

## THIRD DIVISION

**[ G.R. No. 172020, December 06, 2010 ]**

**TRADERS ROYAL BANK, PETITIONER, VS. NORBERTO  
CASTAÑARES AND MILAGROS CASTAÑARES, RESPONDENTS.**

### D E C I S I O N

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

Assailed in this petition for review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Decision<sup>[1]</sup> dated January 11, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67257 which reversed the Joint Decision<sup>[2]</sup> dated August 26, 1998 of the Regional Trial Court (RTC) of Cebu City, Branch 13 in Civil Case Nos. R-22608 and CEB-112.

#### The Facts

Respondent-spouses Norberto and Milagros Castañares are engaged in the business of exporting shell crafts and other handicrafts. Between 1977 and 1978, respondents obtained from petitioner Traders Royal Bank various loans and credit accommodations. Respondents executed two real estate mortgages (REMs) dated April 18, 1977 and January 25, 1978 covering their properties (TCT Nos. T-38346, T-37536, T-37535, T-37192 and T-37191). As evidenced by Promissory Note No. BD-77-113 dated May 10, 1977, petitioner released only the amount of P35,000.00 although the mortgage deeds indicated the principal amounts as P86,000.00 and P60,000.00.<sup>[3]</sup>

Respondents were further granted additional funds on various dates under promissory notes<sup>[4]</sup> they executed in favor of the petitioner:

<u>Type of Loan</u>	<u>Date Granted</u>	<u>Amount</u>
Packing Credit	May 10, 1977	P19,000.00
Packing Credit	May 18, 1977	P25,000.00
Packing Credit	June 23, 1977	P12,500.00
Packing Credit	August 19, 1977	P 2,900.00
Packing Credit	April 4, 1978	P18,000.00
Packing Credit	April 19, 1978	P23,000.00

On June 22, 1977, petitioner transferred the amount of P1,150.00 from respondents' current account to their savings account, which was erroneously posted as P1,500.00 but later corrected to reflect the figure P1,150.00 in the savings account passbook. By the second quarter of 1978, the loans began to mature and the letters of credit against which the packing advances were granted

started to expire. Meanwhile, on December 7, 1979, petitioner, without notifying the respondents, applied to the payment of respondents' outstanding obligations the sum of \$4,220.00 or P30,930.49 which was remitted to the respondents thru telegraphic transfer from AMROBANK, Amsterdam by one Richard Wagner. The aforesaid entries in the passbook of respondents and the \$4,220.00 telegraphic transfer were the subject of respondents' letter-complaint<sup>[5]</sup> dated September 20, 1982 addressed to the Manager of the Regional Office of the Central Bank of the Philippines.

For failure of the respondents to pay their outstanding loans with petitioner, the latter proceeded with the extrajudicial foreclosure of the real estate mortgages.<sup>[6]</sup> Thereafter, a Certificate of Sale<sup>[7]</sup> covering all the mortgaged properties was issued by Deputy Sheriff Wilfredo P. Borces in favor of petitioner as the lone bidder for P117,000.00 during the auction sale conducted on November 24, 1981. Said certificate of sale was registered with the Office of the Register of Deeds on February 4, 1982.

On November 24, 1982, petitioner instituted Civil Case No. R-22608 for deficiency judgment, claiming that after applying the proceeds of foreclosure sale to the total unpaid obligations of respondents (P200,397.78), respondents were still indebted to petitioner for the sum of P83,397.68.<sup>[8]</sup> Respondents filed their Answer With Counterclaim on December 27, 1982.<sup>[9]</sup>

On February 10, 1983, respondents filed Civil Case No. CEB-112 for the recovery of the sums of P2,584.27 debited from their savings account passbook and the equivalent amount of \$4,220.00 telegraphic transfer, and in addition, \$55,258.85 representing the damage suffered by the respondents from letters of credit left un-negotiated because of petitioner's refusal to pay the \$4,220.00 demanded by the respondents.<sup>[10]</sup>

The cases were consolidated before Branch 13, RTC of Cebu City.

### **Ruling of the RTC**

In a Joint Decision<sup>[11]</sup> dated August 26, 1998, the RTC ruled in favor of the petitioner, as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in Civil Case No. R-22608 in favor of the plaintiff and against the defendants directing the defendants jointly and solidarily to pay plaintiff the sum of P83,397.68 with legal rate of interest to be computed from November 24, 1981 (the date of the auction sale) until full payment thereof. They are likewise directed to pay plaintiff attorney's fees in the sum of P10,000.00 plus litigation expenses in the amount of P2,500.00.

With cost against defendants.

In CEB-112, judgment is hereby rendered dismissing the complaint.

With cost against the plaintiff.

SO ORDERED.<sup>[12]</sup>

The trial court found that despite respondents' insistence that the REM covered only a separate loan for P86,000.00 which they believed petitioner committed to lend them, the evidence clearly shows that said REM was constituted as security for all the promissory notes. No separate demand was made for the amount of P86,000.00 stated in the REM, as the demand was limited to the amounts of the promissory notes. The trial court further noted that respondents never questioned the judgment for extrajudicial foreclosure, the certificate of sale and the deficiency in that case.<sup>[13]</sup>

With respect to the passbook entries, the trial court stated that no objection thereto was made by the respondents until five years later when in a letter dated August 10, 1982, respondents' counsel asked petitioner to be enlightened on the matter. Neither did respondents protest the application of the balance (P1,150.00) in the passbook to his account with petitioner. More important, respondent Norberto Castañares in his testimony admitted that the matter was already clarified to him by petitioner and that the latter had the right to apply his deposit to his loan accounts. Admittedly, his complaint has to do more with the lack of consent on his part and the non-issuance of official receipt. However, he did not follow up his request for official receipt as he did not want to be going back and forth to the bank.<sup>[14]</sup>

### **CA Ruling**

With the trial court's denial of their motion for reconsideration, respondents appealed to the CA. Finding merit in respondents' arguments, the appellate court set aside the trial court's judgment under its Decision<sup>[15]</sup> dated January 11, 2006, thus:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the appeal filed in this case and REVERSING AND SETTING ASIDE the Joint Decision dated August 26, 1998, Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 13, in Civil Case No. R-22608 and Civil Case No. CEB-112. With regard to Civil Case No. R-22608, the real estate mortgage dated April 18, 1977 is hereby DECLARED as valid in part as to the amount of P35,000.00 actually released in favor of appellants, while the real estate mortgage dated January 26, 1978 is hereby declared as null and void. Furthermore, in Civil Case No. CEB-112, TRB is hereby ordered to release the amount of US\$4,220.90 to the appellants at its current rate of exchange. No pronouncement as to costs.

SO ORDERED.<sup>[16]</sup>

The CA held that the RTC overlooked the fact that there were no adequate evidence presented to prove that petitioner released in full to the respondents the proceeds of the REM loan. Citing *Filipinas Marble Corporation v. Intermediate Appellate*

*Court*<sup>[17]</sup> and *Naguiat v. Court of Appeals*,<sup>[18]</sup> the appellate court declared that where there was failure of the mortgagee bank to deliver the consideration for which the mortgage was executed, the contract of loan was invalid and consequently the accessory contract of mortgage is likewise null and void. In this case, only P35,000.00 out of the P86,000.00 stated in the REM dated April 18, 1977 was released to respondents, and hence the REM was valid only to that extent. For the same reason, the second REM was null and void since no actual loan proceeds were released to the respondents-mortgagors. The REMs are not connected to the subsequent promissory notes because these were signed by respondents for the sole purpose of securing packing credits and export advances. Further citing *Acme Shoe, Rubber and Plastic Corp. v. Court of Appeals*,<sup>[19]</sup> the CA stated that the rule is that a pledge, real estate mortgage or antichresis may exceptionally secure after-incurred obligations only as long as these debts are accurately described therein. In this case, neither of the two REMs accurately described or even mentioned the securing of future debts or obligations.<sup>[20]</sup>

The CA thus held that petitioner's remedy would be to file a collection case on the unpaid promissory notes which were not secured by the REMs.

As to the \$4,220.00 telegraphic transfer, the CA ruled that petitioner had no basis for withholding and applying the said amount to respondents' loan account. Said transaction was separate and distinct from the contract of loan between petitioner and respondents. Petitioner had no authority to convert the said telegraphic transfer into cash since the participation of respondents was necessary to sign and indorse the disbursement voucher and check. Moreover, petitioner was not transparent in its actions as it did not inform the respondents of its intention to apply the proceeds of the telegraphic transfer to their loan account and worse, it did not even present an official receipt to prove payment. Section 5 of Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act, provides that there shall be no restriction on the withdrawability by the depositor of his deposit or the transferability of the same abroad except those arising from contract between the depositor and the bank.<sup>[21]</sup>

### **The Petition**

Petitioner raised the following grounds in the review of the CA decision:

I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE REAL ESTATE MORTGAGE DATED 18 APRIL 1977 IS VALID ONLY IN PART TO THE EXTENT OF PHP35,000.00 WHICH IS ALLEGEDLY THE AMOUNT PROVED TO HAVE BEEN ACTUALLY RELEASED TO RESPONDENTS OUT OF THE SUM OF PHP86,000.00.

II. THE COURT OF APPEALS ERRED IN DECLARING AS NULL AND VOID THE REAL ESTATE MORTGAGE DATED 26 JANUARY 1978 IN THAT NO ACTUAL LOAN PROCEEDS WERE RELEASED IN FAVOR OF THE RESPONDENTS.

III. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAD NO BASIS IN WITHHOLDING AND SUBSEQUENTLY APPLYING IN PAYMENT

OF RESPONDENTS' OVERDUE ACCOUNT IN THE TELEGRAPHIC TRANSFER  
IN THE AMOUNT OF U.S.\$4,220.00.<sup>[22]</sup>

Petitioner contends that the CA overlooked the specific stipulation in the REMs that the mortgage extends not only to the amounts specified therein but also to loans or credits subsequently granted, which include the packing credits and export advances obtained by the respondents. Moreover, the amounts indicated on the REMs need not exactly be the same amounts that should be released and covered by checks or credit memos, the same being only the maximum sum or "ceiling" which the REM secures, as explained by petitioner's witness, Ms. Blesy Nemeño. Her testimony does not prove that the proceeds of the loans were not released in full, as no credit memos in the specific amounts received by the respondents can be presented.

Petitioner argues that the rulings cited by the CA do not at all support its conclusion that the promissory notes were totally unrelated to the REMs. In the *Acme* case, the pronouncement was that the after-incurred obligations must, at the time they are contracted, only be accurately described in a proper instrument as in the case of a promissory note. The confusion was brought by the use in the CA decision of the word "therein" which is not found in the text of the *Acme* ruling. Besides, it is way too impossible that future loans can be accurately described, as the CA opined, at the time that a deed of real estate mortgage is executed. The CA's reliance on the case of *Filipinas Marble Corporation*, is likewise misplaced as it finds no application under the facts obtaining in the present case. The misappropriation by some individuals of the loan proceeds secured by petitioner was the consideration which compelled this Court to rule that there was failure on the part of DBP to deliver the consideration for which the mortgage was executed. Similarly, the case of *Naguiat* is inapplicable in that there was evidence that an agent of the creditor withheld from the debtor the checks representing the proceeds of the loan pending delivery of additional collateral.

Finally, petitioner reiterates that it had the right by way of set-off the telegraphic transfer in the sum of \$4,220.00 against the unpaid loan account of respondents. Citing *Bank of the Philippine Islands v. Court of Appeals*,<sup>[23]</sup> petitioner asserts that they are bound principally as both creditors and debtors of each other, the debts consisting of a sum of money, both due, liquidated and demandable, and are not claimed by a third person. Hence, the RTC did not err in holding that petitioner validly applied the amount of P30,930.20 (peso equivalent of \$4,220.00) to the loan account of the respondents.

### **Our Ruling**

We rule for the petitioner.

The subject REMs contain the following provision:

That, for and in consideration of certain loans, overdrafts and other credit accommodations obtained, from the Mortgagee by the Mortgagor and/or SPS. NORBERTO V. CASTAÑARES & MILAGROS M. CASTAÑARES and **to secure the payment of the same**, the principal of all of which is hereby fixed at EIGHTY-SIX THOUSAND PESOS ONLY - (P86,000.00)