

## THIRD DIVISION

**[ G.R. NO. 167434, February 19, 2007 ]**

**SPOUSES RAMON M. NISCE AND A. NATIVIDAD PARAS- NISCE,  
PETITIONERS, VS. EQUITABLE PCI BANK, INC., RESPONDENT.**

### D E C I S I O N

**CALLEJO, SR., J.:**

On November 26, 2002, Equitable PCI Bank<sup>[1]</sup> (Bank) as creditor-mortgagee filed a petition for extrajudicial foreclosure before the Office of the Clerk of Court as *Ex-Officio* Sheriff of the Regional Trial Court (RTC) of Makati City. It sought to foreclose the following real estate mortgage contracts executed by the spouses Ramon and Natividad Nisce over two parcels of land covered by Transfer Certificate of Title (TCT) Nos. S-83466 and S-83467 of the Registry of Deeds of Rizal: one dated February 26, 1974; two (2) sets of "Additional Real Estate Mortgage" dated September 27, 1978 and June 3, 1996; and an "Amendment to Real Estate Mortgage" dated February 28, 2000. The mortgage contracts were executed by the spouses Nisce to secure their obligation under Promissory Note Nos. 1042793 and BD-150369, including a Suretyship Agreement executed by Natividad. The obligation of the Nisce spouses totaled P34,087,725.76 broken down as follows:

Spouses Ramon & Natividad Nisce	----- P17,422,285.99
Natividad P. Nisce (surety)	----- US\$57,306.59
and	----- P16,665,439.77 <sup>[2]</sup>

On December 2, 2002, the *Ex-Officio* Sheriff set the sale at public auction at 10:00 a.m. on January 14, 2003,<sup>[3]</sup> or on January 30, 2003 in the event the public auction would not take place on the earlier setting.

On January 28, 2003, the Nisce spouses filed before the RTC of Makati City a complaint for "nullity of the Suretyship Agreement, damages and legal compensation" with prayer for injunctive relief against the Bank and the *Ex-Officio* Sheriff. They alleged the following: in a letter<sup>[4]</sup> dated December 7, 2000 they had requested the bank (through their lawyer-son Atty. Rosanno P. Nisce) to setoff the peso equivalent of their obligation against their US dollar account with PCI Capital Asia Limited (Hong Kong), a subsidiary of the Bank, under Certificate Deposit No. 01612<sup>[5]</sup> and Account No. 090-0104 (Passbook No. 83-3041);<sup>[6]</sup> the Bank accepted their offer and requested for an estimate of the balance of their account; they complied with the Bank's request and in a letter dated February 11, 2002, informed it that the estimated balance of their account as of December 1991 (including the 11.875% per annum interest) was US\$51,000.42,<sup>[7]</sup> and that as of December 2002,

Natividad's US dollar deposit with it amounted to at least P9,000,000.00; they were surprised when they received a letter from the Bank demanding payment of their loan account, and later a petition for extrajudicial foreclosure.

The spouses Nisce also pointed out that the petition for foreclosure filed by the Bank included the alleged obligation of Natividad as surety for the loan of Vista Norte Trading Corporation, a company owned and managed by their son Dino Giovanni P. Nisce (P16,665,439.77 and US\$57,306.59). They insisted, however, that the suretyship agreement was null and void for the following reasons:

(a) x x x [I]t was executed without the knowledge and consent of plaintiff Ramon M. Nisce, who is by law the administrator of the conjugal partnership;

(b) The suretyship agreement did not redound to the benefit of the conjugal partnership and therefore did not bind the same;

(c) Assuming, *arguendo*, that the suretyship contract was valid and binding, any obligation arising therefrom is not covered by plaintiffs' real estate mortgages which were constituted to secure the payment of certain specific obligations only.<sup>[8]</sup>

The spouses Nisce likewise alleged that since they and the Bank were creditors and debtors with respect to each other, their obligations should have been offset by legal compensation to the extent of their account with the Bank.

To support their plea for a writ of preliminary and prohibitory injunction, the spouses Nisce alleged that the amount for which their property was being sold at public auction (P34,087,725.76) was grossly excessive; the US dollar deposit of Natividad with PCI Capital Asia Ltd. (Hong Kong), and the obligation covered by the suretyship agreement had not been deducted. They insisted that their property rights would be violated if the sale at public auction would push through. Thus, the spouses Nisce prayed that they be granted the following reliefs:

(1) that upon the filing of this Complaint and/or after due notice and summary hearing, the Honorable Court immediately issue a temporary restraining order (TRO) restraining defendants, their representatives and/or deputies, and other persons acting for and on their behalf from proceeding with the extrajudicial foreclosure sale of plaintiffs' mortgaged properties on 30 January 2003 or on any other dates subsequent thereto;

(2) that after due notice and hearing and posting of the appropriate bond, the Honorable Court convert the TRO to a writ of preliminary prohibitory injunction;

(3) that after trial on the merits, the Honorable Court render judgment –

(a) making the preliminary injunction final and permanent;

(b) ordering defendant Bank to set off the present peso value of Mrs. Nisce's US dollar time deposit, inclusive of stipulated interest,

against plaintiffs' loan obligations with defendant Bank;

(c) declaring the Deed of Suretyship dated 25 May 1998 null and valid and without any binding effect as to plaintiff spouses, and ordering defendant Bank to exclude the amounts covered by said suretyship contract from plaintiffs' obligations with defendant Bank;

(d) ordering defendant Bank to pay plaintiffs the following sums:

(i) at least P3,000,000.00 as moral damages;

(ii) at least P1,500,000.00 as exemplary damages; and

(iii) at least P500,000.00 as attorney's fees and for other expenses of litigation.

Plaintiffs further pray for costs of suit and such other reliefs as may be deemed just and equitable.<sup>[9]</sup>

On same day, the Bank filed an "Amended Petition" with the Office of the Executive Judge for extrajudicial foreclosure of the Real Estate Mortgage to satisfy the spouses' loan account of P30,533,552.24, exclusive of interests, penalties and other charges; and the amounts of P16,665,439.77 and US\$57,306.59 covered by the suretyship agreement executed by Natividad Nisce.<sup>[10]</sup>

In the meantime, the parties agreed to have the sale at public auction reset to January 30, 2003.

In its Answer to the complaint, the Bank alleged that the spouses had no cause of action for legal compensation since PCI Capital was a different corporation with a separate and distinct personality; if at all, offsetting may occur only with respect to the spouses' US\$500.00 deposit account in its Paseo de Roxas branch.

In the meantime, the *Ex-Officio* Sheriff set the sale at public auction at 10:00 a.m. on March 5 and 27, 2003.<sup>[11]</sup> The spouses Nisce then filed a Supplemental Complaint with plea for a temporary restraining order to enjoin the sale at public auction.<sup>[12]</sup> Thereafter, the RTC conducted hearings on the plaintiffs' plea for a temporary restraining order, and the parties adduced testimonial and documentary evidence on their respective arguments.

### **The Case for the Spouses Nisce**

Natividad frequently traveled abroad and needed a facility with easy access to foreign exchange. She inquired from E.P. Nery, the Bank Manager for PCI Bank Paseo de Roxas Branch, about opening an account. He assured her that she would be able to access it from anywhere in the world. She and Nery also agreed that any balance of account remaining at maturity date would be rolled over until further instructions, or until she terminated the facility.<sup>[13]</sup> Convinced, Natividad deposited US\$20,500.00 on July 19, 1984, and was issued Passbook No. 83-3041.<sup>[14]</sup> Upon her request, the bank transferred the US\$20,000.00 to PCI Capital Asia Ltd. in Hong Kong via cable order.<sup>[15]</sup>

On July 11, 1996, the spouses Nisce secured a P20,000,000.00 loan from the Bank under Promissory Note No. BD-150369.<sup>[16]</sup> The maturity date of the loan was July 11, 2001, payable in monthly installments at 16.731% interest per annum. To secure the payment of the loan account, they executed an Amendment to the Real Estate Mortgage over the properties<sup>[17]</sup> located in Makati City covered by TCT Nos. S-83466 and S-83467.<sup>[18]</sup> They later secured another loan of P13,089,936.90 on March 1, 2000 (to mature on March 1, 2005) payable quarterly at 13.9869% interest per annum; this loan agreement is evidenced by Promissory Note (PN) No. 1042793<sup>[19]</sup> and covered by a Real Estate Mortgage<sup>[20]</sup> executed on February 28, 2000. They made a partial payment of P13,866,666.50 on the principal of their loan account covered by PN No. BD-150369, and P5,348,239.82 on the interests.<sup>[21]</sup> These payments are evidenced by receipts and checks.<sup>[22]</sup> However, there were payments totaling P4,600,000.00 received by the Bank but were not covered by checks or receipts.<sup>[23]</sup> As of September 2000, the balance of their loan account under PN No. BD-150369 was only P4,333,333.46.<sup>[24]</sup> They also made partial payment on their loan account under PN No. 1042793 which, as of May 30, 2001, amounted to P2,218,793.61.<sup>[25]</sup>

On July 20, 1984, PCI Capital issued Certificate of Deposit No. CD-01612;<sup>[26]</sup> proof of receipt of the US\$20,000.00 transferred to it by PCI Bank Paseo de Roxas Branch as requested by Natividad. The deposit account was to earn interest at the rate of 11.875% per annum, and would mature on October 22, 1984, thereafter to be payable at the office of the depository in Hong Kong upon presentation of the Certificate of Deposit.

In June 1991, two sons of the Nisce spouses were stranded in Hong Kong. Natividad called the Bank and requested for a partial release of her dollar deposit to her sons. However, she was informed that according to its computer records, no such dollar account existed. Sometime in November 1991, she submitted her US dollar passbook with a xerox copy of the Certificate of Deposit for the PCIB to determine the whereabouts of the account.<sup>[27]</sup> She reiterated her request to the Bank on January 27, 1992<sup>[28]</sup> and September 11, 2000.<sup>[29]</sup>

In the meantime, in 1994, the Equitable Banking Corporation and the PCIB were merged under the corporate name Equitable PCI Bank.

In a letter dated December 7, 2000, Natividad confirmed to the Bank, through Ms. Shellane R. Casaysayan, her offer to settle their loan account by offsetting the peso equivalent of her dollar account with PCI Capital under Account No. 090-0104.<sup>[30]</sup> Their son, Atty. Rosanno Nisce, later wrote the Bank, declaring that the estimated balance of the US dollar account with PCI Capital as of December 1991 was US\$51,000.42.<sup>[31]</sup> Atty. Nisce corroborated this in his testimony, and stated that Ms. Casaysayan had declared that she would refer the matter to her superiors.<sup>[32]</sup> A certain Rene Esteven also told him that another offer to setoff his parents' account had been accepted, and he was assured that its implementation was being processed.<sup>[33]</sup> On cross examination, Atty. Nisce declared that there was no response to his request for setoff,<sup>[34]</sup> and that Esteven assured him that the Bank

would look for the records of his mother's US dollar savings deposit.<sup>[35]</sup> He was later told that the Bank had accepted the offer to setoff the account.<sup>[36]</sup>

### **The Case for the Bank**

The Bank adduced evidence that, as of January 31, 2003, the balance of the spouses' account under the two promissory notes, including interest and penalties, was P30,533,552.24.<sup>[37]</sup> It had agreed to restructure their loans on March 31, 1998, but they nevertheless failed to pay despite repeated demands.<sup>[38]</sup> The spouses had also been furnished with a statement of their account as of June 2001. Thus, under the terms of the Real Estate Mortgage and Promissory Notes, it had the right to the remedy of foreclosure. It insisted that there is no showing in its records that the spouses had delivered checks amounting to P4,600,000.00.<sup>[39]</sup>

According to the Bank, Natividad's US\$20,000.00 deposit with the PCIB Paseo de Roxas branch was transferred to PCI Capital via cable order,<sup>[40]</sup> and that it later issued Certificate of Deposit No. 01612 (Non-transferrable).<sup>[41]</sup> In a letter dated May 9, 2001, it informed Natividad that it had acted merely as a conduit in facilitating the transfer of the funds, and that her deposit was made with PCI Capital and not with PCIB. PCI Capital had a separate and distinct personality from the PCIB, and a claim against the former cannot be made against the latter. It was later advised that PCI Capital had already ceased operations.<sup>[42]</sup>

The spouses Nisce presented rebuttal documentary evidence to show that PCI Capital was registered in Hong Kong as a corporation under Registration No. 84555 on February 27, 1989<sup>[43]</sup> with an authorized capital stock of 50,000,000 (with par value of HKD1.00); the PCIB subscribed to 29,039,993 issued shares at the par value of HKD1.00 per share;<sup>[44]</sup> on October 25, 2004, the corporate name of PCI Capital was changed to PCI Express *Padala* (HK) Ltd.;<sup>[45]</sup> and the stockholdings of PCIB remained at 29,039,999 shares.<sup>[46]</sup>

On March 24, 2003, the RTC issued an Order<sup>[47]</sup> granting the spouses Nisce's plea for a writ of preliminary injunction on a bond of P10,000,000.00. The dispositive portion of the Order reads:

WHEREFORE, in order not to render the judgment ineffectual, upon filing by the plaintiffs and the approval thereof by the court of a bond in the amount of Php10,000,000.00, which shall answer for any damage should the court finally decide that plaintiffs are not entitled thereto, let a writ of preliminary injunction issue enjoining defendants Equitable-PCI Bank, Atty. Engracio M. Escasinas, Jr., and any person or entity acting for and in their behalf from proceeding with the extrajudicial foreclosure sale of TCT Nos. 437678 and 437679 registered in the names of the plaintiffs.<sup>[48]</sup>

After weighing the parties' arguments along with their documentary evidence, the RTC declared that justice would be best served if a writ of preliminary injunction would be issued to preserve the *status quo*. It had yet to resolve the issue of setoff since only Natividad dealt with the Bank regarding her dollar account. It also had to resolve the issue of whether the Bank had failed to credit the amount of P4,600,000.00 to the spouses Nisce's account under PN No. BD-150369, and their