

## SECOND DIVISION

[ G.R. No. 171870, March 16, 2011 ]

**SPOUSES ANTONIO F. ALAGAR AND AURORA ALAGAR,  
PETITIONER, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.**

### DECISION

**ABAD, J.:**

This case is about a) a claim that the defendant is estopped from questioning the validity of a writ of execution that he subsequently complied with; b) an assertion that a supplemental petition cannot elevate to the higher court those orders of the lower court that were issued more than 60 days earlier; and c) a contention that the petition was not one for *mandamus* which is the proper remedy when the trial court refuses to give due course to an appeal.

#### The Facts and the Case

On April 14, 1992 petitioner spouses Antonio and Aurora Alagar (the Alagars) got a personal loan of P500,000.00 from respondent Philippine National Bank (PNB), secured by a mortgage over a 368-square meter lot on General Luna Street in Vigan, Ilocos Sur.<sup>[1]</sup> The Alagars subsequently increased their loan to P1,700,000.00 and later to P2,900,000.00 with corresponding amendments to the mortgage.

Meanwhile, in 1995 PNB gave New Taj Resources, Inc., a corporation owned by the Alagars, a loan of P9,300,000.00, secured by a mortgage on an 8,086-square meter lot in Pantay Daya, Vigan, Ilocos Sur. The Alagars also executed a joint and solidary agreement that bound them with other persons to pay the corporate loan to the bank.<sup>[2]</sup>

After a few years, the Alagars' outstanding balance on their personal loan with PNB rose to P4,003,134.36 as of May 31, 1997. In the face of this, they negotiated with the bank and requested the condonation of interests so they could settle their debt. Meantime they paid the bank P3,900,000.00 while awaiting approval of their request. When the bank granted it, the Alagars paid the balance of P330,221.50 and sought the release of the General Luna title to them. The bank refused, however, citing the Alagars' other unsettled account.

On January 12, 2001 the Alagars filed a petition for *mandamus*<sup>[3]</sup> before the Regional Trial Court (RTC) of Vigan, Ilocos Sur to compel PNB to release the General Luna title to them. They claimed that PNB had no reason to retain the title since they already paid their personal loan. They insisted that the unsettled account cited by PNB referred to the corporate loan of New Taj Resources, Inc. which was secured by the Pantay Daya title. The Alagars claimed moral and exemplary damages for having been deprived of the use and enjoyment of their property.

In its answer,<sup>[4]</sup> PNB alleged that the petition did not state a cause of action since *mandamus* is not the proper remedy for compelling the performance of contractual obligations. Further, the bank had the right to retain the General Luna title since, as solidary debtors in the corporate loan, which had then become due, the Alagars still had an outstanding obligation with the bank. The mortgage contract between PNB and the Alagars provided that the property on General Luna was to secure, not only their personal loan, but also "any and all other obligations of the Mortgagors to the Mortgagees of whatever kind and nature."

At the trial, the Alagars presented their evidence and on June 26, 2001 formally offered their documentary exhibits. The RTC set PNB's presentation of its evidence on July 30, 2001 but its counsel failed to appear. Consequently, the RTC deemed PNB to have waived presentation of evidence and submitted the case for decision. It appears, however, that on the day of the hearing, the PNB branch manager in Vigan wrote the RTC a letter, explaining that the bank could not come to the hearing due to the retirement of its counsel of record. PNB asked the court for 60 days within which to find another lawyer.<sup>[5]</sup>

On August 6, 2001 Atty. Benjamin V. Sotero entered his appearance as PNB's new counsel. He then filed a motion for reconsideration asking that PNB be allowed to present evidence. He set the motion for hearing on September 17, 2001. On August 7, 2001 the RTC denied PNB's motion on the ground that it violated Sections 3<sup>[6]</sup> and 5<sup>[7]</sup> of Rule 15 of the Rules of Court.<sup>[8]</sup> PNB failed to accompany its motion with supporting affidavits and other papers and set it for hearing more than 10 days after its filing.

Subsequently, Atty. Sotero failed to appear during the hearing on September 17, 2001 that he himself set for the bank's motion for reconsideration. This prompted the trial court to issue another order on that date,<sup>[9]</sup> reiterating its earlier order submitting the case for decision. The trial court also noted that PNB did not react to its August 7, 2001 order that was sent to it by registered mail.

On October 5, 2001 PNB filed an omnibus motion for reconsideration of the orders of July 30, August 7, and September 17, 2001. The bank again asked for an opportunity to present evidence in support of its defense. In an order dated October 29, 2001,<sup>[10]</sup> the trial court denied the omnibus motion for its failure to state when the bank received the questioned orders. Moreover, the trial court rejected counsel's excuse for not reacting to the August 7, 2001 order. Counsel claimed that he had to attend to other urgent legal matters of equal importance.

On January 15, 2002 the trial court rendered judgment<sup>[11]</sup> in favor of the Alagars. It held that, although the pleading was denominated as a petition for *mandamus*, its allegations actually made out a case for specific performance. Since the Alagars' personal loan had already been fully paid, the real estate mortgage had nothing more to secure, such that both law and equity required that the collateral given to secure it be released to the owners.

PNB filed a motion for new trial or for reconsideration. It asserted in addition to its arguments on the merit of the case that the RTC had no jurisdiction over the issue

of whether or not the controversial stipulation in the mortgage contract was valid and binding. The only issues presented by the pleadings were: 1) whether or not the petition stated a cause of action; (2) whether or not the title should be released to the Alagars upon full payment of their personal loan; and (3) whether or not the Alagars were entitled to damages.

Meanwhile, PNB filed a special civil action of *certiorari* before the Court of Appeals (CA) in CA-G.R. SP 68661, seeking to annul and set aside the trial court orders of August 7 (which denied PNB's motion for reconsideration due to technical defects), September 17 (reiterating the August 7 order when PNB's counsel failed to show up at the hearing he set for its motion for reconsideration), and October 29, 2001 (which denied as unmeritorious PNB's omnibus motion for reconsideration). Since the trial court had in the meantime already rendered a decision in the case, however, on March 20, 2002 the CA dismissed the petition for being moot and academic.<sup>[12]</sup>

On March 25, 2002 the RTC issued an order, denying PNB's motion for new trial or for reconsideration for failing to raise new matters and violating the 10-day hearing schedule rule. This prompted PNB to file a notice of appeal. The RTC issued an order on April 29, 2002, however, denying due course to the appeal on the ground that the bank filed it beyond the required 15-day period. The court said that, since PNB's motion for new trial or reconsideration was *pro forma*, it did not toll the running of the period to appeal.

Meantime, on motion of the Alagars, the trial court caused the issuance on June 4, 2002 of a writ of execution against the bank.<sup>[13]</sup> This prompted the PNB to file on June 13, 2002 a special civil action of *certiorari* in CA-G.R. SP 71116, assailing the RTC's March 25, April 29, and June 4, 2002 orders as well as the writ of execution that it issued.<sup>[14]</sup> In a parallel move, PNB asked the trial court to quash the writ of execution, claiming that it was improvidently issued and that, as a matter of judicial courtesy, it should await the CA action on the bank's petition before it.

On July 17, 2002 the RTC denied PNB's urgent motion to quash the writ. The court said that issuing the writ was a ministerial duty after its decision became final and executory. Further, the CA had not issued any restraining order against the RTC.<sup>[15]</sup> PNB moved for reconsideration of this last order but the RTC denied the same on September 16, 2002.<sup>[16]</sup> Thus, an alias writ of execution was issued, compelling PNB to abide by it in full.<sup>[17]</sup>

Later, the Alagars asked the RTC by motion to order the cancellation of the mortgage annotated on its title, alleging that this was a necessary and logical consequence of the implementation of the writ of execution. The RTC granted the motion on August 4, 2003, stating that although the dispositive part of the decision did not say so, the order to release the General Luna title necessarily included with it the cancellation of the mortgage.<sup>[18]</sup>

Again, PNB sought reconsideration of the RTC's August 4, 2003 order and the quashal of the second writ of execution.<sup>[19]</sup> In response, the Alagars filed a petition to cite the PNB for indirect contempt for failing to release the mortgage. PNB opposed the petition. On October 21, 2003<sup>[20]</sup> the RTC granted PNB's motion for

reconsideration and dismissed the Alagars' petition for indirect contempt. At the same time, however, it ordered the amendment of the dispositive part of its January 15, 2002 decision to read as follows:

**Wherefore, finding the allegations in the Complaint proven by competent and preponderant evidence, the Court hereby renders judgment in favor of the plaintiffs as follows:**

**1. Ordering the defendant Philippine National Bank (PNB), Vigan, Ilocos Sur Branch, through its Manager, Mrs. Rosalia A. Quilala to release Original Certificate of Title No. 0-3576 in the name of Spouses Antonio F. Alagar and Aurora J. Alagar to the plaintiffs herein;**

**2. Ordering defendant PNB to pay same plaintiffs the amount of P1,825.00 as actual damages;**

**3. Ordering the defendant to pay the plaintiffs the amount of P100,000.00 as moral damages, P50,000.00 as exemplary damages and P30,000.00 as attorney's fees;**

**4. ORDERING THE DEFENDANT TO EXECUTE THE DEED SUFFICIENT IN LAW TO CANCEL THE MORTGAGE IN FAVOR OF THE PLAINTIFF-SPOUSES ANTONIO ALAGAR AND AURORA ALAGAR AND TO DELIVER SAID DEED TO THE LATTER;**

**5. AS AN ALTERNATIVE, SHOULD THE DEFENDANT FAIL OR REFUSE TO COMPLY WITH THE HEREINABOVE ORDER NO. 4, THE DEPUTY SHERIFF OF THIS COURT, MR. TERCENCIO FLORENDO IS HEREBY APPOINTED TO EXECUTE THE DEED OF CANCELLATION OF THE MORTGAGE IN SUIT IN BEHALF OF THE DEFENDANT PNB FOR REGISTRATION IN THE REGISTRY OF DEEDS OF ILOCOS SUR.**

**The counterclaim not having been proven, the same is dismissed.**

[21]

The Alagars filed a motion for reconsideration of the above insofar as it granted PNB's motion for reconsideration of the August 4, 2003 order and motion to dismiss the petition for indirect contempt. On December 18, 2003 the RTC issued an order, [22] granting the Alagars' motion for reconsideration and reinstating its August 4, 2003 order that directed the issuance of a writ of execution. The order also deleted paragraphs 4 and 5 of the amended dispositive portion of the decision, thus reinstating the original version.

PNB moved for reconsideration of the RTC's December 18, 2003 order and prayed that the proceedings be held in abeyance in view of CA-G.R. SP 71116 which was pending before the CA. But the RTC denied the motion on March 11, 2004, stating that it had the inherent power to amend its decision to make it conform to law and justice. It also declined to hold matters in abeyance since the RTC had not been amply informed about the CA action and since there was no possibility that the