision's dispositive portion reads:

WHEREFORE, in view of the foregoing premises, the appeal filed in this case is hereby **DENIED** and, consequently, **DISMISSED**. The assailed Decision dated May 20, 2007 and Order dated November 5, 2007 of the Regional Trial Court, Branch 148, in Makati City in Civil Case No. 00-51[1] are hereby **AFFIRMED.**

SO ORDERED.[19]

On the issue of prescription, the CA cited the rule that the prescriptive period is interrupted in any of the following instances: (1) when an action is filed before the court; (2) when there is a written extrajudicial demand by the creditors; and (3) when there is any written acknowledgment of the debt by the debtor. The appellate court held:

> As shown by the evidence, we arrived at the conclusion that the prescriptive period was legally interrupted on September 19, 1984 when the defendants-appellants, through several letters, proposed for the restructuring of their loans until the plaintiff-appellee sent its final demand letter on September 10, 1999. Indeed, the period during which the defendants-appellants were seeking reconsideration for the non-settlement of their loans and proposing payment schemes of the same should not be reckoned against it. When prescription is interrupted, all the benefits acquired so far from the lapse of time cease and, when prescription starts anew, it will be entirely a new one. This concept should not be equated with suspension where the past period is included in the computation being added to the period after prescription is resumed. Consequently, when the plaintiff-appellee sent its final demand letter to the defendants- appellants, thus, foreclosing all possibilities of reaching a settlement of the loans which could be favorable to both parties, the period of ten years within which to enforce the five promissory notes under Article 1142 of the New Civil Code began to run again and, therefore, the action filed on April 18, 2000 to compel the defendants-appellants to pay their obligations under the promissory notes had not prescribed. The written communications of the defendants-appellants proposing for the restructuring of their loans and the repayment scheme are, in our view, synonymous to an express acknowledgment of the obligation and had the effect of interrupting the prescription. x x x.[20] (Citation omitted)

The defense of novation was also rejected by the CA, citing the absence of two requirements for a valid novation, namely: (1) the clear and express release of the original debtor from the obligation upon the assumption by the new debtor of the obligation; and (2) the consent of the creditor thereto.

A motion for reconsideration filed by the petitioners was denied by the CA in its Resolution[21] dated January 31, 2011. Hence, the present petition for review on *certiorari*.

The Present Petition

The petitioners present the following grounds to support their petition:

> 1. THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE PRESCRIPTIVE PERIOD WAS LEGALLY INTERRUPTED ON 19 SEPTEMBER 1984 WHEN PETITIONERS, THROUGH SEVERAL LETTERS, PROPOSED FOR THE RESTRUCTURING OF THEIR LOANS UNTIL THE RESPONDENT SENT ITS FINAL DEMAND LETTER ON 10 SEPTEMBER 1999.
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> 2. THE COURT OF APPEALS ERRED WHEN IT HELD THAT THE PRINCIPLE OF NOVATION BY THE SUBSTITUTION OF DEBTORS WAS ERRONEOUSLY EMPLOYED BY THE PETITIONERS TO EXTRICATE THEMSELVES FROM THEIR OBLIGATION TO RESPONDENT.
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> 3. THE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE TRIAL