

## FIRST DIVISION

[ G.R. No. 161776, October 22, 2004 ]

**ALLIED BANKING CORPORATION AND PACITA UY,  
PETITIONERS, VS. SPOUSES DAVID E. ESERJOSE AND ZENAIDA  
ESERJOSE, RESPONDENTS.**

### D E C I S I O N

**YNARES-SATIAGO, J.:**

The period for appeal set by law must be deemed mandatory save for the most extraordinary of circumstances. Unfortunately, the case from which the present petition stems is not one of those extraordinary circumstances. We are asked by petitioners Allied Banking Corporation (hereinafter "ABC") and Pacita Uy to review on certiorari the decision and resolution of the Court of Appeals dated November 14, 2003 and January 16, 2004,<sup>[1]</sup> respectively. In the assailed decision, the appellate court upheld the order<sup>[2]</sup> of the Regional Trial Court of Quezon City, Branch 85, dated August 5, 2003, granting herein respondents' motion to dismiss petitioners' appeal for having been filed out of time and motion for execution of the trial court's decision.

The original action filed with the trial court is one for the release of mortgage, release from guaranty, reconveyance, cancellation of title and damages lodged by respondents Spouses David and Zenaida Eserjose against petitioners ABC and Pacita Uy as well as Johnnie C. So and Avelina Cruz, doing business under the name and style of Lucky Find Enterprises. Respondents allege that they are the registered owners of a piece of property, on which they have built their residential home, located in No. 78-E Tangali Street, Barangay San Jose, Quezon City. The lot is covered by Transfer Certificate of Title (TCT) No. RT-75353 (235715)<sup>[3]</sup> and consists of 378 square meters. In February 1993, the adjoining lot, covered by TCT No. 50096, was offered to them for sale. While interested in buying this adjoining lot, respondents did not have sufficient funds to buy it. Hence, they sought the help of Johnnie C. So, who was then one of their closest friends.

Johnnie C. So referred the respondents to petitioner Uy, manager of ABC's Del Monte, Quezon City Branch. So and his mother-in-law, Avelina Uy, doing business under the name Lucky Find Enterprises, were familiar clients of the bank and maintained a credit accommodation with said bank. Respondents applied for a loan with the bank in the amount of Four Million Pesos (P4,000,000.00), which loan was approved by petitioner Uy, in her capacity as Branch Manager, on condition that the lot to be bought should be registered in the name of Lucky Find Enterprises and that the loan shall be secured by a Real Estate Mortgage dated February 10, 1993<sup>[4]</sup> on the house and lot owned by respondent spouses under TCT No. 75353. The proceeds of the loan were released and the adjoining lot bought and registered in the name of Lucky Find Enterprises under TCT No. 80539.<sup>[5]</sup>

On or about February 2, 1994,<sup>[6]</sup> another mortgage covering respondents' residential lot was executed between ABC and respondent spouses. This mortgage is likewise in the amount of Four Million Pesos (P4,000,000.00). On November 27, 1996, respondent spouses paid ABC the remaining balance of their loan amounting to Two Million Pesos (P2,000,000.00).<sup>[7]</sup> Having paid off the entire amount of their loan, respondents asked petitioner Uy for the return of their two titles, namely, the title to their residential lot and that pertaining to the adjoining lot which they bought. Petitioner Uy did not accede to the request and failed to give an explanation for her inaction. She failed to return the titles despite a formal written demand dated January 5, 1998 by respondents' counsel. Upon their inquiry, respondents learned that aside from the two existing mortgages on their residential lot, another mortgage<sup>[8]</sup> was also executed by So in favor of ABC covering the newly acquired lot to secure a loan of Five Million Pesos (P5,000,000.00) as evidenced by a Real Estate Mortgage agreement dated September 2, 1994. The foregoing events led to the filing of the complaint against the petitioners, Johnnie So and Avelina Cruz.

Johnnie So and Avelina Cruz denied any participation in the transaction between respondents and ABC. They alleged that the respondents dealt with petitioner Uy on their own accord. So further denied having executed the Real Estate Mortgage over the acquired lot "without notice to the [respondents]" since the latter verbally agreed and consented to the mortgage. He further stated that the respondents agreed to register the acquired lot in the name of Lucky Find Enterprises and to mortgage the same as part of the loan line guaranty with the understanding that the bank would release the same along with the title to respondents' residential lot as soon as the "accommodation loan" was paid off by the respondents.

Petitioners ABC and Uy insist on the validity of the agreements executed over the subject properties. They contend that the real estate mortgages, dated February 10, 1993 and February 2, 1994, as well as the Continuing Guaranty/Comprehensive Surety Agreement (CG/CS), dated September 8, 1994,<sup>[9]</sup> were all executed by respondents on their own free will and with full knowledge of the legal implications thereof. Petitioners also allege that aside from the first loan amounting to Four Million Pesos (P4,000,000.00) which was paid, Lucky Find Enterprises/Avelina Cruz were also granted several other loans the total amount of which is Fourteen Million Five Hundred Thirty Four Thousand Seven Hundred Fifty (P14,534,750.00). In signing the CG/CS, respondents became sureties to all these loans to the extent of Twenty Five Million Pesos (P25,000,000.00). The two mortgages on respondents' residential lot also serve as security for the loans. As Lucky Find Enterprises has not yet fully paid these loans, the title to respondents' residential lot cannot be released.

As to the mortgage executed by So for Lucky Find Enterprises over the acquired lot, petitioners maintain that they relied upon the title to the property which shows that it is registered in the name of Lucky Find Enterprises. On this premise, they accepted the property as collateral for the loan in the amount of Five Million Pesos (P5,000,000.00).

On January 31, 2003, the trial court rendered its decision holding that the real estate mortgages covering the residential lot contained an annotation that these were executed to secure a loan line in favor of respondents or Lucky Find Enterprises/Avelina Cruz and "other credit accommodations". Effectively,

respondents were made liable to ABC not only for the amount they borrowed but also for other obligations which Lucky Find Enterprises/Avelina Cruz may incur. The trial court ruled that, unless a continuing real estate mortgage is involved, a real estate mortgage is not a valid security for future loans under the so-called "dragnet clause". Thus, the trial court ruled:

Premises considered, judgment is hereby rendered in favor of the plaintiffs:

1. Declaring the Real Estate Mortgages, dated February 10, 1993 and February 2, 1994, on the property covered by TCT No. 75353 (235715) as fully paid and released;
2. Declaring the Real Estate Mortgage on the property covered by TCT No. 80539 executed by Johnnie C. So in favor of Allied banking Corporation as null and void;
3. Declaring the Continuing Guaranty/Comprehensive Surety Agreement, insofar as plaintiffs are concerned, as null and void;
4. Ordering defendants Allied Banking Corporation and Pacita S. Uy to return TCT No. 75353 (235715) and TCT No. 80539 to the plaintiffs; and, in the event of their failure or refusal to comply, ordering the Registry of Deeds of Quezon City to cancel them and to issue new titles thereon in the name of the plaintiffs;
5. Ordering all the defendants to pay the plaintiffs, jointly and severally, the amount Four Million (P4,000,000.00) Pesos as moral damages; the amount of Four Million (P4,000,000.00) Pesos as exemplary damages and the amount of Fifty Thousand (P50,000.00) as attorney's fees, plus costs of suit.

SO ORDERED.<sup>[10]</sup>

Petitioners ABC and Pacita Uy filed a motion for reconsideration<sup>[11]</sup> dated February 21, 2003 while Johnnie So filed his motion<sup>[12]</sup> on March 5, 2003. Petitioner Uy filed a Supplemental Motion for Reconsideration<sup>[13]</sup> on March 12, 2003. Respondents, for their part, filed their Opposition to Motion for Reconsideration<sup>[14]</sup> on April 4, 2003. The trial court denied the foregoing motions for reconsideration in its Order<sup>[15]</sup> dated June 30, 2003.

From the denial of its motion for reconsideration, petitioners filed their Notice of Appeal on July 14, 2003. The respondents filed their Motion to Dismiss Appeal and Motion for Execution. They alleged that the Notice of Appeal was belatedly filed. According to them, two days before it was to expire, the period to appeal was tolled by the prior filing of the motion for reconsideration. Petitioners received a copy of the Order denying their motion on July 9, 2003. The Notice of Appeal, therefore, should have been filed not later than July 11, 2003. As the filing was done only on July 14, 2003, petitioners were unable to perfect their appeal.

On August 5, 2003, the trial court issued an Order granting respondents' motions. Petitioners' appeal was denied due course and a Writ of Execution was issued by the

trial court.

Petitioners filed a petition for certiorari before the Court of Appeals seeking to annul the Order and Writ of Execution for having been issued in excess of jurisdiction or with grave abuse of discretion.

The Court of Appeals, in its decision dated November 14, 2003, ruled that judgments or orders become final and executory by operation of law and not by judicial declaration. Hence, it disposed of the case as follows:

Based on the foregoing pronouncement of the Supreme Court, it appears that public respondent did not commit grave abuse of discretion in rendering the assailed Order dated August 5, 2003 and issuing the Writ of Execution.

WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit and ordered DISMISSED.

SO ORDERED.<sup>[16]</sup>

Petitioners' motion for reconsideration was denied on January 16, 2004. A petition for review on certiorari filed before us was denied in a resolution dated February 23, 2004 for failure of the petitioners to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case.

On a motion for reconsideration, we resolved to grant the motion for reconsideration and to reinstate the petition.

The following arguments were presented as grounds for the petition:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DENYING THE PETITION BASED ON MERE TECHNICALITY AND IN THE PROCESS, OVERLOOKED THE GREAT PREJUDICE AND GREAT MISCARRIAGE OF JUSTICE TO PETITIONER ABC BY REASON OF THE FACT THAT:

- A. THE AWARD OF EXEMPLARY AND MORAL DAMAGES AMOUNTING TO EIGHT MILLION PESOS (P8,000,000.00) AGAINST ABC IS NOT SUPPORTED BY EVIDENCE.
- B. ASSUMING THAT RESPONDENTS ARE ENTITLED TO AN AWARD OF DAMAGES, ABC MUST NOT BE HELD LIABLE TO PAY RESPONDENTS.
- C. THE NULLIFICATION OF THE CONTINUING GUARANTY/COMPREHENSIVE SURETY CONTRACT AND THE REAL ESTATE MORTGAGE CONTRACTS BY THE COURT A QUO IN ITS ASSAILED DECISION DATED 30 JANUARY 2003 RENDERS PETITIONER ABC AN UNPAID AND UNSECURED CREDITOR OF LUCKY FIND