

SIXTEENTH DIVISION

[CA-G.R. CV NO. 98635, June 30, 2014]

**MOUNTAIN VIEW EQUITIES & DEVELOPMENT CORPORATION
AND ESCALA GARMENTS & MANUFACTURING CORPORATION,
PLAINTIFFS-APPELLANTS, VS. PHILIPPINE NATIONAL BANK,
DEFENDANT-APPELLEE.**

DECISION

CORALES, J.:

This is an appeal^[1] from the December 26, 2011^[2] Decision and February 27, 2012 Resolution^[3] of the Regional Trial Court (RTC), Branch 6, Baguio City dismissing plaintiffs-appellants' complaint for Declaration of the Extinguishment of the Contract of Loan and Mortgage and the Simultaneous Perfection of *Dacion en Pago*, and Annulment of Foreclosure in Civil Case No. 5243-R.

The Antecedents

On April 19, 1989, Mountain View Equities & Development Corp. (Mountain View) obtained a P25,000,000.00 two-year term loan from Philippine National Bank (PNB) to finance the construction of Le Chateau Garden Condominium (Le Chateau) in Baguio City. As security for the loan, Mountain View executed a Real Estate Mortgage (REM) covering a parcel of land registered in its name under Transfer Certificate of Title (TCT) No. T-45190^[4] and all improvements thereon.

For some reasons, Mountain View failed to settle its loan and the same was reconstructed in 1991, 1992, 1993, and 1994.^[5] In 1994,^[6] Escala Garments & Manufacturing Corp. (Escala), a sister company of Mountain View, became the guarantor of the latter's loan. Under the new agreement, Escala's P26,000,000.00 indebtedness with PNB was consolidated with Mountain View's outstanding loan obligation. Unfortunately, Escala was not able to fully guarantee the loan because it later on sustained business losses. As of December 31, 1996, Mountain View and Escala's principal indebtedness amounted to P60,870,000.00 and P23,370,000.00, respectively.^[7]

It appears that as early as August 21, 1996, Mountain View and PNB were already discussing the possibility of cession by way of *dacion en pago* of the unfinished 35 units at Le Chateau with a total area of 2,660.420 square meter (sq.m.) as full settlement of the loan.^[8] On February 19, 1997, PNB' Board of Directors (BOD) passed Board Resolution No. 74^[9] which provides:

RESOLVED, to approve and confirm, as recommended by Management, the following requests of Mountain View Equities & Escala Garments;

1. Authority to negotiate for the compromise settlement of their obligations via '*dacion en pago*' based on their loan booked values;

2. Full settlement of the obligations of MVEDC (P60.87 MM) and EGMC (P23.37 MM) in the total amount of P84.24 MM via '*dacion en pago*' covering 35 condominium units of 'Le Chateau Garden Condominium' located along Legarda Road, Baguio City with a total combined area of 2,660.40 square meters at an estimated value of P103.76 MM based on P39,000.00 current price per square meter to be covered by a Memorandum of Agreement (MOA) which will embody, among others, the major terms and conditions enumerated below;

1. The specific information/data concerning the condominium unit number, floor area in square meters, location of the units and the designated parking space for each unit are detailed and hereto attached and made part hereof by incorporation;
2. MVEDC shall fully complete the construction and development of the condominium building within nine (9) months from date of signing of the Memorandum of Agreement (MOA);
3. The 35 condominium units offered for '*dacion en pago*' shall be completed based on the description and specifications, the details of which are hereto attached and made part hereof by incorporation; MVEDC hereby represents that this description of a completed condominium unit is applicable to all the sold and unsold condominium units;
4. MVEDC shall post a Performance Bond (PB) equivalent to the amount required to fully complete the condominium project; the text and substance of the PB shall be subject to review by the PNB Legal Division prior to the execution and implementation of the MOA;

The company that will issue the Performance Bond shall either be Prudential Guarantee & Assurance Company or Capital Insurance & Surety Corporation;

5. Accruals of interest and penalties on the loans of MVEDC and EGMC shall stop after signing of the MOA and during the agreed construction period;
6. The effectivity of the '*dacion en pago*' shall be upon delivery and acceptance by PNB of the fully completed 35 condominium units on or before the end of the 9th month from the date of signing of the MOA; the effectivity of the '*dacion en pago*' shall be subject to full compliance by MVEDC with the terms and conditions of the MOA with PNB;
7. Implementation of the '*dacion en pago*' is subject to MVEDC's payment of accounts receivable to PNB as well as the unpaid controller's fee of Mr. Carmelo O. Orallo; and

8. Applicable provisions of existing credit policies/circulars of the Bank and such other terms and conditions that the Legal Division may impose to protect the interest of the Bank;

3. Authority for the SVP or EVP of the Corporate Banking Group to negotiate and approve the other terms and conditions of the Memorandum of Agreement;

subject further to the additional condition:

1. The lending unit shall incorporate in the proposed MOA that the Performance Bond equivalent to the amount required to fully complete the project shall be immediately put up upon signing of the MOA.

On March 18, 1997, PNB wrote^[10] Mountain View stating that:

Gentlemen:

We are pleased to inform you that the Board of Directors of the Philippine National Bank approved your proposal for 'Dacion en Pago' as settlement for the obligations of Escala Garments & Manufacturing Corp. & Mountain View Equities & Development Corp..

Documentation of this transaction was endorsed to our Legal Department on March 4, 1997. A draft of the document will be sent to you prior to our discussion of the final terms and conditions of the Memorandum of Agreement.

Thank you.

In subsequent communications,^[11] PNB sent its own version of the MOA and required Mountain View to submit a *pro-forma* performance bond. On November 3, 1997, Mountain View submitted its draft MOA^[12] and the *pro-forma* performance bond.^[13] Neither of the parties signed the MOA and in a letter^[14] dated April 23, 1998, PNB requested for a copy of Mountain View's new proposal pursuant to the conference held on February 18, 1998 between their respective representatives. Instead of giving an alternative proposal, Mountain View resubmitted its draft MOA which embodied the purported *dacion en pago* agreement. In response, PNB informed Mountain View of the need "to secure a revalidation of the lapsed BOD approval covering the *dacion* arrangement subject of the MOA" and requiring them to submit the following documents:^[15] (1) the percentage of completion of the project; (2) total cost of condominium project; (3) remaining amount required to fully complete the project for purposes of fixing the performance bond; and (4) appropriate Board Resolution/s approving the *dacion* of 35 condominium units and 6 commercial units, with respective area of 2,660.40 sq.m. and 498 sq.m., and designating the corporations' authorized signatories to sign any and all documents for the said purpose.

In its letter dated July 7, 1999, Mountain View manifested that the condominium project has been 93% completed and the remaining construction cost would be P33,000,000.00. It offered as a "sweetener" half of the area located below the driveway of the condominium as soon as it has been developed. It also asked from

PNB an additional loan to be able to finish the condominium project within a 9-month period.^[16]

In its reply-letter, PNB emphasized that it has not yet agreed to the transfer of the 35 condominium units and reiterated that the *dacion en pago* previously approved by its BOD had expired, thus, there is a need to re-evaluate and resubmit a settlement proposal. It further stated that the properties being offered for *dacion* were substantially deficient to cover plaintiffs-appellants' outstanding obligation and enjoin Mountain View to give an additional real property. The bank also declined to approve the requested additional loan and informed Mountain View that it could no longer maintain its account in past due status.^[17]

Mountain View manifested its intent to amend the *dacion en pago* arrangement by increasing the floor area of the ceded property to 2,861 sq.m. and providing for the needed fund in finishing the condominium project within 12 months from signing of the final MOA.^[18] PNB rejected the foregoing proposal through its letter dated December 8, 1999.^[19]

On January 10, 2002, the REM was extrajudicially foreclosed to satisfy plaintiffs-appellants' P305,628,805.15 outstanding loan to PNB as of January 31, 2000.^[20] In the public auction held on February 28, 2002, PNB emerged as the highest bidder with a bid of P102,640,190.00.^[21]

Feeling aggrieved, plaintiffs-appellants filed the complaint^[22] for *Declaration of the Extinguishment of the Contracts of Loan and Mortgage and the Simultaneous Perfection of the Contract of Dacion en Pago, and the Annulment of Foreclosure*. They argued that the contract of loan and the REM had been extinguished by the *dacion en pago* agreement which was perfected when PNB notified them of BOD's approval of the proposed cession. Thus, they prayed for the implementation of the *dacion en pago* and the annulment of the foreclosure sale.

In its Answer,^[23] PNB claimed that the *dacion en pago* was conditionally approved by its BOD and there was no perfected contract between it and Mountain View. It insisted that the element of consent was absent because the parties failed to agree on the terms and conditions of the MOA. PNB also raised the affirmative defense of failure to state a cause of action, arguing that the foreclosure sale was validly executed, but the RTC denied the same in its September 30, 2002 Order.^[24]

In the interim, title over the mortgaged property was consolidated in the name of PNB under TCT No. T-78381 but plaintiffs-appellants caused the annotation of a notice of *lis pendens*^[25] on the said title. They also filed a Verified Application^[26] for the issuance of temporary restraining order (TRO) and writ of preliminary injunction (WPI) alleging that PNB already took possession of the foreclosed properties and there is a need to enjoin the latter from committing further acts of dispossession.

In its January 15, 2003 Order, the RTC denied plaintiffs-appellants' application for TRO and WPI.^[27] Subsequently and upon PNB's motion,^[28] the court *a quo* dismissed plaintiffs-appellants' complaint on the ground of lack of cause of action and for being moot and academic as a result of the issuance of the new title in the name of the bank.^[29] Plaintiffs-appellants elevated the matter to this Court *via* a petition for *certiorari*, docketed as CA-G.R. SP No. 93042. In a Decision dated June

30, 2006^[30] which attained finality on August 6, 2006,^[31] the Court granted plaintiffs-appellants' petition for *certiorari* thereby annulling and setting aside the RTC's order of dismissal and directing the re-raffle of the case to another branch of the RTC.

During the ensuing trial, Alberto Escalona (Escalona), Vice President of Mountain View and former Vice President of Escala, categorically admitted that there was no meeting of minds between plaintiffs-appellants and PNB with respect to the final terms and conditions of the MOA. He testified that there were certain provisions in PNB's draft MOA which were not discussed in the parties' previous meetings and the same provided for certain conditions which plaintiffs-appellants could not possibly comply.^[32]

In support of its defense, PNB presented the following witnesses: Rowena Escareal Magpayo (Magpayo), its First Vice President and former Head Account Officer; and Atty. Ma. Socorro Antoniette Marquez (Atty. Marquez) from the Office of the Corporate Secretary of PNB. Magpayo acknowledged PNB's approval of the proposed *dacion en pago* as settlement for the loan but claimed that the same was subject to certain terms and conditions which the parties failed to agree. She further testified that the March 18, 1997 letter does not indicate a period when the approval of the proposed *dacion en pago* would expire.^[33] On the other hand, Atty. Marquez presented and identified PNB's minutes book containing the February 19, 1997 Board Resolution No. 74.^[34]

The Ruling of the RTC

In its December 26, 2011 Decision,^[35] the RTC dismissed the complaint and held that there was no perfected *dacion en pago* due to the absence of the essential elements of a contract. According to the court *a quo*, the BOD's approval only meant that PNB was amenable to settle the indebtedness through *dacion en pago* while the March 18, 1997 letter merely commenced the negotiation stage for its consummation. However, the parties failed to agree on the thing that would be delivered to PNB by Mountain View and the price at which they were to be appraised as shown by the divergent specifications of the objects of the *dacion en pago* in the parties' respective draft MOAs. It also noted that in Board Resolution No. 74, PNB made clear its position that before a *dacion en pago* could take place, its demands must first be met; thus, the parties were simply in the offer and counter-offer stage of a contract.

The pertinent portions of the Decision read:

Defendant's statement in its letter dated March 13, 1997 that "x x x that the Board of Directors of the Philippine National Bank approved your proposal for 'Dacion en Pago' as settlement for the obligations of Escala Garments & Manufacturing Corp & Mountain View Equities & Development Corp." **did not perfect the dacion en pago** between the parties herein. **For the subsequent part of this letter said:** "Documentation of this transaction was endorsed to our Legal Department on March 4, 1997. A draft of the document will be sent to you prior to our discussion of the final terms and conditions of the Memorandum of Agreement."