

THIRD DIVISION

[G.R. No. 170782, June 22, 2009]

**SIAIN ENTERPRISES, INC., PETITIONER, VS. CUPERTINO REALTY
CORP. AND EDWIN R. CATACUTAN, RESPONDENTS.**

DECISION

NACHURA, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the decision of the Court of Appeals in CA-G.R. CV No. 71424^[1] which affirmed the decision of the Regional Trial Court, Branch 29, Iloilo City in Civil Case No. 23244.^[2]

On April 10, 1995, petitioner Siain Enterprises, Inc. obtained a loan of P37,000,000.00 from respondent Cupertino Realty Corporation (Cupertino) covered by a promissory note signed by both petitioner's and Cupertino's respective presidents, Cua Le Leng and Wilfredo Lua. The promissory note authorizes Cupertino, as the creditor, to place in escrow the loan proceeds of P37,000,000.00 with Metropolitan Bank & Trust Company to pay off petitioner's loan obligation with Development Bank of the Philippines (DBP). To secure the loan, petitioner, on the same date, executed a real estate mortgage over two (2) parcels of land and other immovables, such as equipment and machineries.

Two (2) days thereafter, or on April 12, 1995, the parties executed an amendment to promissory note which provided for a seventeen percent (17%) interest per *annum* on the P37,000,000.00 loan.^[3] The amendment to promissory note was likewise signed by Cua Le Leng and Wilfredo Lua on behalf of petitioner and Cupertino, respectively.

On August 16, 1995, Cua Le Leng signed a second promissory note in favor of Cupertino for P160,000,000.00. Cua Le Leng signed the second promissory note as maker, on behalf of petitioner, and as co-maker, liable to Cupertino in her personal capacity. This second promissory note provides:

PROMISSORY NOTE

AMOUNT

DATE: AUGUST 16, 1995

ONE HUNDRED SIXTY MILLION PESOS

(PHP 160,000,000.00)

FOR VALUE RECEIVED, after one (1) year from this date on or August 16, 1996, WE, SIAIN ENTERPRISES INC. with Metro Manila office address at 306 J.P. Rizal St., Mandaluyong City, represented herein by its duly authorized President, Ms. LELENG CUA, (a copy of her authority is hereto attached as Annex "A") and Ms. LELENG CUA in her personal capacity, a resident of ILOILO CITY, jointly and severally, unconditionally promise to pay CUPERTINO REALTY CORPORATION, or order, an existing corporation duly organized under Philippine laws, the amount/sum of ONE HUNDRED SIXTY MILLION PESOS (PHP 160,000,000.00), Philippine Currency, without further need of

any demand, at the office of CUPERTINO REALTY CORPORATION;

The amount/sum of ONE HUNDRED SIXTY MILLION PESOS (PHP 160,000,000.00) shall earn a compounding interest of 30% per annum which interest shall be payable to CUPERTINO REALTY CORPORATION at its above given address ON THE FIRST DAY OF EVERY MONTH WITHOUT THE NEED OF DEMAND.

In case We fail to pay the principal amount of this note at maturity or in the event of bankruptcy or insolvency, receivership, levy of execution, garnishment or attachment or in case of conviction for a criminal offense carrying with it the penalty of civil interdiction or in any of the cases covered by Article 1198 of the Civil Code of the Philippines, then the entire principal of this note and other interests and penalties due thereon shall, at the option of CUPERTINO REALTY CORPORATION, immediately become due and payable and We jointly and severally agree to pay additionally a penalty at the rate of THREE PERCENT (3%) per month on the total amount/sum due until fully paid. Furthermore, We jointly and severally agree to pay an additional sum equivalent to 20% of the total amount due but in no case less than PHP 100,000.00 as and for attorney's fees in addition to expenses and costs of suit.

We hereby authorize and empower CUPERTINO REALTY CORPORATION at its option at any time, without notice, to apply to the payment of this note and or any other particular obligation or obligations of all or any one of us to CUPERTINO REALTY CORPORATION, as it may select, irrespective of the dates of maturity, whether or not said obligations are then due, any and all moneys, checks, securities and things of value which are now or which may hereafter be in its hand on deposit or otherwise to the credit of, or belonging to, both or any one of us, and CUPERTINO REALTY CORPORATION is hereby authorized to sell at public or private sale such checks, securities, or things of value for the purpose of applying the proceeds thereof to such payments of this note.

We hereby expressly consent to any extension and/or renewals hereof in whole or in part and/or partial payment on account which may be requested by and granted to us or any one of us for the payment of this note as long as the remaining unpaid balance shall earn an interest of THREE percent (3%) a month until fully paid. Such renewals or extensions shall, in no case, be understood as a novation of this note or any provision thereof and We will thereby continue to be liable for the payment of this note.

We submit to the jurisdiction of the Courts of the City of Manila or of the place of execution of this note, at the option of CUPERTINO REALTY CORPORATION without divesting any other court of its jurisdiction, for any legal action which may arise out of this note. In case of judicial execution of this obligation, or any part of it, we hereby waive all our rights under the provisions of Rule 39, section 12 of the Rules of Court.

We, who are justly indebted to CUPERTINO REALTY CORPORATION, agree to execute respectively a real estate mortgage and a pledge or a chattel mortgage covering securities to serve as collaterals for this loan and to execute likewise an irrevocable proxy to allow representatives of the creditor to be able to monitor acts of management so as to prevent any premature

call of this loan. We further undertake to execute any other kind of document which CUPERTINO REALTY CORPORATION may solely believe is necessary in order to effect any security over any collateral.

For this purpose, Ms. LELENG CUA, upon the foregoing promissory note, has this 16th day of Aug 1995, pledged her shares of stocks in SIAIN ENTERPRISES, INC., worth PHP 1,800,000.00 which she hereby confesses as representing 80% of the total outstanding shares of the said company.

In default of payment of said note or any part thereof at maturity, Ms. LELENG CUA hereby authorizes CUPERTINO REALTY CORPORATION or its assigns, to dispose of said security or any part thereof at public sale. The proceeds of such sale or sales shall, after payment of all expenses and commissions attending said sale or sales, be applied to this promissory note and the balance, if any, after payment of this promissory note and interest thereon, shall be returned to the undersigned, her heirs, successors and administrators; it shall be optional for the owner of the promissory note to bid for and purchase the securities or any part thereof.

(signed)
SIAIN
INC.

ENTERPRISES,
LELENG CUA

In her personal capacity

CO-MAKER

By:

(signed)
LELENG CUA
MAKER

WITNESSES:

(signed)
EDGARDO LUA

(signed)
ROSE MARIE RAGODON^[4]

Parenthetically, on even date, the parties executed an amendment of real estate mortgage, providing in pertinent part:

WHEREAS, on 10 April 1995, the [petitioner] executed, signed and delivered a Real Estate Mortgage to and in favor of [Cupertino] on certain real estate properties to secure the payment to [Cupertino] of a loan in the amount of THIRTY SEVEN MILLION PESOS (P37,000,000.00) Philippine Currency, granted by [Cupertino] was ratified (sic) on 10 April 1995 before Constancio Mangoba, Jr., Notary Public in Makati City, as Doc. No. 242; in Page No. 50; Book No., XVI; Series of 1995, and duly recorded in the Office of the Register of Deeds for the said City of Iloilo;

WHEREAS, the [petitioner] has increased its loan payable to [Cupertino] which now amounts to ONE HUNDRED NINETY SEVEN MILLION PESOS (197,000,000.00); and

WHEREAS, the [petitioner] and [Cupertino] intend to amend the said Real Estate Mortgage in order to reflect the current total loan secured by the said Real Estate Mortgage;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed and by these presents do hereby agree to amend said Real Estate Mortgage dated 10 April 1995 mentioned above by substituting the total amount of the loan secured by said Real Estate Mortgage from P37,000,000.00 to P197,000,000.00.

It is hereby expressly understood that with the foregoing amendment, all other terms and conditions of said Real Estate Mortgage dated 10 April 1995 are hereby confirmed, ratified and continued to be in full force and effect, and that this agreement be made an integral part of said Real Estate Mortgage.^[5]

Curiously however, and contrary to the tenor of the foregoing loan documents, petitioner, on March 11, 1996, through counsel, wrote Cupertino and demanded the release of the P160,000,000.00 loan increase covered by the amendment of real estate mortgage.^[6] In the demand letter, petitioner's counsel stated that despite repeated verbal demands, Cupertino had yet to release the P160,000,000.00 loan. On May 17, 1996, petitioner demanded anew from Cupertino the release of the P160,000,000.00 loan.^[7]

In complete refutation, Cupertino, likewise through counsel, responded and denied that it had yet to release the P160,000,000.00 loan. Cupertino maintained that petitioner had long obtained the proceeds of the aforesaid loan. Cupertino declared petitioner's demand as made to "abscond from a just and valid obligation," a mere afterthought, following Cupertino's letter demanding payment of the P37,000,000.00 loan covered by the first promissory note which became overdue on March 5, 1996.

Not surprisingly, Cupertino instituted extrajudicial foreclosure proceedings over the properties subject of the amended real estate mortgage. The auction sale was scheduled on October 11, 1996 with respondent Notary Public Edwin R. Catacutan commissioned to conduct the same. This prompted petitioner to file a complaint with a prayer for a restraining order to enjoin Notary Public Catacutan from proceeding with the public auction.

The following are the parties' conflicting claims, summarized by the RTC, and quoted verbatim by the CA in its decision:

"The verified complaint alleges that [petitioner] is engaged in the manufacturing and retailing/wholesaling business. On the other hand, Cupertino is engaged in the realty business. That on April 10, 1995, [petitioner] executed a Real Estate Mortgage over its real properties covered by Transfer Certificates of title Nos. T-75109 and T-73481 ("the mortgage properties") of the Register of Deeds of Iloilo in favor of Cupertino to secure the former's loan obligation to the latter in the amount of Php37,000,000.00. That it has been the agreement between [petitioner] and Cupertino that the aforesaid loan will be non-interest bearing. Accordingly, the parties saw to it

that the promissory note (evidencing their loan agreement) did not provide any stipulation with respect to interest. On several occasions thereafter, [petitioner] made partial payments to Cupertino in respect of the aforesaid loan obligation by the former to the latter in the total amount of Php7,985,039.08, thereby leaving a balance of Php29,014,960.92. On August 16, 1995, [petitioner] and Cupertino executed an amendment of Real Estate Mortgage (Annex "C") increasing the total loan covered by the aforesaid REM from Php37,000,000.00 to P197,000,000.00. This amendment to REM was executed preparatory to the promised release by Cupertino of additional loan proceeds to [petitioner] in the total amount of Php160,000,000.00. However, despite the execution of the said amendment to REM and its subsequent registration with the Register of Deeds of Iloilo City and notwithstanding the clear agreement between [petitioner] and Cupertino and the latter will release and deliver to the former the aforesaid additional loan proceeds of P160,000,000.00 after the signing of pertinent documents and the registration of the amendment of REM, Cupertino failed and refused to release the said additional amount for no apparent reason at all, contrary to its repeated promises which [petitioner] continuously relied on. On account of Cupertino's unfulfilled promises, [petitioner] repeatedly demanded from Cupertino the release and/or delivery of the said Php160,000,000.00 to the former. However, Cupertino still failed and refused and continuously fails and refuses to release and/or deliver the Php160,000,000.00 to [petitioner]. When [petitioner] tendered payment of the amount of Php29,014,960.92 which is the remaining balance of the Php37,000,000.00 loan subject of the REM, in order to discharge the same, Cupertino unreasonably and unjustifiably refused acceptance thereof on the ground that the previous payment amounting to Php7,985,039.08, was applied by Cupertino to alleged interests and not to principal amount, despite the fact that, as earlier stated, the aforesaid loan by agreement of the parties, is non-interest bearing. Worst, unknown to [petitioner], Cupertino was already making arrangements with [respondent] Notary Public for the extrajudicial sale of the mortgage properties even as [petitioner] is more than willing to pay the Php29,014,960.92 which is the remaining balance of the Php37,000,000.00 loan and notwithstanding Cupertino's unjustified refusal and failure to deliver to [petitioner] the amount of Php160,000,000.00. In fact, a notarial sale of the mortgaged properties is already scheduled on 04 October 1996 by [respondent] Notary Public at his office located at Rm. 100, Iloilo Casa Plaza, Gen Luna St., Iloilo City. In view of the foregoing, Cupertino has no legal right to foreclose the mortgaged properties. In any event, Cupertino cannot extrajudicially cause the foreclosure by notarial sale of the mortgage properties by [respondent] Notary Public as there is nothing in the REM (dated 10 April 1995) or in the amendment thereto that grants Cupertino the said right.

x x x x

"[Respondents] finally filed an answer to the complaint, alleging that the loan have (sic) an interest of 17% per annum: that no payment was ever made by [petitioner], that [petitioner] has already received the amount of the loan prior to the execution of the promissory note and amendment of Real Estate Mortgage, xxx.

"[Petitioner] filed a supplemental complaint alleging subsequent acts made by defendants causing the subsequent auction sale and registering the