

THIRD DIVISION

[G.R. No. 164510, November 25, 2008]

**SPOUSES SANTIAGO AND RUFINA TANCHAN, PETITIONERS, VS.
ALLIED BANKING CORPORATION, RESPONDENT.**

DECISION

AUSTRIA-MARTINEZ, J.:

By way of Petition for Review under Rule 45 of the Rules of Court, spouses Santiago and Rufina Tanchan (petitioners) seek the modification of the June 15, 2004 Decision^[1] of the Court of Appeals (CA) which affirmed the August 3, 2001 Decision^[2] and August 8, 2002 Order^[3] of Branch 137, Regional Trial Court (RTC), Makati in Civil Case No. 98-2468.^[4]

The relevant facts are of record.

For value received, Cebu Foremost Construction, Inc. (Foremost), through its Chairman and President Henry Tanchan (Henry) and his spouse, Vice-President and Treasurer Ma. Julie Ann Tanchan (Ma. Julie Ann) executed and delivered to Allied Banking Corporation (respondent) seven US\$ promissory notes,^[5] including Promissory Note No. 0051-97-03696^[6] (**Exhibit "G"**) for US\$379,000.00, at 9.50% interest rate per annum, due on February 9, 1998.

Foremost also issued to respondent several Philippine peso promissory notes^[7] covering various loans in the aggregate amount of Php28,900,000.00, including Promissory Note No. 0051-97-03688 (**Exhibit "H"**) for PhpP16,500,000.00, at an interest rate of 14.5% per annum, due on February 9, 1998.^[8]

All the foregoing promissory notes are secured by two Continuing Guaranty/ Comprehensive Surety Agreements (CG/CSA) executed in the personal capacities of spouses Henry and Ma. Julie Ann (Spouses Tanchan) and Henry's brother, herein petitioner Santiago Tanchan (Santiago),^[9] for himself and as attorney-in-fact of his wife and co-petitioner Rufina Tanchan (Rufina) under a Special Power of Attorney, dated April 30, 1993, which grants Santiago authority to:

x x x borrow and/or contract debts and obligations involving, affecting or creating a charge or liability on, or which may involve, affect or create a liability on the Property and/or my interest therein, whether or not such debt/s or obligation/s contracted or to be contracted will benefit me or the family, and to sign, execute and deliver in my name to or in favor of any party, under such terms and conditions as my attorney-in-fact may deem necessary, appropriate or convenient, any and all documents instruments or contract/s (including without limitations, promissory notes, loan agreements, assignments, surety or guaranty undertakings,

security agreements) involving, affecting or creating a charge or liability on the Property."^[10]

The liability of the sureties under both CG/CSAs is limited to Php150,000,000.00.^[11]

Exhibit "G" and all the Philippine peso promissory notes, including Exhibit "H", are secured not only by the two CG/CSAs but also by a Real Estate Mortgage executed on February 14, 1997 by Henry, for himself and as the legal guardian of the minors Henry Paul L. Tanchan and Don Henry L. Tanchan; his wife Ma. Julie Ann; and Spouses Pablo and Milagros Lim, over real properties registered in their names under Transfer Certificates of Title No. 115804, No. 111149, No. 110672 and No. 3815, all located in Cebu City.^[12]

In separate final demand letters, both dated May 14, 1998, respondent sought from Foremost payment of US\$1,054,000.00, as the outstanding principal balance, exclusive of interest and charges, of its obligations under the seven US\$ promissory notes, and Php28,900,000.00 under its Philippine peso promissory notes.^[13] Separate demands for payment were also made upon Spouses Tanchan^[14] and the petitioners^[15] as sureties.

In a letter dated April 6, 1998, Foremost offered to cede to respondent, by way of *dacion en pago*, the mortgaged real properties in full payment of its loan obligations.^[16]

On August 3, 1998, respondent instituted the extra-judicial foreclosure of the real estate mortgage to satisfy its claim against Foremost in the aggregate "amount of Php55,578,826.77, inclusive of interest, other charges and attorney's fees, equivalent to 10% of the total amount due as of May 3, 1998, plus the costs and expenses of foreclosure."^[17] At the public auction sale, respondent's bid of only Php37,745,283.67 for all the mortgaged properties, including the buildings and improvements thereon,^[18] was adjudged the sole and highest bid.

On October 13, 1998, respondent filed with the RTC a Complaint for Collection of Sum of Money with Petition for Issuance of Writ of Preliminary Injunction against Foremost, Spouses Tanchan and herein petitioners (collectively referred to as Foremost, et al.), praying that they be ordered to pay, jointly and severally, the following amounts:^[19]

Promissory Note	Amount
0051-96-09495	US\$ 80,000.00 plus interest at the rate of 11.4% per annum from December 29, 1997 until fully paid and a penalty charge on the unpaid interest at the rate of 1% per month reckoned from December 29, 1997 until fully paid and a penalty charge on the unpaid principal reckoned from May 28, 1998 until fully paid.
0051-96-17617	US\$110,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month, all reckoned from December 29, 1997 until fully paid.
0051-96-	US\$250,000.00 plus interest at the rate of 11.4% per

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0051-96-24801	US\$115,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month all reckoned from December 29, 1997 until fully paid.
0051-96-00603	US\$75,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month all reckoned from December 29, 1997 until fully paid.
0051-97-02444	US\$45,000.00 plus interest at the rate of 11.4% per annum and a penalty charge at the rate of 1% per month all reckoned from December 29, 1997 until fully paid.
0051-97-03696 (Exhibit "G")	US\$379,000.00 plus interest at the rate of 11.4% per annum reckoned from January 8, 1998 until fully paid and a penalty charge at the rate of 1% per month from February 9, 1998 until fully paid.
0051-97-03688 (Exhibit "H")	PhpP7,466,795.67 plus interest at the rate of 20% per annum and a penalty charge at the rate of 3% per month from August 10, 1998. (Emphasis supplied)

Respondent also prayed for payment of attorney's fees equivalent to 25% of the total amount due, expenses and costs of suit,

In support of its application for issuance of a writ of preliminary attachment, respondent submitted an Affidavit executed by Elmer Elumbaring (Elumbaring), Branch Cashier/Loans Supervisor, Cebu, Jakosalem Branch, stating that:

4. Defendants [Foremost, et al.] committed fraud in contracting the obligations upon which the action is brought in that: a) to induce plaintiff [respondent] to grant the credit accommodation they represented to the plaintiff [respondent] that they were in a financial position to pay their obligations on maturity date in consideration of which plaintiff [respondent] granted the credit accommodations. It turned out, however, that they were not in such financial position when they failed to pay their obligations on maturity date; b) they falsely represented that the proceeds of the Loan would be used as additional working capital in consideration of which, plaintiff [respondent] granted the loans but when defendants [Foremost, et al.] received the said proceeds, they diverted the same to a purpose other than that for which they were intended as shown by the fact that defendants [Foremost, et al.] were not able to fully pay the obligations at its maturity date;
5. There is no security whatsoever for the claim plaintiff [respondent] seeks to enforce by this action, and only by the issuance of a writ of preliminary attachment can its interest be protected.^[20]

The application for writ of preliminary attachment was granted by the RTC in an Order dated November 3, 1998, to wit:

WHEREFORE, finding plaintiff's [respondent's] application for the issuance of a writ of preliminary attachment sufficient in form and substance, and the ground set forth therein being among those allowed by the Rules (Rule 57, Sec. 1 [e]), let a Writ of Preliminary Attachment issue against the properties of defendants Cebu Foremost Construction, Incorporated, Santiago Tanchan, Jr., Rufina C. Tanchan, Henry Tanchan and Ma. Julie Ann T. Tanchan, upon plaintiff's [respondent's] filing of a bond in the amount of FIFTY-FOUR MILLION (P54,000,000.00) PESOS, conditioned to answer for whatever damage that the said defendants [Foremost, et al.] may suffer by reason of the issuance of said writ should the Court finally adjudge that plaintiff [respondent] was not entitled thereto.

SO ORDERED.^[21]

Thus, armed with a writ of attachment,^[22] the sheriff levied several parcels of land registered in the name of Foremost, et al.^[23]

In their Amended Answer with Counterclaim,^[24] Foremost, et al. acknowledged the authenticity and due execution of the promissory notes but denied liability for the amounts alleged in the Complaint, the computation of which they dispute due to the arbitrariness of the imposition of new interest rates. They impugned the cause of action of respondent to collect the amount due under Exhibit "G" and Exhibit "H" in view of the bank's prior extra-judicial foreclosure of the securities thereon, which recourse bars collection of the amounts due on the same promissory notes.^[25]

Foremost, et al. questioned the inclusion of Rufina as a party-defendant even when she was not bound by the CG/CSAs which her husband Santiago signed in excess of his authority under the special power of attorney to contract loans for the family but not to guarantee loans obtained by third persons.^[26]

The issuance of the writ of preliminary attachment was likewise objected to by Foremost on the ground that it contracted the loans in good faith but was prevented from paying the same only because of the economic crisis that beset the country. On the part of Spouses Tanchan and herein petitioners, they claim that they had no personal participation or influence in the loan transactions except to ensure its payment; hence, they could not have practiced fraud upon respondent because they did not personally contract the loans with it.^[27] Thus, each sought payment of Php100,000,000.00 as moral damages for the emotional and mental vexation visited upon them by respondent in causing the unwarranted preliminary attachment of their properties.^[28]

At the pre-trial, respondent submitted an Amended Pre-trial Brief where it admitted that Foremost's Exhibit "G" and Exhibit "H" were among those secured by the real estate mortgage^[29] that it earlier foreclosed, but the proceeds of the foreclosure sale satisfied only part of the amounts due on said promissory notes and left a deficiency which is now the subject of their complaint.^[30]

The RTC issued a Pre-trial Order which limited the issues to be resolved to the following:

1. Does the [respondent] have a cause of action with respect to the promissory notes marked as [Exhibits] G^[31] and H^[32]?
2. Is [petitioner] Rufina C. Tanchan liable on the basis of the Continuing Guaranty/Comprehensive Surety Agreements because of her authority from [sic] Santiago Tanchan, Jr. was limited to borrow money only for the benefit of the family?
3. Is the unilateral increase of the interest rate of [respondent] valid?
4. What is the amount and nature of the damages that should be adjudged against the losing party in favor of the prevailing party?
^[33]

As directed by the RTC in its Pre-trial Order, both parties presented affidavits in lieu of direct examination of their witnesses.

For respondent, Fresnido Bandilla (Bandilla), Manager, Legal Department, testified that the obligations of Foremost which were secured by the real estate mortgage had amounted to Php61,155,339.36 as of the date of the foreclosure sale, and that with respondent's bid of only Php37,745,283.67 being adjudged the lone and highest bid, there remained an unpaid balance of Php23,415,115.69.^[34] Elumbaring corroborated Bandilla's testimony.^[35]

On the other hand, Henry averred that even in the wake of the Asian financial crisis, Foremost struggled to meet interest payments on its loan obligations with respondent, but the point came when there were no more construction jobs to be had, and Foremost was constrained to default on its obligations.^[36]

Santiago testified that he and his spouse could not have defrauded respondent because they did not directly contract the loans with it but merely acted as sureties. Thus, the issuance of the writ of attachment against their properties was arbitrary, and brought upon them social humiliation and emotional torment.^[37]

After the parties submitted their respective memoranda,^[38] the RTC rendered its August 31, 2001 Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering defendants Cebu Foremost Construction, Inc., Santiago Tanchan, Jr., Rufina C. Tanchan, Henry Tanchan and Ma. Julie Ann Tanchan, solidarily, [to] pay plaintiff Allied Banking Corporation the following amounts: (1) US \$80,000.00, plus 8.75 % interest per annum from 7 June 1996 to 6 May 1997, 9.5% interest per annum from 7 May 1997 until fully paid, and 1% penalty per month on the amount due from maturity date and until fully paid; (2) US \$110,00.00, plus 8.75% interest per annum from 24 September to 29 May 1997, 9.5% interest per annum from 30 May 1997 until fully paid, and 1% penalty per month on the amount due from maturity date until fully paid; (3) US \$570,000.00, plus 8.75% interest per annum from 8 October 1996 to 29 May 1997, 9.5% interest per annum from 30 May 1997 until fully paid, and 1% penalty per month on the amount due from maturity date until fully paid; (4) US \$115,000.00 plus 9.5% interest per