

## THIRD DIVISION

[ G.R. NO. 163712, November 30, 2006 ]

**METROPOLITAN BANK AND TRUST COMPANY AND ROGELIO T. UY, PETITIONERS, VS. JOSE B. TAN AND ELIZA GO TAN, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On the application for extra-judicial foreclosure of mortgage filed by herein petitioners Metropolitan Bank and Trust Company (Metrobank) and its Vice President Rogelio T. Uy (Uy), the Office of the Provincial Sheriff of Misamis Oriental issued a "Sheriff's Notice of Sale"<sup>[1]</sup> setting on April 17, 1998 the sale at public auction of four mortgaged parcels of land including that covered by Transfer Certificate of Title No. T-53267 (the title in question) registered in the name of herein respondent Jose B. Tan who was referred to in the title as "JOSE B. TAN, of legal age, Filipino, married to Eliza Go Tan. . . ."<sup>[2]</sup>

A day before the scheduled public auction of the mortgaged properties or on April 16, 1998, respondent spouses Jose B. Tan and Eliza Go Tan filed a complaint<sup>[3]</sup> against petitioners, along with Albano L. Cuarto, Sheriff IV of the Office of the Provincial Sheriff of Misamis Oriental, for removal of cloud on the title in question and injunction before the Regional Trial Court of Misamis Oriental. The complaint was docketed as Civil Case No. 98-225.

Respondents cited the following grounds-bases of their complaint:

1. Respondent Eliza Go Tan never gave her consent or conformity to encumber the title in question;
2. The real estate mortgages, annotated as Entries No. 142475, 146789, 174644, 213699, 247803, and 246959 at the back of TCT No. 52367 covering the questioned land are null and void because respondent Jose B. Tan had already fully paid the obligations secured by the mortgages annotated as Entries No. 14275, 146789, and 174644; while the mortgages registered as Entry No. 213699 (amendment of mortgage, amending a previous loan of P15,000,000 to P25,000,000) and Entry No. 246959 (amendment of mortgage amending a previous loan of P25,000,000 to P40,000,000), as well as any mortgage prior to that registered as Entry No. 213699 was not executed and signed by [respondent Jose B. Tan]. (Underscoring supplied)

As scheduled, the public auction of the foreclosed properties took place on April 17, 1998 following which the Office of the Provincial Sheriff of Misamis Oriental issued a

Sheriff's Certificate of Sale<sup>[4]</sup> in the name of petitioner Metrobank, the highest bidder.

In their Answer<sup>[5]</sup> to the Complaint, petitioners alleged that:

**Plaintiffs** [herein respondents], **together with their two sons, Ariel and Rey John, obtained a credit line** from the defendant bank from which they made availments from time to time. In time and always upon their plea, the line was gradually increased until it reached P40 million. There was **no separate or distinct loan to speak of; all availments or releases were taken from one and the same line.**

In the same token, the mortgage constituted on the four lots, TCT No. T-53267 included, was for the entire credit line and not for any particular availment or for a determinate portion of the credit. As such, the mortgage will be discharged and the four lots released only upon the termination of the line, which means full payment of the entire loan – which plaintiffs never did.<sup>[6]</sup> (Emphasis and underscoring supplied)

Petitioners further alleged that the deeds of real estate mortgage,<sup>[7]</sup> promissory notes,<sup>[8]</sup> and credit line agreements<sup>[9]</sup> bore the signature of respondent Jose B. Tan either for himself or as attorney-in-fact of his son Ariel Tan and, in one of them, his wife-co-respondent Eliza Go Tan's signature appeared.

By way of Counterclaim, petitioners prayed for the award of attorney's fees, compensatory and/or moral damages, exemplary damages, and other reliefs.<sup>[10]</sup>

Crediting the testimony of respondent Jose B. Tan denying having 1) executed and signed the two amendments of the mortgage, 2) received the amount of P40,000,000, and 3) appeared before Notary Public Joel Peñaranda who notarized<sup>[11]</sup> the mortgage for P40,000.00, and likewise crediting the testimony of respondent Eliza Go Tan denying that the signature appearing on the real estate mortgage dated November 5, 1992 was hers,<sup>[12]</sup> and finding that

. . . the existing loans covered by real estate mortgages annotated at the back of subject TCT No. T-53267 of the Registry of Deeds for Cagayan de Oro, had been fully paid as of July 1, 1997, defendant Metrobank **had no basis to be paid again through the extra-judicial foreclosure proceedings**<sup>[13]</sup> (underscoring supplied)[,]

Branch 38 of the Misamis Oriental RTC, by Decision of March 5, 2001, rendered judgment in favor of respondents, disposing as follows:

WHEREFORE, premises considered, this Court hereby renders judgment in favor of the plaintiffs spouses Jose B. Tan and Eliza G. Tan and against the defendants, as follows:

a) Declaring that, because of the fact that the plaintiff Eliza G. Tan did not give her consent to all the real estate mortgages annotated at the back of her title, TCT No. T-53267, of the Registry of Deeds for Cagayan de Oro, all said mortgages are **null and void ab initio;**

b) Declaring that, because plaintiff Jose B. Tan did not execute the real estate mortgages annotated at the back of his title, TCT No. T-53267, of the Registry of Deeds for Cagayan de Oro, all said mortgages are null and void ab initio;

c) Declaring the **extra-judicial foreclosure proceedings** taken by the defendant sheriff , including the sheriff's certificate of sale as **null and void**;

d) Making permanent the writ of preliminary injunction against the defendant sheriff, and the Office of the Provincial Sheriff of Misamis Oriental enjoining and restraining them, their agents, and representatives from issuing a final certificate of sale in favor of defendant Metrobank covering the parcel of land covered by TCT No. T-53267;

e) Ordering the removal of the cloud on the title, TCT No. T-53267, of the Registry of Deeds for Cagayan de Oro, and the cancellation of all the entries of the real estate mortgages and amendment of mortgages annotated at the back of TCT No. T-53267, of the Registry of Deeds for Cagayan de Oro City;

f) **Absolving the plaintiffs spouses from financial liability** from the null and void real estate mortgages;

g) **Declaring the principal obligations obtained by Rey John Tan** through the annulled real estate mortgages as **FULLY PAID** by him;

h) Ordering defendant Metrobank to pay attorney's fee and expenses of litigation in the amount of P100,000 and the costs.

SO ORDERED.<sup>[14]</sup> (Emphasis and underscoring supplied)

Petitioners appealed the trial court's decision before the Court of Appeals.

By Decision of November 21, 2003,<sup>[15]</sup> the Court of Appeals affirmed the trial court's decision and accordingly dismissed petitioners' appeal. And it denied petitioners' Motion for Reconsideration.<sup>[16]</sup>

Hence, the present Petition for Review on Certiorari filed on July 7, 2004.<sup>[17]</sup>

The petition is impressed with merit.

Petitioners assail, in the main, the appellate court's affirmance of the trial court's decision absolving respondents from liability for the principal obligation obtained by their son Rey John Tan which was secured by real estate mortgages, including that covered by the title in question, and declaring such principal obligation of Rey John Tan, who is not a party to the case, to have been fully paid by him as of July 1,

1997, before the questioned extra-judicial foreclosure and public auction sale conducted on April 17, 1998.<sup>[18]</sup>

Respondent Jose B. Tan<sup>[19]</sup> insisted that he was not a party to the documents bearing on the grant of the credit line, he pointing to the absence of his signature above his typewritten name on the Credit Line Agreements, promissory notes, disclosure statements, and an Amendment of Real Estate Mortgage. Respondents presented in evidence Promissory Notes – Exhibits "B-2" and "B-4" dated July 1, 1997 and June 24, 1997, respectively; three Credit Line Agreements – Exhibits "B-6," "B-7," and "B-8,"<sup>[20]</sup> dated May 2, 1997; and the Agreement amending the real estate mortgage – Exhibit "B-9,"<sup>[21]</sup> all dated May 2, 1997.

Petitioners, on the other hand, presented six Promissory Notes dated February 26, 1996, May 8, 1996, August 27, 1996, October 8, 1996, October 25, 1996, and November 18, 1996;<sup>[22]</sup> five Credit Line Agreements dated September 9, 1991, September 24, 1992, September 2, 1993, November 3, 1994, and April 25, 1996;<sup>[23]</sup> an Amendment of Real Estate Mortgage from P15,000,000 to P25,000,000; and October 29, 1996<sup>[24]</sup> Amendment of Real Estate Mortgage from P25,000,000 to P40,000,000.

All document-exhibits of petitioners which are original copies bear the signature of respondent Jose B. Tan, however, as solidary co-debtor of his sons Rey John Tan and Ariel Tan.<sup>[25]</sup> And these documents were annotated at the back of the title in question.<sup>[26]</sup>

In the absence of proof, nay allegation, that the signatures of respondent Jose B. Tan on the abovementioned documents were forged, this Court is constrained to uphold their genuineness.<sup>[27]</sup>

As for the claim that respondent Eliza Go Tan did not give her consent to the mortgage of the title in question, the same is belied by her signature<sup>[28]</sup> on Exhibit "18"-Real Estate Mortgage which is annotated as Entry No. 174644 at the back of the title. Her bare denial that the signature was forged, without more, does not lie.

In any event, lack of respondent Eliza Go Tan's consent to the mortgage covering the title in question would not render the encumbrance void under the second paragraph of Article 124 of the Family Code.<sup>[29]</sup> For proof is wanting that the property covered by the title is conjugal — that it was acquired during respondents' marriage which is what would give rise to the presumption that it is conjugal property.<sup>[30]</sup> The statement in the title that the property is "registered in accordance with the provisions of Section 103 of the Property Registration Decree in the name of **JOSE B. TAN, of legal age, married to Eliza Go Tan**"<sup>[31]</sup> does not prove or indicate that the property is conjugal. So *Ruiz v. Court of Appeals*<sup>[32]</sup> instructs:

The property subject of the mortgage is registered in the name of "Corazon G. Ruiz, of legal age, **married to** Rogelio Ruiz, Filipinos." Thus, title is registered in the name of Corazon alone because the phrase "married to Rogelio Ruiz" is merely descriptive of the civil status of Corazon and should not be construed to mean that her husband is also a registered owner. Furthermore, registration of the