

FIRST DIVISION

[G.R. No. 179901, April 14, 2008]

**BANCO DE ORO-EPCI, INC., * PETITIONER, VS. JAPRL
DEVELOPMENT CORPORATION, RAPID FORMING CORPORATION
AND JOSE U. AROLLADO, RESPONDENTS.**

DECISION

CORONA, J.:

This petition for review on certiorari^[1] seeks to set aside the decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 95659 and its resolution^[3] denying reconsideration.

After evaluating the financial statements of respondent JAPRL Development Corporation (JAPRL) for fiscal years 1998, 1999 and 2000,^[4] petitioner Banco de Oro-EPCI, Inc. extended credit facilities to it amounting to P230,000,000^[5] on March 28, 2003. Respondents Rapid Forming Corporation (RFC) and Jose U. Arollado acted as JAPRL's sureties.

Despite its seemingly strong financial position, JAPRL defaulted in the payment of four trust receipts soon after the approval of its loan.^[6] Petitioner later learned from MRM Management, JAPRL's financial adviser, that JAPRL had altered and falsified its financial statements. It allegedly bloated its sales revenues to post a big income from operations for the concerned fiscal years to project itself as a viable investment.^[7] The information alarmed petitioner. Citing relevant provisions of the Trust Receipt Agreement,^[8] it demanded immediate payment of JAPRL's outstanding obligations amounting to P194,493,388.98.^[9]

SP Proc. No. Q-03-064

On August 30, 2003, JAPRL (and its subsidiary, RFC) filed a petition for rehabilitation in the Regional Trial Court (RTC) of Quezon City, Branch 90 (Quezon City RTC).^[10] It disclosed that it had been experiencing a decline in sales for the three preceding years and a staggering loss in 2002.^[11]

Because the petition was sufficient in form and substance, a stay order^[12] was issued on September 28, 2003.^[13] However, the proposed rehabilitation plan for JAPRL and RFC was eventually rejected by the Quezon City RTC in an order dated May 9, 2005.^[14]

Civil Case No. 03-991

Because JAPRL ignored its demand for payment, petitioner filed a complaint for sum of money with an application for the issuance of a writ of preliminary attachment against respondents in the RTC of Makati City, Branch 145 (Makati RTC) on August 21, 2003.^[15] Petitioner essentially asserted that JAPRL was guilty of fraud because it (JAPRL) altered and falsified its financial statements.^[16]

The Makati RTC subsequently denied the application (for the issuance of a writ of preliminary attachment) for lack of merit as petitioner was unable to substantiate its allegations. Nevertheless, it ordered the service of summons on respondents.^[17] Pursuant to the said order, summonses were issued against respondents and were served upon them.

Respondents moved to dismiss the complaint due to an allegedly invalid service of summons.^[18] Because the officer's return stated that an "administrative assistant" had received the summons,^[19] JAPRL and RFC argued that Section 11, Rule 14 of the Rules of Court^[20] contained an exclusive list of persons on whom summons against a corporation must be served.^[21] An "administrative assistant" was not one of them. Arollado, on the other hand, cited Section 6, Rule 14 thereof^[22] which mandated personal service of summons on an individual defendant.^[23]

The Makati RTC, in its October 10, 2005 order,^[24] noted that because corporate officers are often busy, summonses to corporations are usually received only by administrative assistants or secretaries of corporate officers in the regular course of business. Hence, it denied the motion for lack of merit.

Respondents moved for reconsideration^[25] but withdrew it before the Makati RTC could resolve the matter.^[26]

RTC SEC Case No. 68-2008-C

On February 20, 2006, JAPRL (and its subsidiary, RFC) filed a petition for rehabilitation in the RTC of Calamba, Laguna, Branch 34 (Calamba RTC). Finding JAPRL's petition sufficient in form and in substance, the Calamba RTC issued a stay order^[27] on March 13, 2006.

In view of the said order, respondents hastily moved to suspend the proceedings in Civil Case No. 03-991 pending in the Makati RTC.^[28]

On July 7, 2006, the Makati RTC granted the motion with regard to JAPRL and RFC but ordered Arollado to file an answer. It ruled that, because he was jointly and solidarily liable with JAPRL and RFC, the proceedings against him should continue.^[29] Respondents moved for reconsideration^[30] but it was denied.^[31]

On August 11, 2006, respondents filed a petition for certiorari^[32] in the CA alleging that the Makati RTC committed grave abuse of discretion in issuing the October 10, 2005 and July 7, 2006 orders.^[33] They asserted that the court did not acquire jurisdiction over their persons due to defective service of summons. Thus, the Makati RTC could not hear the complaint for sum of money.^[34]

In its June 7, 2007 decision, the CA held that because the summonses were served on a mere administrative assistant, the Makati RTC never acquired jurisdiction over respondents. Thus, it granted the petition.^[35]

Petitioner moved for reconsideration but it was denied.^[36] Hence, this petition.

Petitioner asserts that respondents maliciously evaded the service of summonses to prevent the Makati RTC from acquiring jurisdiction over their persons. Furthermore, they employed bad faith to delay proceedings by cunningly exploiting procedural technicalities to avoid the payment of their obligations.^[37]

We grant the petition.

Respondents, in their petition for certiorari in the CA, questioned the jurisdiction of the Makati RTC over their persons (*i.e.*, whether or not the service of summons was validly made). Therefore, it was only the October 10, 2005 order of the said trial court which they in effect assailed.^[38] However, because they withdrew their motion for reconsideration of the said order, it became final. Moreover, the petition was filed 10 months and 1 day after the assailed order was issued by the Makati RTC,^[39] way past the 60 days allowed by the Rules of Court. For these reasons, the said petition should have been dismissed outright by the CA.

More importantly, when respondents moved for the suspension of proceedings in Civil Case No. 03-991 before the Makati RTC (on the basis of the March 13, 2006 order of the Calamba RTC), they waived whatever defect there was in the service of summons and were deemed to have submitted themselves voluntarily to the jurisdiction of the Makati RTC.^[40]

We withhold judgment for the moment on the July 7, 2006 order of the Makati RTC suspending the proceedings in Civil Case No. 03-991 insofar as JAPRL and RFC are concerned. Under the Interim Rules of Procedure on Corporate Rehabilitation, a stay order defers all actions or claims against the corporation seeking rehabilitation^[41] from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings.^[42]

The Makati RTC may proceed to hear Civil Case No. 03-991 only against Arollado if there is no ground to go after JAPRL and RFC (as will later be discussed). A creditor can demand payment from the surety solidarily liable with the corporation seeking rehabilitation.^[43]

Respondents abused procedural technicalities (albeit unsuccessfully) for the sole purpose of preventing, or at least delaying, the collection of their legitimate obligations. Their reprehensible scheme impeded the speedy dispensation of justice. More importantly, however, considering the amount involved, respondents utterly disregarded the significance of a stable and efficient banking system to the national economy.^[44]

Banks are entities engaged in the lending of funds obtained through deposits^[45]

from the public.^[46] They borrow the public's excess money (*i.e.*, deposits) and lend out the same.^[47] Banks therefore redistribute wealth in the economy by channeling idle savings to profitable investments.

Banks operate (and earn income) by extending credit facilities financed primarily by deposits from the public.^[48] They plough back the bulk of said deposits into the economy in the form of loans.^[49] Since banks deal with the public's money, their viability depends largely on their ability to return those deposits on demand. For this reason, banking is undeniably imbued with public interest. Consequently, much importance is given to sound lending practices and good corporate governance.^[50]

Protecting the integrity of the banking system has become, by large, the responsibility of banks. The role of the public, particularly individual borrowers, has not been emphasized. Nevertheless, we are not unaware of the rampant and unscrupulous practice of obtaining loans without intending to pay the same.

In this case, petitioner alleged that JAPRL fraudulently altered and falsified its financial statements in order to obtain its credit facilities. Considering the amount of petitioner's exposure in JAPRL, justice and fairness dictate that the Makati RTC hear whether or not respondents indeed committed fraud in securing the credit accomodation.

A finding of fraud will change the whole picture. In this event, petitioner can use the finding of fraud to move for the dismissal of the rehabilitation case in the Calamba RTC.

The protective remedy of rehabilitation was never intended to be a refuge of a debtor guilty of fraud.

Meanwhile, the Makati RTC should proceed to hear Civil Case No. 03-991 against the three respondents guided by Section 40 of the General Banking Law which states:

Section 40. Requirement for Grant of Loans or Other Credit Accommodations. Before granting a loan or other credit accommodation, a bank must ascertain that the debtor is capable of fulfilling his commitments to the bank.

Towards this end, a bank may demand from its credit applicants a statement of their assets and liabilities and of their income and expenditures and such information as may be prescribed by law or by rules and regulations of the Monetary Board to enable the bank to properly evaluate the credit application which includes the corresponding financial statements submitted for taxation purposes to the Bureau of Internal Revenue. **Should such statements prove to be false or incorrect in any material detail, the bank may terminate any loan or credit accommodation granted on the basis of said statements and shall have the right to demand immediate repayment or liquidation of the obligation.**

In formulating the rules and regulations under this Section, the Monetary Board shall recognize the peculiar characteristics of microfinancing, such

as cash flow-based lending to the basic sectors that are not covered by traditional collateral. (emphasis supplied)

Under this provision, banks have the right to annul any credit accommodation or loan, and demand the immediate payment thereof, from borrowers proven to be guilty of fraud. Petitioner would then be entitled to the immediate payment of P194,493,388.98 and other appropriate damages.^[51]

Finally, considering that respondents failed to pay the four trust receipts, the Makati City Prosecutor should investigate whether or not there is probable cause to indict respondents for violation of Section 13 of the Trust Receipts Law.^[52]

ACCORDINGLY, the petition is hereby **GRANTED**. The June 7, 2007 decision and August 31, 2007 resolution of the Court of Appeals in CA-G.R. SP No. 95659 are **REVERSED** and **SET ASIDE**.

The Regional Trial Court of Makati City, Branch 145 is ordered to proceed expeditiously with the trial of Civil Case No. 03-991 with regard to respondent Jose U. Arollado, and the other respondents if warranted.

SO ORDERED.

*Puno, C.J., (Chairperson), Carpio, and Leonardo-De Castro, JJ., concur.
Azcuna, J., on official leave.*

* Formerly Equitable PCI Bank, Inc.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan-Vidal of the Tenth Division of the Court of Appeals. Dated June 7, 2007. *Rollo*, pp. 49-59.

[3] Dated August 31, 2007. *Id.*, p. 60.

[4] *Id.*, pp. 62-63.

[5] *Id.*, p. 63.

[6] JAPRL failed to pay the value of trust receipt nos. 114505, 1000006285, 1000006305 and 1000006325. *Id.*

[7] *Id.*, pp. 62-66.

[8] Paragraph 16 of the Trust Receipt Agreement provided:

16. If any of the following Events of Default shall have occurred:

X X X

X X X

X X X