

THIRD DIVISION

[G.R. No. 157901, September 11, 2009]

**ORIX METRO LEASING AND FINANCE CORPORATION,
PETITIONER, VS. M/V "PILAR-I" AND SPOUSES ERNESTO DY
AND LOURDES DY, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision^[1] dated 22 November 2002 and Resolution^[2] dated 2 April 2003 of the Court of Appeals in CA-G.R. CV No. 57321. The appellate court, in its assailed Decision and Resolution, affirmed with modifications the Decision^[3] dated 31 July 1997 of the Regional Trial Court (RTC), Makati City, Branch 64, in Civil Case No. 92-2311.

Petitioner Orix Metro Leasing and Finance Corporation (Orix Metro) is a domestic corporation engaged in the leasing and financing business. Respondents Ernesto and Lourdes Dy (spouses Dy) are the proprietors of Limchia Enterprises, engaged in the shipping business.

Needing to raise funds for the acquisition of a cargo vessel, Limchia Enterprises, with Lourdes Dy as co-maker, obtained a loan from Orix Metro in the amount of P4,764,024.00^[4] evidenced by a Promissory Note executed on 3 August 1990.^[5] According to the Promissory Note, Lourdes Dy would pay for the loan, without need of notice or demand, in 36 monthly installments due and payable on the 6th day of each month starting 6 September 1990. Ernesto Dy likewise executed a Continuing Suretyship Agreement,^[6] wherein he made himself a solidary obligor in the event his wife Lourdes Dy would default under the terms of the Promissory Note.

With the proceeds of the loan, Limchia Enterprises was able to acquire and register in its name the vessel M/V Pilar-I. On 16 July 1990, the Philippine Coast Guard in Zamboanga City issued in favor of Limchia Enterprises the Certificate of Ownership and Certificate of Philippine Registry of M/V Pilar-I.

As additional security for the loan from Orix Metro, Limchia Enterprises, with Lourdes Dy as signatory, executed on 3 August 1990 a Deed of Chattel Mortgage^[7] over M/V Pilar-I in favor of Orix Metro. The mortgage was registered with the Office of the Philippine Coast Guard in Zamboanga City, and annotated on the Certificate of Ownership of Limchia Enterprises, pursuant to the Ship Mortgage Act of 1978. Furthermore, the spouses Dy also constituted a Real Estate Mortgage on their Quezon City home in favor of Orix Metro.

On 27 December 1990, M/V Pilar-I was attacked by pirates, and the vessel was

brought to Palau Sapi, Kota Kinabalu, Malaysia. The spouses Dy suffered financial losses from the incident and, thus, failed to pay according to the schedule of payments set forth in the Promissory Note dated 3 August 1990. As of August 1992, the spouses Dy should have already paid amortizations amounting to P3,140,364.00; however, they were only able to pay P2,775,339.00.^[8] Consequently, Orix Metro sent them several demand letters.

The spouses Dy appealed for the restructuring of their loan with Orix Metro. Lourdes Dy also requested the release of the mortgage on their Quezon City home, so they could mortgage the same real property to secure a bank loan, the proceeds of which they would use, in turn, to pay the arrears, penalty charges, as well as advance payments, on their loan from Orix Metro.

On 29 July 1991, Orix Metro sent Lourdes Dy a letter approving the release of the real estate mortgage, thus:

We are pleased to inform you that your request for the release of Real Estate Property located at San Francisco del Monte, Quezon City which is presently mortgaged with us, has been approved subject to the final payment amounting to EIGHT HUNDRED THOUSAND PESOS only (P800,000.00) to cover all your arrearages, penalty charges and advance payment.

Release of the said property shall be subject to the final clearing of your check.^[9]

When the spouses Dy still failed to make any payments, counsel for Orix Metro sent a final demand letter to Lourdes Dy on 21 February 1992, which reads:

For and in behalf of my client therefore, we are constrained to make FINAL LEGAL DEMAND against your company and its surety, ERNESTO T. DY, for the considered amount of THREE MILLION FOUR HUNDRED ELEVEN THOUSAND FIFTY PESOS (P3,411,050.00) to be paid and on hand on or before 28 February 1992, failing which we will be constrained to exercise our options under our contract, the pertinent provisions of which have been reproduced above for your perusal, and collect the full amount of P4,167,702.00 inclusive of penalties, attorney's fees and liquidated damages as provided for under our contract.^[10]

It would appear that several checks issued by Lourdes Dy to Orix Metro to cover the loan bounced, prompting Orix Metro to file several criminal complaints against her for violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law, with the Makati RTC, Branch 134, where it was docketed as Criminal Cases No. 92-3964-08.^[11] Lourdes Dy wrote Orix Metro a letter on 30 May 1992, and perhaps in the hope of settling aforesaid criminal cases, proposed that she and her husband Ernesto be allowed to update their loan account:

This has reference to I.S. No. 922871, Makati and our plea that you allow us to update our account. We will be paying interest and charges until we are able to reinstate our monthly payments of P132,334.00.

After a careful study and deliberation of cash flow and considering the onset of rainy season which renders mobility slower we would like to offer the following schedule of payment:

June 30, 1992	P280,000.00
July 31, 1992	330,000.00
August 31, 1992	330,000.00
September 30, 1992	330,000.00
October 30, 1992	130,000.00
November 28, 1992	130,000.00 ^[12]

Orix Metro replied in a letter dated 9 June 1992^[13] that it was considering Lourdes Dy's foregoing proposal. It presented a counter-offer, which included, as a condition, the posting by the spouses Dy of additional collateral worth not less than P550,000.00.^[14]

The spouses Dy, however, asked Orix Metro to waive the requirement for additional collateral:

This is in reply to your letter of June 9, 1992 addressed to our client, Mrs. Lourdes Dy and to inform you that we will be amenable to incorporate the amount of P55,128.00 in order that their arrearages will be obliterated on November 30, 1992.

However, we beg to be allowed to reinstate the account without being required to post an additional collateral of P500,000.00 considering that the value of the vessel mortgaged is more than double the amount of the loan.^[15]

In a letter dated 14 July 1992, Orix Metro agreed to waive the additional collateral, but it required the spouses Dy to reinsure M/V Pilar-I and to issue postdated checks for the proposed payments, to wit:

In response to your letter dated June 22, 1992, we acknowledge your request to waive the requirement of additional collateral of P500,000.00 provided that (1) the vessel M/V Pilar I should be reinsured in the amount of P3.5 million with an insurance company accredited to COLF; (2) we would require the issuance of post dated checks for all proposed payments including the additional of P55,128.00; and (3) we would execute an affidavit of desistance only after the second payment of P330,000.00 on 31 July 1992 is cleared and credited to our account.^[16]

The spouses Dy did not meet the foregoing conditions and were not able to reinsure the vessel or deliver all of the required postdated checks. In the meantime, on 18 August 1992, Orix Metro filed a Complaint and Petition for Extrajudicial Foreclosure of Preferred Ship Mortgage under Presidential Decree No. 1521 with Urgent Prayer for Attachment^[17] with the RTC of Makati City, Branch 64, where it was docketed as Civil Case No. 92-2311.^[18]

Upon the filing of an affidavit of merit and the posting of a bond in the amount of P2,386,825.00 by Orix Metro as required by the Revised Rules of Court, the RTC issued an Order of Arrest (of Vessel) dated 1 September 1992, directing the Sheriff to arrest, seize, and take immediate possession of M/V Pilar-I and to keep it under the custody of the court. Pursuant to the said arrest order, the Sheriff seized the vessel on 30 September 1992 at Pier 18 in North Harbor, Manila.

On 13 October 1992, Orix Metro filed an Urgent *Ex Parte* Motion asking the RTC to turn over possession of M/V Pilar-I to it.^[19]

Also on 13 October 1992, the spouses Dy filed a Motion to Lift and/or Set Aside Order of Arrest/Seizure of Defendants' vessel M/V Pilar-I, manifesting that the obligation sought to be enforced by Orix Metro was not yet due. The spouses Dy claimed that it acted favorably on their request for restructuring of the loan in its letter dated 10 August 1992,^[20] thus, resulting in the reduction of the monthly amortizations and the extension of the terms of payment. The initial payment of the loan under the extended period was to begin on 6 September 1992, or after the Complaint was filed on 18 August 1992.^[21] Expectedly, Orix Metro opposed the Motion of the spouses Dy.

Subsequently, the spouses Dy filed their Answer,^[22] again averring that there was yet no default on their part at the time the Complaint was filed on 18 August 1992, considering that Orix Metro acquiesced to the restructuring of their loan and to the extension of time to pay.

On 1 February 1993, the RTC issued an Order granting the motion to lift/set aside the order of arrest/seizure of M/V Pilar-I and ordering the Sheriff to return the vessel to the spouses Dy, but requiring them to pay Orix Metro according to the terms embodied in the 10 August 1992 letter of Orix Metro to spouses Dy.^[23] However, acting on the Motion for Reconsideration filed by Orix Metro, the RTC set aside its 1 February 1993 Order and directed that M/V Pilar-I be returned to Orix Metro.

The spouses Dy assailed the RTC Order of 23 June 1993 before the Court of Appeals *via* a Petition for *Certiorari*, docketed as CA-G.R. SP No. 32000. In a Resolution dated 21 March 1994, the Court of Appeals dismissed CA-G.R. SP No. 32000 after finding no grave abuse of discretion on the part of the RTC judge when he reinstated the Order of Arrest of the vessel. The Court of Appeals held that the Attachment of the vessel was an ancillary remedy, with both parties being protected by the bond put up by Orix Metro.^[24] The spouses Dy intended to elevate their case to this Court, but failed to file the proper pleadings within the extended period granted to them; thus, their case was deemed closed and terminated. Thereafter, the

proceedings before the RTC resumed.

On 28 September 1994, Orix Metro transferred all of its rights, title to and interests in M/V Pilar-I, as mortgagee, to Colorado Shipyard Corporation (Colorado).^[25] Despite the objection of the spouses Dy, the RTC approved the assignment on the condition that the term "foreclosed vessel," used in the Deed of Assignment to refer to M/V Pilar-I, be changed to "mortgaged vessel." An Amended Transfer of Rights by Orix Metro and Colorado, executed and submitted to the RTC on 4 December 1994, was approved on 5 December 1994. Possession of M/V Pilar-I was then transferred to Colorado.

Trial on the merits ensued.

The RTC rendered its Decision^[26] on 31 July 1997 in favor of the spouses Dy. It ruled that they had not yet incurred a default, since Orix Metro agreed to a restructured schedule of payment. There being no default, the attempt at foreclosure of the chattel mortgage on M/V Pilar-I by Orix Metro was premature, and the Complaint in Civil Case No. 92-2311 had no cause of action. The dispositive portion of the said RTC Decision is reproduced below:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

1. Ordering [herein petitioner] Consolidated Orix Leasing and Finance Corporation and whoever is presently in actual possession of M/V "Pilar I" to return said vessels to [herein respondents]. The Sheriff of this Court with the assistance of the Philippine Coast Guard is ordered to effect the return of M/V Pilar I to [respondents] Limchia Enterprises and Spouses Ernesto Dy and Lourdes Dy; and
2. Ordering [petitioner] Consolidated Orix Leasing and Finance Corporation [to pay] the following amounts to the [respondents]:
 - a) P2,340,000.00 as actual damages;
 - b) P300,000.00 as attorney's fees; and,
 - c) P500,000.00 as moral damages.^[27]

Orix Metro sought recourse from the Court of Appeals by filing a Notice of Appeal on 2 September 1997. After being granted its request for extension, Orix Metro finally filed its Appellant's Brief on 29 March 1999. The spouses Dy were able to file their Appellee's Brief on 19 July 1999. The appellate court, however, still found for the spouses Dy based on the following ratiocination:

Evidently, the parties agreed to restructure the loan and [herein petitioner Orix Metro] acceded to the [herein respondents'] proposed schedule of payments. Records show that in accordance with [Lourdes Dy]'s letter dated May 30, 1992, [respondents] have partially complied with the payment of their obligation for the months of June and July