

THIRD DIVISION

[G.R. No. 176246, February 13, 2009]

PREMIERE DEVELOPMENT BANK, PETITIONER, VS. CENTRAL SURETY & INSURANCE COMPANY, INC., RESPONDENT.

DECISION

NACHURA, J.:

Before us is a petition for review on *certiorari* assailing the Court of Appeals (CA) Decision^[1] in CA-G.R. CV No. 85930, which reversed and set aside the decision of the Regional Trial Court (RTC), Branch 132, Makati City in Civil Case No. 0051306.^[2]

On August 20, 1999, respondent Central Surety & Insurance Company (Central Surety) obtained an industrial loan of P6,000,000.00 from petitioner Premiere Development Bank (Premiere Bank) with a maturity date of August 14, 2000. This P6,000,000.00 loan, evidenced by Promissory Note (PN) No. 714-Y,^[3] stipulates payment of 17% interest *per annum* payable monthly in arrears and the principal payable on due date. In addition, PN No. 714-Y provides for a penalty charge of 24% interest *per annum* based on the unpaid amortization/installment or the entire unpaid balance of the loan. In all, should Central Surety fail to pay, it would be liable to Premiere Bank for: (1) unpaid interest up to maturity date; (2) unpaid penalties up to maturity date; and (3) unpaid balance of the principal.

To secure payment of the P6,000,000.00 loan, Central Surety executed in favor of Premiere Bank a Deed of Assignment with Pledge^[4] covering Central Surety's Membership Fee Certificate No. 217 representing its proprietary share in Wack Wack Golf and Country Club Incorporated (Wack Wack Membership). In both PN No. 714-Y and Deed of Assignment, Constancio T. Castañeda, Jr. and Engracio T. Castañeda, president and vice-president of Central Surety, respectively, represented Central Surety and solidarily bound themselves to the payment of the obligation.

Parenthetically, Central Surety had another commercial loan with Premiere Bank in the amount of P40,898,000.00 maturing on October 10, 2001. This loan was, likewise, evidenced by a PN numbered 376-X^[5] and secured by a real estate mortgage over Condominium Certificate of Title No. 8804, Makati City. PN No. 376-X was availed of through a renewal of Central Surety's prior loan, then covered by PN No. 367-Z.^[6] As with the P6,000,000.00 loan and the constituted pledge over the Wack Wack Membership, the P40,898,000.00 loan with real estate mortgage was transacted by Constancio and Engracio Castañeda on behalf of Central Surety.

It appears that on August 22, 2000, Premiere Bank sent a letter to Central Surety demanding payment of the P6,000,000.00 loan, to wit:

August 22,
2000

CENTRAL SURETY AND INSURANCE CO.

2nd Floor Universalre Bldg.
No. 106 Paseo de Roxas, Legaspi Village
Makati City

Attention: Mr. Constancio T.
Castaneda, Jr.
President

Mr. Engracio T. Castaneda
Vice President

Gentlemen:

This has reference to your overdue loan of P6.0 Million.

We regret to inform you that despite efforts to restructure the same, you have failed up to this time, to submit the required documents and come up with equity necessary to implement the restructuring scheme.

In view thereof, we regret that unless the above loan is settled on or before five (5) days from the date hereof, we shall exercise our option to have the Stock Certificate No. 217 with Serial No. 1793 duly issued by Wack Wack Golf and Country Club, Inc. transferred in the name of Premiere Development Bank in accordance with the terms and conditions of the Deed of Assignment with Pledge executed in favor of Premiere Development Bank.

We shall appreciate your prompt compliance.

Very truly yours,

(sgd.)

IGNACIO R. NEBRIDA, JR.
Senior Asst. Vice President/
Business Development Group
- Head^[7]

Posthaste, Central Surety responded and sent the following letter dated August 24, 2000:

24 August
2000

Mr. Ignacio R. Nebrida, Jr.
Senior Asst. Vice President/
Business Development Group - Head
Premiere Bank
EDSA cor. Magallanes Avenue
Makati City

Sir:

With reference to this 6.0 Million loan account, we have informed Ms. Evangeline Veloira that we are intending to settle the account by the end of September. As of 14 August 2000 we made payment to your bank as per receipt attached.

As you may know, present conditions have been difficult for the insurance industry whose performance is so closely linked to the nation's economic prosperity; and we are now asking for some consideration and leeway on your very stiff and immediate demands.

Kindly extend to us your favorable approval.

Very truly yours,

(sgd.)

ENGRACIO T.
CASTANEDA
Vice-President^[8]

Accordingly, by September 20, 2000, Central Surety issued Bank of Commerce (BC) Check No. 08114^[9] dated September 22, 2000 in the amount of P6,000,000.00 and payable to Premiere Bank. The check was received by Premiere Bank's Senior Account Manager, Evangeline Veloira, with the notation "full payment of loan-Wack Wack," as reflected in Central Surety's Disbursement Voucher.^[10] However, for undisclosed reasons, Premiere Bank returned BC Check No. 08114 to Central Surety, and in its letter dated September 28, 2000, demanded from the latter, not just payment of the P6,000,000.00 loan, but also the P40,898,000.00 loan which was originally covered by PN No. 367-Z.^[11] In the same letter, Premiere Bank threatened foreclosure of the loans' respective securities, the pledge and real estate mortgage, should Central Surety fail to pay these within ten days from date, thus:

28
September
2000

CENTRAL SURETY & INSURANCE CO.
By: Constancio T. Castañeda Jr. - President
Engracio T. Castañeda - Vice President
2nd Floor Universalre Bldg. No. 106

Paseo de Roxas, Legaspi Village, Makati City

RE: *YOUR COMMERCIAL LOAN OF P40,898,000.00 &
P6,000,000.00 WITH PREMIERE DEVELOPMENT BANK
UNDER ACCOUNT NOS. COM-367-Z AND COM 714-Y*

Dear Sirs:

We write on behalf of our client, Premiere Development Bank, in connection with your above-captioned loan account.

While our client has given you all the concessions, facilities and opportunities to service your loans, we regret to inform you that you have failed to settle the same despite their past due status.

In view of the foregoing and to protect the interest of our client, please be advised that *unless the outstanding balances of your loan accounts as of date plus interest, penalties and other fees and charges are paid in full or necessary arrangements acceptable to our client is made by you within ten (10) days from date hereof*, we shall be constrained much to our regret, to file foreclosure proceedings against the collateral of the loan mortgaged to the Bank or pursue such action necessary in the premises.

We trust, therefore, that you will give this matter your preferential attention.

Very truly yours,

(sgd.)

PACITA M. ARAOS^[12]

(italics supplied)

The very next day, on September 29, 2000, Central Surety, through its counsel, wrote Premiere Bank and re-tendered payment of the check:

29 September 2000

PREMIERE BANK
EDSA cor. Magallanes Avenue
Makati City

Attention: Mr. Ignacio R. Nebrida, Jr.
Senior Asst. Vice President/
Business Development Group - Head

Re : Promissory Note No. 714-Y

Sir:

This is further to our client's letter to you dated 24 August 2000, informing you that it would settle its account by the end of September 2000.

Please be advised that on 20 September 2000 our client delivered to your bank BC cheque no. 08114 payable to Premiere Bank in the amount of **SIX MILLION PESOS (P6,000,000.00)**, which was received by your Senior Account Manager, Ms. Evangeline Veloira. However, for unexplained reasons the cheque was returned to us.

We are again tendering to you the said cheque of **SIX MILLION PESOS (P6,000,000.00)**, in payment of **PN#714-Y**. Please accept the cheque and issue the corresponding receipt thereof. Should you again refuse to accept this cheque, then I shall advise my client to deposit it in court for proper disposition.

Thank you.

Very truly yours,

(sgd.)

EPIFANIO E. CUA

Counsel for Central Surety & Insurance
Company^[13]

(italics supplied)

On even date, a separate letter with another BC Check No. 08115 in the amount of P2,600,000.00 was also tendered to Premiere Bank as payment for the Spouses Engracio and Lourdes Castañeda's (Spouses Castañeda's) personal loan covered by PN No. 717-X and secured by Manila Polo Club, Inc. membership shares.

On October 13, 2000, Premiere Bank responded and signified acceptance of Central Surety's checks under the following application of payments:

13 October
2000

ATTY. EPIFANIO E. CUA
2/F Universalre Condominium
106 Paseo de Roxas
Legaspi Village, Makati City

Dear Atty. Cua:

Thank you for your two (2) letters both dated 29 September 2000 on behalf of your clients with the enclosed check nos. 0008114 and 0008115 for the total of P8,600,000.00.