

## SECOND DIVISION

[ G.R. NOS. 159669 - 163521, March 12, 2007 ]

**UNITED OVERSEAS BANK PHILS. (FORMERLY WESTMONT BANK),  
PETITIONER, VS. ROSEMOORE MINING & DEVELOPMENT CORP.  
AND DRA. LOURDES PASCUAL, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

We resolve these two consolidated cases, which though with distinct courts of origin, pertain to issues stemming from the same loan transaction.

The antecedent facts follow.

Respondent Rosemoor Mining and Development Corporation (Rosemoor), a Philippine mining corporation with offices at Quezon City, applied for and was granted by petitioner Westmont Bank<sup>[1]</sup> (Bank) a credit facility in the total amount of P80 million consisting of P50,000,000.00 as long term loan and P30,000,000.00 as revolving credit line.<sup>[2]</sup>

To secure the credit facility, a lone real estate mortgage agreement was executed by Rosemoor and Dr. Lourdes Pascual (Dr. Pascual), Rosemoor's president, as mortgagors in favor of the Bank as mortgagee in the City of Manila.<sup>[3]</sup> The agreement, however, covered six (6) parcels of land located in San Miguel, Bulacan<sup>[4]</sup> (Bulacan properties), all registered under the name of Rosemoor,<sup>[5]</sup> and two (2) parcels of land<sup>[6]</sup> situated in Gapan, Nueva Ecija (Nueva Ecija properties), owned and registered under the name of Dr. Pascual.<sup>[7]</sup>

Rosemoor subsequently opened with the Bank four (4) irrevocable Letters of Credit (LCs) totaling US\$1,943,508.11.<sup>[8]</sup> To cover payments by the Bank under the LCs, Rosemoor proceeded to draw against its credit facility and thereafter executed promissory notes amounting collectively to P49,862,682.50.<sup>[9]</sup> Two (2) other promissory notes were also executed by Rosemoor in the amounts of P10,000,000.00 and P3,500,000.00, respectively, to be drawn from its revolving credit line.<sup>[10]</sup>

Rosemoor defaulted in the payment of its various drawings under the LCs and promissory notes. In view of the default, the Bank caused the extra-judicial foreclosure of the Nueva Ecija properties on 22 May 1998 and the Bulacan properties on 10 August 1998. The Bank was the highest bidder on both occasions.<sup>[11]</sup>

On 8 October 1999, the Bank caused the annotation of the Notarial Certificate of Sale covering the Nueva Ecija properties on the certificates of title concerned. Later,

on 16 March 2001, the Notarial Certificate of Sale covering the Bulacan properties was annotated on the certificates of title of said properties.<sup>[12]</sup>

The foregoing facts led to Rosemoor's filing of separate complaints against the Bank, one before the Regional Trial Court of Manila (Manila RTC) and the other before the Regional Trial Court of Malolos, Bulacan (Malolos RTC).

### ***The Manila Case (G.R. No. 163521)***

On 5 August 1998, Rosemoor and Dr. Pascual filed a Complaint, originally captioned as one for "Damages, Accounting and Release of Balance of Loan and Machinery and for Injunction" before the Manila RTC.<sup>[13]</sup> Impleaded as defendants were the Bank and Notary Public Jose Sineneng, whose office was used to foreclose the mortgage.<sup>[14]</sup> The complaint was twice amended, the caption eventually reflecting an action for "Accounting, Specific Performance and Damages."<sup>[15]</sup> Through the amendments, Pascual was dropped as a plaintiff while several officers of the Bank were included as defendants.<sup>[16]</sup>

The Bank moved for the dismissal of the original and amended complaints on the ground that the venue had been improperly laid.<sup>[17]</sup> The motion was denied by the trial court through an Omnibus Resolution dated 24 January 2000.<sup>[18]</sup>

Rosemoor's prayer in the Second Amended Complaint, which was filed in November of 1999, reads as follows:

WHEREFORE, plaintiff Rosemoor Mining & Development Corporation respectfully prays that, after trial of the issues, this court promulgate judgment -

1. Directing Westmont to render an accounting of the loan account of Rosemoor under the Long Term Loan Facility and the Revolving Credit Line at least up to the dates of foreclosure of Rosemoor's mortgaged properties on May 22, 1998 and August 18, 1998, showing among others (a) the sums of money paid by Rosemoor or otherwise debited from its deposit account in payment of the loans it had obtained from Westmont to cover the cost of the machinery to be imported under the Unpaid LCs and under LC No. 97-058 for the tiling plant, as well as for working capital, and (b) all interests, penalties and charges imposed on the loans pertaining to the Unpaid LCs and LC No. 97-058 and for which Westmont had foreclosed Rosemoor's and Dra. Pascual's real estate mortgage; (c) the amount of import and customs duties, demurrage, storage and other fees which Rosemoor had paid or which was otherwise debited from Rosemoor's deposit account, in connection with the importation of the tiling plant and as a consequence of the non-release thereof by Westmont;
2. Ordering all the defendants jointly and severally to pay to Rosemoor, by way of actual damages, the dollar equivalent of the amounts in (1) (a), (b) and (c) at the exchange rate prevailing at

the time of the opening of the LCs;

3. Ordering defendants jointly and severally to pay to Rosemoor actual damages for operational losses suffered by Rosemoor due to its failure to use the tiling plaint which Westmont had refused to release to Rosemoor, in such amount as may be proven at the trial;
4. Directing the defendants jointly and severally to pay, by way of correction for the public good, exemplary damages in the amount of P 500,000.00 each;
5. Ordering defendants jointly and severally to indemnify Rosemoor in the sum of P350,000.00, representing attorney's fees and litigation expenses incurred by Rosemoor for the protection and enforcement of its rights and interests.

Plaintiff prays for further and other relief as may be just and equitable under the circumstances. [19]

On 15 August 2002, the Bank filed another motion to dismiss the Second Amended Complaint on the ground of forum-shopping since, according to it, Rosemoor had filed another petition earlier on 11 March 2002 before the Malolos RTC. [20] The Bank contended that as between the action before the Manila RTC and the petition before the Malolos RTC, there is identity of parties, rights asserted, and reliefs prayed for, the relief being founded on the same set of facts. The Bank further claimed that any judgment that may be rendered in either case will amount to *res judicata* in the other case. [21] Still, the Manila RTC denied the motion to dismiss. [22] It also denied the Bank's motion for reconsideration of the order of denial. [23]

The Bank challenged the Manila RTC's denial of the Bank's second motion to dismiss before the Court of Appeals, through a petition for certiorari. The appellate court dismissed the petition in a Decision dated 26 February 2004. [24] The Bank filed a motion for reconsideration which, however, was denied through a Resolution dated 30 April 2004. [25]

In the Petition for Review on Certiorari in G.R. No. 163521, the Bank argues that the Court of Appeals erred in holding that no forum-shopping attended the actions brought by Rosemoor. [26]

### ***The Malolos Case (G.R. No. 159669)***

After the complaint with the Manila RTC had been lodged, on 11 March 2002, Rosemoor and Dr. Pascual filed another action against the Bank, this time before the Malolos RTC. Impleaded together with the Bank as respondent was the Register of Deeds for the Province of Bulacan in the Petition for Injunction with Damages,

with Urgent Prayer for Temporary Restraining Order and/or Preliminary Injunction. [27]

In the Malolos case, Rosemoor and Dr. Pascual alleged that the redemption period for the Bulacan properties would expire on 16 March 2002. They claimed that the

threatened consolidation of titles by the Bank is illegal, stressing that the foreclosure of the real estate mortgage by the Bank was fraudulent and without basis,<sup>[28]</sup> as the Bank had made them sign two blank forms of Real Estate Mortgage and several promissory notes also in blank forms. It appeared later, according to Rosemoor and Dr. Pascual, that the two Real Estate Mortgage blank forms were made as security for two loans, one for P80 million and the other for P48 million, when the total approved loan was only for P80 million. The Bank later released only the amount of P10 million out of the P30 million revolving credit line, to the prejudice of Rosemoor, they added.<sup>[29]</sup>

The Petition's prayer reads as follows:

WHEREFORE, premises considered, it is most respectfully prayed that this Honorable Court -

1. Issue ex-parte a temporary restraining order before the matter could be heard on notice to restrain and enjoin respondent BANK from proceeding with its threatened consolidation of its titles over the subject properties of petitioner Rosemoor in San Miguel, Bulacan covered by TCT Nos. 42132; 42133; 42134; 42135; 42136 and RT 34569 (T-222448) on March 16, 2002 or at any time thereafter; that the respondent Register of Deeds for the Province of Bulacan be enjoined and restrained from registering any document(s) submitted and/or to be submitted by respondent BANK consolidating its titles over the above-named properties of petitioner Rosemoor in San Miguel, Bulacan; and likewise, that the Register of Deeds for the province of Bulacan be restrained and enjoined from canceling the titles of Rosemoor over its properties, namely, TCT Nos. 42132; 42133; 42134; 42135; 42136 and RT 34569 (T-222448);
2. That after due notice, a writ of preliminary injunction be issued upon the posting of a bond in such amount as may be fixed by this Court;
3. That after due hearing and trial, judgment be rendered in favor of petitioners and against respondent BANK -
  - a. Permanently enjoining respondent BANK from proceeding with the consolidation of its titles to the subject properties of Rosemoor covered by TCT Nos. 42132; 42133; 42134; 42135; 42136 and RT 34569 (T-222448); and permanently restraining respondent Register of Deeds for the Province of Bulacan from registering any document(s) submitted and/or to be submitted by respondent BANK consolidating its titles over the above-named properties of petitioner Rosemoor in San Miguel, Bulacan; and likewise, that the Register of Deeds for the province of Bulacan be restrained and enjoined from cancelling the titles of Rosemoor over its properties, namely, TCT Nos. 42132; 42133; 42134; 42135; 42136 and RT 34569 (T-222448);

- b. Declaring the foreclosures of Real Estate Mortgages on the properties of petitioners Rosemoor and Dra. Pascual to be null and void;
- c. Recognizing the ownership in fee simple of the petitioners over their properties above-mentioned;
- d. Awarding to petitioners the damages prayed for, including attorney's fees and costs and expenses of litigation.

Petitioners pray for such other reliefs and remedies as may be deemed just and equitable in the premises.<sup>[30]</sup>

As it did before the Manila RTC, the Bank filed a motion to dismiss on 26 March 2002 on the ground that Rosemoor had engaged in forum-shopping, advertent to the pending Manila case.<sup>[31]</sup> The Bank further alleged that Dr. Pascual has no cause of action since the properties registered in her name are located in Nueva Ecija. The Malolos RTC denied the motion to dismiss in an Order dated 13 May 2002.<sup>[32]</sup> In the same Order, the Malolos RTC directed the Bank to file its answer to the petition within five (5) days from notice.<sup>[33]</sup>

Despite receipt of the Order on 21 May 2002, the Bank opted not to file its answer as it filed instead a motion for reconsideration on 5 June 2002.<sup>[34]</sup> Meanwhile, Rosemoor and Dr. Pascual moved to declare the Bank in default for its failure to timely file its answer.<sup>[35]</sup> On 10 September 2002, the Malolos RTC issued an order denying the Bank's motion for reconsideration for lack of merit and at the same time declaring the Bank in default for failure to file its answer.<sup>[36]</sup>

Hence, the Bank filed a second petition for certiorari before the Court of Appeals, where it assailed the Orders dated 13 May 2002 and 10 September 2002 of the Malolos RTC. During the pendency of this petition for certiorari, the Malolos RTC decided the Malolos case on the merits in favor of Rosemoor.<sup>[37]</sup> The decision in the Malolos case was also appealed to the Court of Appeals.<sup>[38]</sup> Based on these developments, the appellate court considered the prayer for preliminary injunction as moot and academic and proceeded with the resolution of the petition, by then docketed as CA-G.R. SP No.73358, on the merits. The appellate court dismissed the petition in a Decision dated 20 June 2003.<sup>[39]</sup> Undaunted, the Bank filed the petition in G.R. No. 159669 before this Court.

The two petitions before this Court have been consolidated. We find one common issue in G.R. No. 159669 and G.R. No. 163521 - whether Rosemoor committed forum-shopping in filing the two cases against the Bank. The other issues for resolution were raised in G.R. No. 159669, pertaining as they do to the orders issued by the Malolos RTC. These issues are whether the action to invalidate the foreclosure sale was properly laid with the Malolos RTC even as regards the Nueva Ecija properties; whether it was proper for the Malolos RTC to declare the Bank in default; and whether it was proper for the Malolos RTC to deny the Bank's motion to dismiss through a minute resolution.<sup>[40]</sup>

*Forum-Shopping*