483 Phil. 33

SECOND DIVISION

[G.R. No. 135706, October 01, 2004]

SPS. CESAR A. LARROBIS, JR. AND VIRGINIA S. LARROBIS, PETITIONERS, VS. PHILIPPINE VETERANS BANK, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a petition for review of the decision of the Regional Trial Court (RTC), Cebu City, Branch 24, dated April 17, 1998,[1] and the order denying petitioner's motion for reconsideration dated August 25, 1998, raising pure questions of law.[2]

The following facts are uncontroverted:

On March 3, 1980, petitioner spouses contracted a monetary loan with respondent Philippine Veterans Bank in the amount of P135,000.00, evidenced by a promissory note, due and demandable on February 27, 1981, and secured by a Real Estate Mortgage executed on their lot together with the improvements thereon.

On March 23, 1985, the respondent bank went bankrupt and was placed under receivership/liquidation by the Central Bank from April 25, 1985 until August 1992. [3]

On August 23, 1985, the bank, through Francisco Go, sent the spouses a demand letter for "accounts receivable in the total amount of P6,345.00 as of August 15, 1984,"[4] which pertains to the insurance premiums advanced by respondent bank over the mortgaged property of petitioners.[5]

On August 23, 1995, more than fourteen years from the time the loan became due and demandable, respondent bank filed a petition for extrajudicial foreclosure of mortgage of petitioners' property.[6] On October 18, 1995, the property was sold in a public auction by Sheriff Arthur Cabigon with Philippine Veterans Bank as the lone bidder.

On April 26, 1996, petitioners filed a complaint with the RTC, Cebu City, to declare the extra-judicial foreclosure and the subsequent sale thereof to respondent bank null and void.[7]

In the pre-trial conference, the parties agreed to limit the issue to whether or not the period within which the bank was placed under receivership and liquidation was a fortuitous event which suspended the running of the ten-year prescriptive period in bringing actions.[8]

On April 17, 1998, the RTC rendered its decision, the *fallo* of which reads:

WHEREFORE, premises considered judgment is hereby rendered dismissing the complaint for lack of merit. Likewise the compulsory counterclaim of defendant is dismissed for being unmeritorious.[9]

It reasoned that:

…defendant bank was placed under receivership by the Central Bank from April 1985 until 1992. The defendant bank was given authority by the Central Bank to operate as a private commercial bank and became fully operational only on August 3, 1992. From April 1985 until July 1992, defendant bank was restrained from doing its business. Doing business as construed by Justice Laurel in 222 SCRA 131 refers to:

> "….a continuity of commercial dealings and arrangements and contemplates to that extent, the performance of acts or words or the exercise of some of the functions normally incident to and in progressive prosecution of the purpose and object of its organization."
>
> The defendant bank's right to foreclose the mortgaged property prescribes in ten (10) years but such period was interrupted when it was placed under receivership. Article 1154 of the New Civil Code to this effect provides:
>
> "The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him."
>
> In the case of Provident Savings Bank vs. Court of Appeals, 222 SCRA 131, the Supreme Court said.
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> "Having arrived at the conclusion that a foreclosure is part of a bank's activity which could not have been pursued by the receiver then because of the circumstances discussed in the Central Bank case, we are thus convinced that the prescriptive period was legally interrupted by fuerza mayor in 1972 on account of the prohibition imposed by the Monetary Board against petitioner from transacting business, until the directive of the Board was nullified in 1981. Indeed, the period during which the obligee was prevented by a caso fortuito from enforcing his right is not reckoned against him. (Art. 1154, NCC) When prescription is interrupted, all the benefits acquired so far from the possession cease and when prescription starts anew, it will be entirely a new one. This concept should not be equated with suspension where the past period is included in the computation being added to the period after the prescription is presumed (4 Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 1991 ed. pp. 18-19), consequently, when the closure of the petitioner was set aside in 1981, the period of ten years within which to foreclose under Art. 1142 of the N.C.C. began to run and, therefore, the action filed on August

> 21, 1986 to compel petitioner to release the mortgage carried with it the mistaken notion that petitioner's own suit for foreclosure has prescribed."
>
> Even assuming that the liquidation of defendant bank did not affect its right to foreclose the plaintiffs' mortgaged property, the questioned extrajudicial foreclosure was well within the ten (10) year prescriptive period. It is noteworthy to mention at this point in time, that defendant bank through authorized Deputy Francisco Go made the first extrajudicial demand to the plaintiffs on August 1985. Then on March 24, 1995 defendant bank through its officer-in-charge Llanto made the second extrajudicial demand. And we all know that a written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period. (Ledesma vs. C.A., 224 SCRA 175.)[10]

Petitioners filed a motion for reconsideration which the RTC denied on August 25, 1998.[11] Thus, the present petition for review where petitioners claim that the RTC erred:

> I
>
> …IN RULING THAT THE PERIOD WITHIN WHICH RESPONDENT BANK WAS PUT UNDER RECEIVERSHIP AND LIQUIDATION WAS A FORTUITOUS EVENT THAT INTERRUPTED THE RUNNING OF THE PRESCRIPTIVE PERIOD.
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> II
>
> …IN RULING THAT THE WRITTEN EXTRA-JUDICIAL DEMAND MADE BY RESPONDENT ON PETITIONERS WIPED OUT THE PERIOD THAT HAD ALREADY ELAPSED.
>
> III
>
> …IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION OF ITS HEREIN ASSAILED DECISION.[12]

Petitioners argue that: since the extra-judicial foreclosure of the real estate mortgage was effected by the bank on October 18, 1995, which was fourteen years from the date the obligation became due on February 27, 1981, said foreclosure and the subsequent sale at public auction should be set aside and declared null and void *ab initio* since they are already barred by prescription; the court a quo erred in sustaining the respondent's theory that its having been placed under receivership by the Central Bank between April 1985 and August 1992 was a fortuitous event that interrupted the running of the prescriptive period;[13] the court a quo's reliance on the case of *Provident Savings Bank vs. Court of Appeals*[14] is misplaced since they have different sets of facts; in the present case, a liquidator was duly appointed for respondent bank and there was no judgment or court order that would legally or physically hinder or prohibit it from foreclosing petitioners' property; despite the absence of such legal or physical hindrance, respondent bank's receiver or liquidator failed to foreclose petitioners' property and therefore such inaction should bind respondent bank;[15] foreclosure of mortgages is part of the receiver's/liquidator's

duty of administering the bank's assets for the benefit of its depositors and creditors, thus, the ten-year prescriptive period which started on February 27, 1981, was not interrupted by the time during which the respondent bank was placed under receivership; and the Monetary Board's prohibition from doing business should not be construed as barring any and all business dealings and transactions by the bank, otherwise, the specific mandate to foreclose mortgages under Sec. 29 of R.A. No. 265 as amended by Executive Order No. 65 would be rendered nugatory.[16] Said provision reads:

> Section 29. *Proceedings upon Insolvency* – Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts. The Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and designate the official of the Central Bank or a person of recognized competence in banking or finance, as receiver to immediately take charge its assets and liabilities, as expeditiously as possible, collect and gather all the assets and administer the same for the benefit of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing and foreclosing mortgages in the name of the bank.

Petitioners further contend that: the demand letter, dated March 24, 1995, was sent after the ten-year prescriptive period, thus it cannot be deemed to have revived a period that has already elapsed; it is also not one of the instances enumerated by Art. 1115 of the Civil Code when prescription is interrupted;[17] and the August 23, 1985 letter by Francisco Go demanding P6,345.00, refers to the insurance premium on the house of petitioners, advanced by respondent bank, thus such demand letter referred to another obligation and could not have the effect of interrupting the running of the prescriptive period in favor of herein petitioners insofar as foreclosure of the mortgage is concerned.[18]

Petitioners then prayed that respondent bank be ordered to pay them P100,000.00 as moral damages, P50,000.00 as exemplary damages and P100,000.00 as attorney's fees.[19]

Respondent for its part asserts that: the period within which it was placed under receivership and liquidation was a fortuitous event that interrupted the running of the prescriptive period for the foreclosure of petitioners' mortgaged property; within such period, it was specifically restrained and immobilized from doing business which includes foreclosure proceedings; the extra-judicial demand it made on March 24, 1995 wiped out the period that has already lapsed and started anew the prescriptive period; respondent through its authorized deputy Francisco Go made the first extra-judicial demand on the petitioners on August 23, 1985; while it is true that the first demand letter of August 1985 pertained to the insurance premium advanced by it over the mortgaged property of petitioners, the same however

formed part of the latter's total loan obligation with respondent under the mortgage instrument and therefore constitutes a valid extra-judicial demand made within the prescriptive period.[20]

In their Reply, petitioners reiterate their earlier arguments and add that it was respondent that insured the mortgaged property thus it should not pass the obligation to petitioners through the letter dated August 1985.[21]

To resolve this petition, two questions need to be answered: (1) Whether or not the period within which the respondent bank was placed under receivership and liquidation proceedings may be considered a fortuitous event which interrupted the running of the prescriptive period in bringing actions; and (2) Whether or not the demand letter sent by respondent bank's representative on August 23, 1985 is sufficient to interrupt the running of the prescriptive period.

Anent the *first issue,* we answer in the negative.

One characteristic of a fortuitous event, in a legal sense and consequently in relations to contract, is that its occurrence must be such as to render it impossible for a party to fulfill his obligation in a normal manner.[22]

Respondent's claims that because of a fortuitous event, it was not able to exercise its right to foreclose the mortgage on petitioners' property; and that since it was banned from pursuing its business and was placed under receivership from April 25, 1985 until August 1992, it could not foreclose the mortgage on petitioners' property within such period since foreclosure is embraced in the phrase "doing business," are without merit.

While it is true that *foreclosure* falls within the broad definition of "doing business," that is:

> …a continuity of commercial dealings and arrangements and contemplates to that extent, the performance of acts or words or the exercise of some of the functions normally incident to and in progressive prosecution of the purpose and object of its organization.[23]

it should not be considered included, however, in the acts prohibited whenever banks are "prohibited from doing business" during receivership and liquidation proceedings.

This we made clear in *Banco Filipino Savings & Mortgage Bank vs. Monetary Board, Central Bank of the Philippines*[24] where we explained that:

> Section 29 of the Republic Act No. 265, as amended known as the Central Bank Act, provides that when a bank is forbidden to do business in the Philippines and placed under receivership, *the person designated as receiver shall immediately take charge of the bank's assets and liabilities, as expeditiously as possible, collect and gather all the assets and administer the same for the benefit of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution*, exercising all the powers