

FIRST DIVISION

[G.R. NO. 138145, June 15, 2006]

**SUICO RATTAN & BURI INTERIORS, INC. AND SPOUSES
ESMERALDO AND ELIZABETH D. SUICO, PETITIONERS, VS.
COURT OF APPEALS AND METROPOLITAN BANK AND TRUST CO.,
INC., RESPONDENTS.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals (CA) dated January 14, 1999 in CA-G.R. CV No. 48320, which reversed and set aside the Decision^[2] of the Regional Trial Court (RTC) of Cebu in Civil Case No. CEB-13156; and the CA Resolution dated April 6, 1999, denying petitioners' motion for reconsideration.^[3]

The facts of the case are as follows:

Suico Rattan & Buri Interiors, Inc. (SRBII) is a domestic corporation engaged in the business of export of rattan and buri products. Spouses Esmeraldo and Elizabeth Suico (Suico spouses) are officers of SRBII. On the other hand, Metropolitan Bank and Trust Co., Inc. (Metrobank) is a commercial banking corporation duly organized and existing under the laws of the Philippines.

In the course of its business, SRBII applied for a credit line with Metrobank. On September 5, 1991, SRBII and Metrobank, Mandaue branch, entered into a Credit Line Agreement (Agreement) wherein the latter granted the former a discounting line amounting to P7,000,000.00 and an export bills purchase or draft against payment line (EBP/DP line) P10,000,000.00 for a maximum aggregate principal amount of P17,000,000.00.^[4] As provided for under the Agreement, drawings on the credit line are secured by a Continuing Surety Agreement for the sum of P17,500,000.00 executed by the Suico spouses,^[5] a Real Estate Mortgage executed on September 5, 1991 by SRBII and the Suico spouses over properties located at *Brgy. Tabok, Mandaue City, Cebu* and covered by Transfer Certificate of Title (TCT) Nos. 21663 and 21665, and Fire Insurance policies over the properties duly endorsed in favor of Metrobank. The Agreement expressly provides that the EBP/DP line is "clean".^[6]

Previous to the execution of the Agreement, the Suico spouses had already incurred loan obligations from Metrobank which are secured by separate Real Estate Mortgages executed on May 8, 1986,^[7] March 23, 1987^[8] and August 24, 1987^[9] over the same properties which are the subject of the Real Estate Mortgage executed on September 5, 1991. Between June 13, 1991 and July 11, 1991, SRBII also incurred obligations with Metrobank by entering into twelve negotiations for the

purchase of export bills by the former from the latter. These obligations are evidenced by drafts drawn by SRBII in favor of Metrobank for a sum amounting to US\$441,279.25 which has a peso equivalent of P12,218,866.23.^[10] As a consequence of these negotiations, Metrobank issued various checks in favor of petitioners totaling P12,194,443.23,^[11] the last one of which was dated July 24, 1991.^[12]

Subsequently, SRBII and the Suico spouses were unable to pay their obligations prompting Metrobank to extra-judicially foreclose the four mortgages constituted over the subject properties. Metrobank, being the lone and highest bidder, acquired the said properties during the auction sale. A Certificate of Sale dated November 18, 1992 was then issued in its favor.^[13]

On November 5, 1992, Metrobank filed an action for the recovery of a sum of money arising from the obligations of SRBII and the Suico spouses on their export bills purchases incurred between June and July, 1991.^[14] SRBII and the Suico spouses filed their Answer contending that their indebtedness are secured by a real estate mortgage and that the value of the mortgaged properties is more than enough to answer for all their obligations to Metrobank.^[15]

On June 8, 1993, the RTC issued a pre-trial order enumerating the parties' claims, testimonial and documentary evidence to be presented and the issues raised.^[16] Thereafter, trial ensued.

After trial, the RTC rendered judgment on September 26, 1994 with the following dispositive portion:

WHEREFORE, foregoing premises considered, the Complaint is hereby dismissed. All obligations of defendants to plaintiffs incurred by the former either as principal, surety or guarantor, which matured and had become due and demandable on the date of the foreclosure of the Real Estate Mortgage are hereby declared already fully paid by the mortgage security.

SO ORDERED.^[17]

Aggrieved by the decision of the RTC, Metrobank filed an appeal with the CA.

On January 14, 1999, the CA rendered a Decision disposing as follows:

WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE, and a new one rendered ordering appellees, jointly and severally, to pay appellant the sum of P16,585,286.27 representing the principal obligations and interests as of October 31, 1992, plus interest on the principal sum of P12,218,866.23 at the rate of P26% per annum from November 1, 1992 until the said amounts are fully paid, the sum equivalent to two percent (2%) of the total amount due as and for attorney's fees, and to pay the costs.

SO ORDERED.^[18]

While the CA affirmed the trial court's ruling that under the provisions of the real estate mortgage contracts executed by herein petitioners, the clear intent of the contracting parties is that the mortgages shall not be limited to the amount secured under the said contracts but shall extend to other obligations that they may obtain from Metrobank, including renewals or extensions thereof, the CA ruled that since the proceeds from the foreclosure sale of the mortgaged properties amounted only to P10,383,141.63, the same is not sufficient to answer for the entire obligation of petitioners to Metrobank and that the latter may still recover the deficiency of P16,585,286.27 representing the value of the export bills purchased by herein petitioners.

SRBII and the Suico spouses filed a Motion for Reconsideration but the same was denied by the CA through its Resolution issued on April 6, 1999.^[19]

Hence, the present petition with the following Assignment of Errors:

I

THE RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE REAL ESTATE MORTGAGE DATED SEPTEMBER 5, 1991 SERVED AS THE COLLATERAL FOR ALL THE OBLIGATIONS OF THE PETITIONERS.

II

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DECIDING THE CASE BASED ON AN ISSUE NOT RAISED IN THE PLEADINGS OR ADMISSIONS OF THE PARTIES.

III

THE RESPONDENT COURT OF APPEALS ERRED IN NOT TAKING COGNIZANCE THAT RES JUDICATA HAD ALREADY SET IN, IN VIEW OF THE TERMINATION OF THE PROCEEDINGS IN EXTRAJUDICIAL FORECLOSURE SALE.

IV

THE RESPONDENT COURT OF APPEALS ERRED IN ORDERING THE PETITIONERS TO PAY SOLIDARILY THE AMOUNT OF P16,585,286.27 REPRESENTING THE PRINCIPAL OBLIGATION AND INTEREST AS OF OCTOBER 31, 1992 AND TO PAY AN INTEREST ON THE PRINCIPAL SUM OF P12,218,866,23 AT THE RATE OF 26% PER ANNUM FROM NOVEMBER 1, 1992 UNTIL THE SAID AMOUNTS ARE FULLY PAID.

V

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS SUICO SPOUSES ARE SOLIDARILY LIABLE WITH PETITIONER CORPORATION FOR PAYMENT OF INTEREST PRIOR TO THE FILING OF THE COMPLAINT.

VI

THE RESPONDENT COURT OF APPEALS ERRED IN ORDERING PETITIONERS TO PAY THE SUM EQUIVALENT TO TWO PERCENT (2%) OF THE TOTAL AMOUNT DUE AS AND FOR ATTORNEY'S FEES AND TO PAY THE COSTS.^[20]

As to the first assigned error, petitioners claim that the Real Estate Mortgage executed on September 5, 1991 answered for all their obligations to Metrobank.

Petitioners contend that the language of the subject mortgage contract is explicit in that it shall secure all other obligations of petitioners of whatever kind or nature, whether direct or indirect, principal or secondary and whether said obligations have been contracted before, during or after the execution of the said mortgage contract.

Petitioners also contend that the secured obligations shall include those which were incurred by petitioners from other branches of Metrobank because the properties covered by the subject mortgage contract had earlier been mortgaged to the other branches of Metrobank. Petitioners argue that despite the existence of prior mortgages, Metrobank's acceptance of the mortgaged properties as collateral for their Credit Line Agreement only means that the value of the said properties is sufficient to answer for the previous and present obligations of petitioners and that Metrobank accepts the said properties as continuing collaterals. Petitioners argue that Metrobank is now estopped from claiming that the subject mortgage contract does not answer for all of petitioners' obligations in its favor.

With respect to the second assigned error, petitioners contend that the CA erred in ruling that the bank's cause of action is based on its claim for a deficiency judgment arising from insufficient proceeds of the foreclosure sale of the mortgaged properties; Metrobank's cause of action is for a sum of money; at the time of the filing of the complaint, there is no deficiency judgment to speak of because the complaint was filed on November 5, 1992 while the foreclosure sale was only held on November 18, 1992; the complaint was not amended to include recovery of the deficiency as part of its cause of action.

Anent the third assignment of error, petitioners assert that Metrobank is guilty of splitting a single cause of action when it filed its complaint for a sum of money on November 5, 1992 and, thereafter, on November 18, 1992, foreclosed the properties subject matter of the mortgage. Petitioners contend that in the event that a mortgage debtor fails to pay his obligation, the mortgage creditor has the option to file an action to collect the indebtedness or to foreclose the property subject matter of the mortgage. However, the creditor may not pursue both remedies. Petitioners contend that the present action for a sum of money is already barred by *res judicata* by reason of the extrajudicial foreclosure sale of the mortgaged properties, as evidenced by the execution of the Definite Deed of Sale in favor of Metrobank on January 21, 1994.

As to the fourth assigned error, petitioners contend that the CA erred in holding that they are still liable to pay the deficiency in their obligation which was not covered by the proceeds of the sale of the foreclosed mortgaged properties. Petitioners assert that in bidding and in subsequently buying the subject mortgaged properties during the foreclosure sale for a price which is much lower than their market value, Metrobank effectively prevented petitioners from paying their entire obligation.

Petitioners claim that they are not interested in the redemption of the foreclosed properties, rather they are more concerned with the payment of their obligation

considering that these properties are the only ones with which they expect to settle their indebtedness. Hence, since Metrobank, in buying the foreclosed properties at a very low price, prevented petitioners from paying their entire obligation, it is already barred by the principle of estoppel, equity and fair play from recovering the remaining balance of petitioners' obligation to it.

With respect to the fifth assigned error, the Suico spouses contend that the CA committed error in holding them solidarily liable with SRBII for the payment of the remaining balance of the latter's obligation plus interest on the ground that they are mere sureties and as such they can only be held liable if the principal does not pay.

Absent any showing that SRBII cannot pay, petitioners contend that they are not liable to pay. The Suico spouses also contend that, as sureties, they are liable to pay interest only at the time of the filing of the complaint.

As to the last assigned error, petitioners contend that the CA erred in awarding attorney's fees equivalent to 2% of the total amount due because petitioners did not act in bad faith nor did they willfully refuse to pay their obligation, which allegedly prompted Metrobank to litigate. Moreover, petitioners argue that the award of attorney's fees by the CA is contrary to the general rule that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.

In its Comment, respondent bank contends that the export bills purchases made by petitioners are not secured by any real estate mortgage. To support its argument respondent bank cites the stipulation contained in the Credit Line Agreement that the export bills purchases are clean or unsecured. Respondent bank further argues that the export bills purchases were availed of by petitioners through the bank's Cebu Downtown Center Branch (otherwise referred to in the records as the Plaridel Branch) while the other loan obligations of petitioners, which were secured by real estate mortgages, were obtained from its Mandaue City Branch. Moreover, respondent bank asserts that petitioners' obligations with the former's Mandaue City Branch are evidenced by documents which are distinct and separate from the documents representing petitioners' export bills purchases with the Metrobank Cebu Downtown Center Branch. In any case, respondent bank contends that even if the real estate mortgage contracts executed by petitioners be considered as securing all of the latter's obligations, including their export bills purchases, the fact remains that the foreclosure of the mortgaged properties generated an amount which is insufficient to answer for all the obligations of petitioners to respondent bank.

Respondent bank contends that under the law, it is not prevented from claiming the balance of petitioners' obligation which was not covered by the proceeds of the foreclosure sale. Respondent bank also argues that it is erroneous for petitioners to claim that just because it (Metrobank) did not require petitioners to put up additional security when they availed of subsequent loans, the previous mortgages are already sufficient to secure all their subsequent obligations.

Respondent bank further contends that the CA is correct in ruling that it (Metrobank) is entitled to deficiency judgment considering that petitioners themselves raised the issue that the real estate mortgages they executed secured all their obligations with respondent bank. Respondent argues that the issue on deficiency judgment necessarily arose because the proceeds of the foreclosure sale are not sufficient to answer for all the obligations of petitioners to respondent bank.

In any case, respondent bank contends that the CA is clothed with ample authority