545 Phil. 268

SECOND DIVISION

[G.R. NO. 159189, February 21, 2007]

THE MANILA BANKING CORPORATION, PETITIONER, VS. UNIVERSITY OF BAGUIO, INC. AND GROUP DEVELOPERS, INC., RESPONDENTS.

DECISION

QUISUMBING, J.:

On appeal is the Order[1] dated April 11, 2002 of the Regional Trial Court (RTC) of Makati City, Branch 61, in Civil Case No. 90-389, dismissing petitioner's amended complaint for a sum of money with application for preliminary attachment. In the appeal under Section 2, Rule 41, on a pure question of law, petitioner alleges that the assailed Order of the RTC was manifestly not in accord with law and jurisprudence. Also assailed is the trial court's June 27, 2003 Order[2] denying the motion for reconsideration.

The facts are culled from the records.

On November 26, 1981, petitioner Manila Banking Corporation granted a P14 million credit line[3] to respondent University of Baguio, Inc. for the construction of additional buildings and purchase of new equipment.[4] On behalf of the university, then Vice-Chairman Fernando C. Bautista, Jr.[5] signed Promissory Note (PN) Nos. 10660, 10672, 10687, and 10708[6] and executed a continuing suretyship agreement.[7] However, Bautista, Jr. diverted the net proceeds of the loan. He endorsed and delivered the four checks representing the net proceeds to respondent Group Developers, Inc. (GDI).[8] The loan was not paid.

On February 12, 1990, the bank filed a complaint for a sum of money with application for preliminary attachment[9] against the university, Bautista, Jr. and his wife Milagros, before the RTC of Makati City. Five years later, on March 31, 1995, the bank amended the complaint and impleaded GDI as additional defendant.

In the amended complaint,[10] the bank alleged that it was unaware and did not approve the diversion of the loan to GDI; that it granted the loan without collateral upon the university's undertaking that it would construct new buildings; and that GDI connived with the university and Bautista, Jr. in fraudulently contracting the debt.

In its Answer, the university claimed that the bank and GDI approved the diversion. Allegedly, Victor G. Puyat, then GDI's President, and Vicente G. Puyat, then the bank's President, decided to use the proceeds of the loan. The university stated that Vicente G. Puyat and Victor G. Puyat even assured the university, in separate

letters[11] both dated October 22, 1981, that it would be relieved of any liability from the loan. Consequently, even if the loan was overdue, the bank did not demand payment until February 8, 1989. By way of cross-claim, the university prayed that GDI be ordered to pay the university the amount it would have to pay the bank. In addition, the university filed a third-party complaint against Victor G. Puyat and the heirs of Vicente G. Puyat.

On December 14, 1995, the bank and GDI executed a deed of *dacion en pago*.[12] As attorney-in-fact of Batulao Bio-Loop Farms, Inc., GDI ceded and transferred to the bank a parcel of land consisting of 210,000 square meters located in Nasugbu, Batangas and covered by Transfer Certificate of Title No. T-70784. The *dacion en pago* was for a consideration of P78 million and in full settlement of the loan under PN Nos. 10660, 10672, 10687, and 10708, subject of Civil Case No. 90-389.[13]

In an Omnibus Order[14] dated April 21, 1997, the trial court dismissed the third-party complaint against the heirs of Vicente G. Puyat for being premature since the bank's cause of action was against the university as a "dummy" of GDI. The trial court also dismissed the case as to Fernando Bautista, Jr. and his wife upon Fernando's death. The trial court further ruled that the university's motion to implead GDI as third-party defendant, and GDI's motions to dismiss the amended complaint and cross-claim, had been mooted by the *dacion en pago*.

On March 19, 1998, the university moved to dismiss the amended complaint on the grounds that: (1) there was "no more cause of action" against it since the loan had been settled by GDI; and (2) the bank "failed to prosecute the action for an unreasonable length of time."[15] In an Order[16] dated August 17, 1999, the trial court denied the motion since the "matters relied upon by the university were evidentiary in nature."

On October 14, 1999, the university moved to set the case for pre-trial on December 2, 1999.[17]

On August 3, 2000, the trial court resolved GDI's motion to resolve the motions to dismiss and defer pre-trial; expunged from the record the deed of *dacion en pago*; and reinstated GDI's motions to dismiss the amended complaint and cross-claim on the ground that no compromise agreement was submitted for its approval.[18]

On August 29, 2001, the university filed a manifestation with motion for reconsideration of the August 17, 1999 Order denying the university's motion to dismiss the amended complaint. The university argued that the grounds for its motion to dismiss were not evidentiary as the deed of *dacion en pago* and the bank's judicial admission thereof were on record.

The bank opposed the motion on the ground that the motion for reconsideration of the August 17, 1999 Order was filed after more than two years. The bank noted that it was the university which moved to set the case for pre-trial; thus, its claim of not seeking reconsideration of the August 17, 1999 Order because of the scheduled pre-trial was preposterous. The bank concluded that the motion to dismiss lacked basis since the deed of *dacion en pago* had already been expunged.

In the appealed Order of April 11, 2002, the trial court ruled that the bank had no cause of action against the defendants because its claim for a sum of money had been paid through the *dacion en pago*. The trial court noted that the bank even admitted the settlement. It disposed of the case as follows:

> WHEREFORE, in view of the foregoing, defendant [respondent herein] University of Baguio's Motion to Dismiss Amended Complaint is herein GRANTED and this complaint for collection of sum of money is herein DISMISSED.
>
> Defendant UBI [respondent university] shall file the appropriate Manifestation in Court specifying the dates in June when it will be available to present evidence on its counterclaim.
>
> SO ORDERED.[19]

Hence, this appeal where petitioner alleges:

> I.
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> THE RTC SERIOUSLY ERRED IN GRANTING THE MOTION TO DISMISS OF RESPONDENT UBI ON THE BASIS OF A DOCUMENT THAT HAS ALREADY BEEN INDISPUTABLY STRICKEN OFF FROM (sic) THE RECORDS OF THE CASE.
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> II.
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> THE RTC SERIOUSLY ERRED IN GRANTING UBI'S MOTION TO DISMISS WHEN THE ISSUES RAISED THEREIN ARE EVIDENTIARY IN NATURE AND DID NOT REFER TO THE ALLEGATIONS IN THE COMPLAINT.
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> III.
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> THE RTC SERIOUSLY ERRED IN RULING, WITHOUT TRIAL, THAT THE DEED OF *DACION EN PAGO* BETWEEN PETITIONER AND RESPONDENT UBI [SHOULD BE GDI] HAS NOT BEEN RESCINDED.
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> IV.
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> THE RTC SHOULD HAVE DENIED UBI'S MANIFESTATION (WITH MOTION FOR RECONSIDERATION) AS THE FILING OF THE MOTION TO DISMISS AFTER RESPONDENT UBI FILED ITS ANSWER VIOLATED THE RULES OF COURT.
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> V.
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> THE RTC, WITHOUT JUSTIFIABLE NOR LEGAL BASIS, ADOPTED DIFFERENT POLICIES TO PARTIES SIMILARLY SITUATED.
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> VI.
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> THE RTC, WITHOUT JUSTIFIABLE NOR LEGAL BASIS, RESOLVED FOR THE

SECOND TIME A MOTION TO DISMISS WHICH IT HAS EARLIER DENIED INSTEAD OF RESOLVING THE MANIFESTATION (WITH MOTION FOR RECONSIDERATION OF SAID DENIAL) WHICH IT WAS BEING ASKED TO RESOLVE.[20]

In essence, the issue for our resolution is, did the trial court err in dismissing the amended complaint, without trial, upon motion of respondent university?

Petitioner argues that the university's motion to dismiss on alleged lack of cause of action because of the deed of *dacion en pago*, an evidence *aliunde*, was improper since petitioner has yet to present its evidence. Petitioner also argues that the April 11, 2002 appealed Order was flawed because it was based on evidence expunged from the record.

Respondent university counters that the amended complaint deserved dismissal because petitioner admitted the *dacion en pago* and stated its lack of interest to pursue the case against respondent university. The university contends that petitioner's acceptance of the Batangas property, as equivalent of performance, extinguished the obligation under the four promissory notes. Thus, the university concludes that no more cause of action lies against it.

For its part, respondent GDI maintains that the *dacion en pago* has no "legal effect" but also avers that the *dacion en pago* effectively paid the loan warranting dismissal of the complaint, cross-claim and counterclaim against it.

Prefatorily, we note the trial court's inconsistent rulings in this case. To recall, the Omnibus Order dated April 21, 1997 appeared to have considered the *dacion en pago* as full settlement of the case. The trial court thus ruled that the *dacion en pago* mooted the motion to implead GDI as third-party defendant, and GDI's motions to dismiss amended complaint and third-party cross-claim.[21] Yet, in the same order, the trial court dismissed the case against the heirs of Vicente G. Puyat on the ground of prematurity, since petitioner's cause of action was against respondent university as "dummy" of GDI, implying that the case was not yet actually settled. Recall also that the August 17, 1999 Order ruled that the payment of the loan through the *dacion en pago* was "evidentiary"[22] or had to be proved. The order was silent on whether it reversed the trial court's earlier statement that the *dacion en pago* settled the loan and the case.

A year later, on August 3, 2000, the trial court expunged the deed of *dacion en pago* and reinstated GDI's motions to dismiss the amended complaint and cross-claim.[23] Then, the appealed Order of April 11, 2002 ruled that petitioner had "no cause of action" against the defendants since the loan was settled by the *dacion en pago*,[24] despite the order which expunged the deed.

In *Domondon v. Lopez*,[25] we distinguished a motion to dismiss for failure of the complaint to state a cause of action from a motion to dismiss based on lack of cause of action. The first is governed by Section 1 (g),[26] Rule 16, while the second by Rule 33,[27] of the Rules of Court, to wit:

> **. . . The first [situation where the complaint does not allege a sufficient cause of action]** is raised in a motion to