

FIRST DIVISION

[G.R. No. 173349, February 09, 2011]

**SAMUEL U. LEE AND PAULINE LEE AND ASIATRUST
DEVELOPMENT BANK, INC., PETITIONERS, VS. BANGKOK BANK
PUBLIC COMPANY, LIMITED, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

The Case

In this Petition for Review on Certiorari under Rule 45, petitioners assail the March 15, 2006 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 79362, which reversed and set aside the April 21, 2003 Decision^[2] of the Regional Trial Court (RTC), Branch 73 in Antipolo City, in Civil Case No. 99-5388, entitled *Bangkok Bank Public Company Limited v. Spouses Samuel U. Lee and Pauline Lee and Asiatrust Development Bank* for the Rescission of Real Estate Mortgage (REM), Annulment of Foreclosure Sale, Cancellation of Titles and Damages. They assail also the June 29, 2006 CA Resolution denying their motion for reconsideration.

The Facts

Midas Diversified Export Corporation (MDEC) and Manila Home Textile, Inc. (MHI) entered into two separate Credit Line Agreements (CLAs) with Respondent Bangkok Bank Public Company, Limited (Bangkok Bank) on November 29, 1995 and April 17, 1996, respectively.^[3] MDEC and MHI are owned and controlled by the Lee family: Thelma U. Lee, Maybelle L. Lim, Daniel U. Lee and Samuel U. Lee (Samuel).^[4] Both corporations have interlocking directors and management led by the Lee family; and engaged in the manufacturing and export of garments, ladies' bags and apparel.

Bangkok Bank required guarantees from the Lee family for the two CLAs. Consequently, the Lee family executed guarantees in favor of Bangkok Bank on December 1, 1995 for the CLA for MDEC and on April 17, 1996 for the CLA of MHI. Under the guarantees, the Lee family irrevocably and unconditionally guaranteed, as principal debtors, the payment of any and all indebtedness of MDEC and MHI with Bangkok Bank.^[5] Prior to the granting of the CLAs, Bangkok Bank conducted a property check on the Lee family and required Samuel to submit a list of his properties. Bangkok Bank, however, did not require the setting aside, as collateral, of any particular property to answer for any future unpaid obligation.^[6] Subsequently, MDEC and MHI made several availments from the CLAs. In time, the advances, which MDEC and MHI had taken out from the CLAs, amounted to three million dollars (USD 3,000,000).^[7]

On July 25, 1996, MDEC was likewise granted a loan facility by Asiatrust

Development Bank, Inc. (Asiitrust).^[8] This facility had an available credit line of forty million pesos (PhP 40,000,000) for letters of credit, advances on bills and export packing; and a separate credit line of two million dollars (USD 2,000,000) for bills purchase.^[9]

In the meantime, in May 1997, Samuel bought several parcels of land in Cupang, Antipolo, and later entered into a joint venture with Louisville Realty and Development Corporation to develop the properties into a residential subdivision, called Louisville Subdivision.^[10] These properties in Cupang, Antipolo are the subject properties in the instant case (Antipolo properties) and are covered by Transfer Certificate of Title (TCT) Nos. 329663 to 329511 of the Registry of Deeds of Rizal in Marikina City (RD).^[11]

Throughout 1997, MDEC availed itself of the omnibus credit line granted by Asiitrust on three occasions: ten million pesos (PhP 10,000,000) to mature on July 15, 1997; eleven million pesos (PhP 11,000,000) to mature on February 6, 1998; and another ten million pesos (PhP 10,000,000) to mature on February 20, 1998. In the same year, particularly in August 1997, when MDEC had defaulted in the payment of its loan that matured on July 15, 1997, Asiitrust initiated negotiations with MDEC and required the Lee family to provide additional collateral that would secure the loan. In December 1997, the negotiation was concluded when Asiitrust had agreed to Samuel's proposition that he would mortgage the subject Antipolo properties to secure the loan, and therefore execute a REM over the properties.^[12] While the titles of the Antipolo properties had been delivered by Samuel to Asiitrust and the REM had been executed in January 1998, spouses Samuel and Pauline Lee (spouses Lee) were requested to sign a new deed of mortgage on February 23, 1998, and, thus, it was only on that date that the said mortgage was actually notarized, registered, and annotated at the back of the titles.^[13]

Similarly, MDEC and MHI initially had made payments with their CLAs until they defaulted and incurred aggregate obligations to Bangkok Bank in the amount of USD 1,998,554.60 for MDEC and USD 800,000 for MHI.^[14] Similarly, the Lee corporations defaulted in their obligations with other creditors. For example, Security Bank Corporation (SBC) filed a case against the Lee family for a sum of money resulting from the nonpayment of obligations before the RTC, Branch 132 in Makati City, entitled *Security Bank Corporation v. Duty Free Superstore, Inc., Daniel U. Lee, Samuel U. Lee and Jacqueline M. Lee*, docketed as Civil Case No. 98-196. On January 30, 1998, the RTC in Civil Case No. 98-196 issued a Writ of Preliminary Attachment in favor of SBC, granting attachment of the defendants' real and personal properties.^[15] The writ, however, was neither registered nor annotated on the titles of the subject Antipolo properties at the RD.

On February 16, 1998, MDEC, MHI, and three other corporations owned by the Lee family filed before the Securities and Exchange Commission (SEC) a Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver.^[16] Said petition acknowledged, among others, MDEC and MHI's indebtedness with Bangkok Bank, and admitted that matured and maturing obligations could not be met due to liquidity problems. The petition likewise had a list of creditors to whom the corporations remain indebted, which included Asiitrust.^[17] The petition stated that

the Lee family and their corporations had more than sufficient properties to cover all liabilities to their creditors; and presented a list of all their properties including the subject properties located in Antipolo, Rizal. Notably, the list of properties attached to the petition indicated that the subject Antipolo properties of the spouses Lee had already been earmarked, or that they had already served as security, for MDEC's unpaid obligation with Asiatruster.^[18]

On February 20, 1998, the SEC issued a Suspension Order enjoining the Lee corporations from disposing of their property in any manner except in the ordinary course of business, and from making any payments outside the legitimate expenses of their business during the pendency of the petition.^[19]

On March 12, 1998, Bangkok Bank instituted an action before the RTC, Branch 141 in Makati City to recover the loans extended to MDEC and MHI under the guarantees, docketed as Civil Case No. 98-628.^[20] Bangkok Bank's application for the issuance of a writ of preliminary attachment was granted through the Orders dated March 17 and 18, 1998, covering the properties of the Lee family in Antipolo, Cavite, Quezon City, and Baguio, among others.^[21]

While enforcing the writs of preliminary attachment, Bangkok Bank discovered that the spouses Lee had executed a REM over the subject Antipolo properties in favor of Asiatruster; and that the REM had previously been annotated on the titles.^[22] Thus, the writs of preliminary attachment were also inscribed at the back of the TCTs covering the subject Antipolo properties, next to the annotation of the REM.

With MDEC still unable to make payments on its defaulting loans with Asiatruster, the latter foreclosed the subject mortgaged Antipolo properties. On April 15, 1998, Asiatruster won as the highest bidder at the auction sale, purchasing the said properties for PhP 20,864,735.^[23] Thereafter, Asiatruster still filed an action against MDEC and the spouses Lee to collect the deficiency amounting to at least PhP 14,800,000. Up until the filing of the memoranda by the parties before this Court, the said action remained pending before the CA.^[24]

Subsequently, the sale was registered on April 21, 1998.^[25] Believing the REM and the foreclosure sale to be fraudulent, Bangkok Bank did not redeem the subject properties. As there had been no effort to redeem the properties, consequently, the TCTs covering the subject properties were consolidated in the name of Asiatruster on April 30, 1999, and 120 new titles were issued in the name of Asiatruster without the annotation of the writs of preliminary attachment, which were deemed canceled.^[26]

Among the 120 titles foreclosed by Asiatruster in Louisville Subdivision in Antipolo, only 12 properties were sold for a maximum price of PhP 250,000 for a house and lot, and 108 titles remained. Asiatruster was still unable to sell them and convert them into cash. From then on, Asiatruster maintained security services and paid the real estate taxes of the subject Antipolo properties, among others.

On July 20, 1999, Bangkok Bank filed the instant case before the RTC, Branch 73 in Antipolo City, docketed as Civil Case No. 99-5388 for the rescission of the REM over the subject properties, annulment of the April 15, 1998 foreclosure sale, cancellation of the new TCTs issued in favor of Asiatruster, and damages amounting to PhP

600,000. In its action, Bangkok Bank alleged, among others, that the presumption of fraud under Article 1387 of the Civil Code applies, considering that a writ of preliminary attachment was issued in January 1998 in favor of SBC against Samuel. It also claimed that collusion and fraud transpired between the spouses Lee and Asiatrust in the execution of the REM. On August 5, 1999, Bangkok Bank amended its complaint to implead the RD.

Meanwhile, on March 23, 2000, the RTC, Branch 141 in Makati City in Civil Case No. 98-628 rendered a Partial Decision in favor of Bangkok Bank, ordering the Lee family, pursuant to the guarantees, to pay USD 1,998,554.60 for the CLA of MDEC and USD 800,000 for the CLA of MHI, with the corresponding 12% interest per annum from the date of the filing of the complaint, i.e., on March 12, 1998, until fully paid.

But Bangkok Bank had only levied on the execution of the partial decision, some old equipment, office fixtures and furniture, garments, textiles, and other small production equipment with an approximate aggregate value of PhP 600,000.^[27] Considering the total liabilities of the Lee family to Bangkok Bank, the levied properties were insufficient to satisfy the partial judgment in Civil Case No. 98-628.

The Ruling of the RTC

After due hearing with the parties presenting their evidence, on April 21, 2003, the RTC rendered a Decision dismissing the case, the *fallo* reading:

WHEREFORE, premises considered, the instant case is hereby dismissed for lack of merit.

No findings as to the counterclaim of the defendants for insufficiency of evidence to support the claim.

SO ORDERED.^[28]

In dismissing the instant case, the trial court found no concrete proof of the alleged fraud committed by the Lee family and Asiatrust, more so, that of a collusion or conspiracy between them. Consequently, it ruled that Art. 1381(3) of the Civil Code does not apply. Moreover, it noted that Bangkok Bank has not proved that it cannot in any manner collect its claims from the Lee family. For one, it held that Bangkok Bank chose not to exercise its right of redemption over the subject properties; for another, the subject properties were not the only properties of the Lee family as admitted by Bangkok Bank's sole witness, Susan Capalaran.

The RTC explained that a mortgage contract is an onerous undertaking to secure payment of an obligation and cannot be considered as a gratuitous alienation; thus, Art. 1387 of the Civil Code does not apply.^[29] Finally, it held that neither fraud nor a violation of the SEC suspension order can result from the execution of the REM and the foreclosure of the subject properties, because according to the testimony of Bangkok Bank's sole witness, the subject properties are not covered by the SEC Suspension Order for which reason Bangkok Bank filed an action to attach them. As the subject properties are not covered by the SEC Suspension Order, the RTC held

that there is nothing that precludes the spouses Lee from mortgaging them to Asiatrust.^[30]

The Ruling of the CA

Aggrieved, Bangkok Bank appealed the trial court's decision before the CA; and on March 15, 2006, the appellate court rendered the assailed decision, which granted the appeal, and reversed and set aside the RTC decision. The decretal portion reads:

WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The assailed Decision dated April 21, 2003 of the trial court is REVERSED and SET ASIDE. A new judgment is rendered ordering the:

1. Rescission of the Real Estate Mortgage over Appellees-spouses Lee's Antipolo properties in favor of appellee Asiatrust;
2. Annulment of the Foreclosure Sale conducted on April 15, 1998;
3. Cancellation of the Transfer Certificate of Titles in the name of Asiatrust; and
4. Reversion of the titles in favor of appellees-spouses Lee.

No costs.

SO ORDERED.^[31]

In reversing and setting aside the RTC decision, the CA held as crucial the Letter dated April 4, 1998 sent by the counsel of the Midas Group of Companies to the Office of the Clerk of Court and *Ex-Officio* Sheriff of the trial court relative to the extra-judicial foreclosure of the REM scheduled on April 15, 1998. The letter assailed said proceeding as bereft of legal and factual bases in the light of the February 20, 1998 Suspension Order of the SEC.^[32] It held that the present counsel of petitioner-spouses Lee cannot take a 360-degree turn as regards their predecessor's position, for Bangkok Bank merely adopted petitioners' earlier stance. Thus, the CA ruled that petitioner-spouses Lee are in estoppel *in pais*, under Art. 1431 of the Civil Code and Section 2(a) of Rule 131 of the Revised Rules on Evidence.

The CA found that the subject Antipolo properties, though personal assets of the spouses Lee, are covered by the February 20, 1998 Suspension Order of the SEC, since they are included in the list submitted to SEC by the Lee family; and that Samuel is a guarantor of the loans incurred by MDEC and MHI from Bangkok Bank. It ruled that Samuel, being a guarantor, is jointly and severally liable to Bangkok Bank for the corporate debts of MDEC and MHI, as he divested himself from the protection of the limited liability doctrine, which, the CA held, was shown (1) through the inclusion of the said subject Antipolo properties in the list submitted to the SEC; and (2) by Samuel, through the guarantees that he executed, thus voluntarily binding himself to the payment of the loans incurred from Bangkok Bank.

The CA also rejected petitioners' claim that the subject properties were allotted to Asiatrust. It reasoned that if the subject properties were indeed allotted to