



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 15, 2022** which reads as follows:*

“G.R. No. 223312 (*Benjamin C. Gutierrez v. Philippine Bank of Communications, et al.*). – Before this Court is a Petition for Review on *Certiorari*¹ filed by petitioner Benjamin C. Gutierrez (Gutierrez) assailing the Decision² dated July 24, 2015 and Resolution dated March 8, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 99887. The CA reversed and set aside the Decision³ dated June 26, 2012 of the Regional Trial Court (RTC) of Makati City, Branch 58 in Civil Case Nos. 02-868 and 02-869, which granted the complaint for Annulment of Promissory Notes and Real Estate Mortgage executed by Gutierrez in favor of respondent Philippine Bank of Communications (PBCOM).

Facts of the Case

On December 12, 1985, Gutierrez obtained a loan from PBCOM to finance his construction business. The loan was secured by a Real Estate Mortgage over the properties of Gutierrez in Malabon City registered under Transfer Certificate of Title (TCT) Nos. 298 and 1270. Four amendments thereto were executed from October 20, 1986 to July 23, 1996, increasing Gutierrez’ mortgage debt to ₱10,000,000.00.⁴

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¹ *Rollo*, pp. 35-68.

² *Id.* at 11-30; penned by Associate Justice Ramon Bato, Jr., with Associate Justices Eduardo Peralta, Jr. and Maria Elisa Sempio Diy, concurring.

³ *Id.* at 159-193; penned by Presiding Judge Eugene C. Paras.

⁴ *Id.* at 13.

In April 1996, Gutierrez incorporated his construction business as Benjamin C. Gutierrez Construction, Inc. (BCGCI). The Real Estate Mortgage over the Malabon properties was also amended to include BCGCI as an additional beneficiary.⁵

On October 3, 1996, Gutierrez and his wife Lourdes increased their obligation to ₱11,000,000.00 by executing another Amendment to Real Estate Mortgage over the Malabon properties.⁶

Later, on January 28, 1997, Gutierrez and Lourdes obtained a loan from PBCOM in the amount of ₱12,600,000.00, secured by a Real Estate Mortgage over their property covered by TCT No. 55559 located at Ayala Heights, Quezon City.⁷

On May 31, 2002, PBCOM demanded for the payment of ₱11,000,000.00.⁸ Upon Gutierrez' failure to pay, PBCOM initiated the extrajudicial foreclosure of both the Ayala Heights and Malabon properties.⁹

Respondent Notary Public Atty. Tagumpay Ponce (Atty. Ponce) caused the posting and publication of the "Notice of Extrajudicial Foreclosure Sale" (Notice) of the subject properties. Gutierrez sought the postponement of the foreclosure sale to no avail. As indicated in the Notice, the foreclosure sale was conducted on July 18, 2002 at 10:00 a.m.¹⁰

Gutierrez filed two complaints for the annulment of the promissory note in the amount of ₱12,600,000.00, the real estate mortgages covering the Ayala Heights and Malabon properties, and the extrajudicial foreclosure sale.¹¹

Civil Case No. 02-868

In Civil Case No. 02-868, Gutierrez claimed that the Ayala Heights property only secures a loan in the amount of ₱8,000,000.00. However, PBCOM asked him to sign a promissory note in the amount

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⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id. at 63.

⁹ Id. at 14.

¹⁰ Id. at 161.

¹¹ Id. at 14.

of ₱12,600,000.00. Further, he averred that said promissory note and the Real Estate Mortgage covering the Ayala Heights property are void for lack of cause or consideration because he did not receive the ₱12,600,000.00 loan proceeds.¹²

Gutierrez also argued that the extrajudicial foreclosure held on July 18, 2002 is tainted with irregularities: (a) the amount annotated in TCT No. 55559 (₱8,000,000.00) is different from the amount stated in the promissory note (₱12,600,000.00); and (b) the foreclosure sale transpired at 1:00 p.m., instead of 10:00 a.m. as stated in the Notice.¹³

Civil Case No. 02-869

Meanwhile, in Civil Case No. 02-869, Gutierrez claimed that the loan secured by the Malabon properties was already fully paid. Hence, there is no basis for the foreclosure sale.¹⁴

Ruling of the RTC

On June 26, 2012, the RTC rendered its Decision¹⁵ and ruled in favor of Gutierrez:

WHEREFORE, premises considered, finding preponderance of evidence to sustain this instant complaint, the Court **RENDERS** judgment as follows:

In Civil Case No. 02-868:

1. ANNULS and/or SET ASIDES Promissory Note BD VAR 8299196009 and Real Estate Mortgage in the amount of P12,600,000.00 executed by plaintiff Benjamin C. Gutierrez and defendant Philippine Bank of Communications for having concluded without cause or consideration;

2. ANNULS and/or SET ASIDES the Extrajudicial Foreclosure on plaintiff Benjamin C. Gutierrez's property located in Ayala Heights, Quezon City covered by Transfer Certificate of Title No. 55559 of the Register of Deeds of Quezon City;

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¹² Id. at 160-161.

¹³ Id. at 73-75.

¹⁴ Id. at 63.

¹⁵ Id. at 159-193.

3. ORDERING defendant Philippine Bank of Communications to pay plaintiff Benjamin C. Gutierrez the amount of P12,600,000.00 as actual and compensatory damage; the amount of P1,000,000.00 as moral damages, the amount of P500,000.00 for exemplary damages and the amount of P250,000.00 plus P3,000.00 per Court appearance as and by way of attorney's fees;

4. ORDERING defendant Philippine Bank of Communications to pay the costs of suit.

In Civil Case No. 02-869:

1. ANNULS and/or SET ASIDES the Promissory Note in the amount of P11,000,000.00 and the Amendment to Real Estate Mortgage executed by plaintiff Benjamin C. Gutierrez and defendant Philippine Bank of Communications for having concluded without cause or consideration.

2. ANNULS and/or SET ASIDES the Extrajudicial Foreclosure on plaintiff Benjamin Gutierrez's Malabon properties covered by Transfer Certificate of Title Nos. 298 and 1270 of the Register of Deeds of Rizal;

3. ORDERING defendant Philippine Bank of Communications to pay plaintiff Benjamin C. Gutierrez the amount of P1,000,000.00 as moral damages; the amount of P500,000.00 for exemplary damages and the amount of P250,000.00 plus P3,000.00 per Court appearance as and by way of attorney's fees;

4. ORDERING defendant Philippine Bank of Communications to pay the costs of suit.

SO ORDERED.¹⁶

Primarily, the trial court held that the Promissory Notes and the Real Estate Mortgage covering the Ayala Heights property are null and void for lack of cause or consideration. Records show that without the consent of Gutierrez, PBCOM applied the ₱12,600,000.00 loan proceeds to the outstanding obligations of BCGCI. The RTC pointed out that BCGCI is a separate legal entity and Gutierrez should not be held personally liable.¹⁷

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¹⁶ Id. at 192-193.

¹⁷ Id. at 189-190.

Given that the loan of BGCI is not the loan of Gutierrez, it is not proper for PBCOM to foreclose the Ayala property because the Real Estate Mortgage over the latter secures a personal loan and not that of BGCI.¹⁸

Moreover, the RTC found that on August 15, 1996, Gutierrez paid ₱13,270,000.00¹⁹ to PBCOM for the loan obligations of BGCI. Consequently, PBCOM has no basis to foreclose the Malabon properties. PBCOM erred when, despite full payment, it failed to release the mortgage and cancel the annotation on the titles of the Malabon properties.²⁰

Ruling of the CA

In its Decision²¹ dated July 24, 2015, the CA granted the appeal filed by PBCOM, as follows:

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 26, 2012 of the Regional Trial Court of Makati City, Branch 58, in Civil Case Nos. 02-868 and 02-869 is **REVERSED** and **SET ASIDE**, and a new one is entered **DISMISSING** the Complaints in Civil Case Nos. 02-868 and 02-869 for lack of merit.²²

First, the CA noted that Gutierrez is liable for the loan obligations of BCGCI since the latter was not yet incorporated at that time.²³

Evidenced by ten (10) promissory notes issued from November 1996 to May 1997, Gutierrez borrowed a total amount of ₱11,000,000.00. The loan proceeds were deposited in tranches to the PBCOM Joint Savings Account of Gutierrez and Lourdes Gutierrez failed to pay the loans when they fell due.²⁴

Later, the unpaid obligations were restructured and consolidated into a new promissory note dated January 28, 1997²⁵ in the amount of ₱12,600,000.00, which was used to pay the previous obligations of Gutierrez. The CA explained that the application of the

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¹⁸ Id. at 190.

¹⁹ ₱13,000,000.00 in some parts of the *rollo*.

²⁰ *Rollo*, p. 191.

²¹ Id. at 11-30.

²² Id. at 29.

²³ Id. at 21.

²⁴ Id. at 21-22.

²⁵ July 15, 1999 in some parts of the *rollo*.

₱12,600,000.00 loan proceeds to the prior unpaid obligations of Gutierrez is valid and legal pursuant to Article 1252²⁶ of the Civil Code.²⁷

Second, the CA held that the Real Estate Mortgage over the Ayala Heights property, which served as security for the ₱12,600,000.00 loan must likewise be upheld.²⁸

The Real Estate Mortgage over the Ayala Heights property satisfies all the requisites of a valid mortgage under Articles 2085²⁹ and 2125³⁰ of the Civil Code:

- a) It was constituted to secure the payment of a loan.
- b) Gutierrez and his wife as own the mortgaged property, as evidenced by the TCT.
- c) The REM was recorded in the Registry of Deeds and annotated at the back of the TCT.

The fact that the said Real Estate Mortgage was used to secure a loan in the amount of ₱12,600,000.00 when what was indicated in the deed is merely ₱8,000,000.00, shows that the mortgage is a continuing one, and shall be valid.³¹ In fact, the Deed of Real Estate Mortgage itself stipulates that it “shall also secure the performance by the MORTGAGOR(S) and/or the above beneficiary of the covenants and conditions of the above-mentioned credits and banking facilities, *including all reavailments, renewals and extensions thereof x x x.*³²

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²⁶ Art. 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due. x x x

²⁷ *Rollo*, pp. 22-23.

²⁸ *Id.* at 23-26.

²⁹ Article 2085. The following requisites are essential to the contracts of pledge and mortgage:
(1) That they be constituted to secure the fulfillment of a principal obligation;
(2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
(3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

³⁰ Article 2125. In addition to the requisites in Article 2085, it is indispensable, in order that a mortgage may be validly constituted, that the document in which it appears be recorded in the Registry of Property. If the instrument is not recorded, the mortgage is nevertheless binding between the parties. x x x

³¹ *Rollo*, p. 24

³² *Id.* at. 26. Italics supplied.

Third, the CA ruled that there was no irregularity in the auction sale of the Ayala Heights property as it was conducted within the announced date and still between 9:00 o'clock in the morning and 4:00 o'clock in the afternoon³³ pursuant to Section 4 of Act 3135.³⁴

Furthermore, the CA emphasized that the move from 10:00 a.m. to 1:00PM was at the instance of Gutierrez when he requested that a conference be made between him, the notary public and PBCOM for the settlement of the obligation. Gutierrez, however, failed to get the consent of PBCOM to cancel the auction sale because no settlement of the obligation was made.³⁵

Fourth, the RTC erred when it released the Real Estate Mortgage on the Malabon properties on the basis of the alleged payment made by Gutierrez in the amount of ₱13,270,000.00. In contrast to the RTC finding, the CA ruled that Gutierrez failed to discharge the burden of proof to establish the fact of payment. Based on the records, the CA found that the payment in the amount of ₱13,270,000.00 was for *prior* obligations covered by different promissory notes not in issue.³⁶

In a Resolution³⁷ dated March 8, 2016, the CA denied the Motion for Reconsideration filed by Gutierrez.

Petition for Review on *Certiorari*

Undeterred, Gutierrez filed a Petition for Review on *Certiorari*³⁸ before the Court and maintained the following arguments:

- 1) The ₱12,600,000.00 is a personal loan of Gutierrez and PBCOM has no right to apply the loan proceeds to the outstanding obligations of BCGCI.³⁹

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³³ Id. at 26-27.

³⁴ Section 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of the peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos each day of actual work performed, in addition to his expenses.

³⁵ *Rollo*, p. 27.

³⁶ Id. at 27-28.

³⁷ Id. at 31-33.

³⁸ Id. at 35-68.

³⁹ Id. at 50.

- 2) The CA has no basis in piercing the corporate entity of BCGCI since the latter was not made a party to the suits and there is no proof that BCGCI was in default of its loan obligations to PBCOM.⁴⁰
- 3) PBCOM acknowledged full payment of the loan obligations secured by the Malabon properties. The alleged subsequent loan availments in the amount of ₱28,050,000.00 are not annotated in the titles of the Malabon properties. Hence, the said amount cannot be the basis of the extrajudicial foreclosure sale.⁴¹

In their Comment,⁴² PBCOM and Star Asset Management NPL, Inc. (Star Asset), to whom the subject properties were later sold, maintain that the promissory note in the amount of ₱12,600,000.00 is a renewal or consolidation of the past due obligations of Gutierrez.⁴³

PBCOM emphasized that the promissory notes in issue contain a provision that gives the authority to apply the proceeds of the new promissory note to pay or retire the past due loan of Gutierrez.⁴⁴ In addition, respondents argue that the loans of BCGCI are immaterial for the validity of the promissory notes executed by Gutierrez. The BCGCI loans are only relevant in relation to the fact that the Real Estate Mortgages that secured the loans of Gutierrez were likewise used as security for the loans of BCGCI.⁴⁵

Ruling of the Court

The petition has no merit.

Question of Fact

The resolution of the issues raised by Gutierrez necessarily entails a review of the evidence already presented before the lower courts, which is beyond the province of this Court in a Petition for Review on *Certiorari* under Rule 45. Gutierrez also failed to raise any exempting circumstances for the Court to resolve these questions of fact.

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⁴⁰ Id. at 51-55.

⁴¹ Id. at 61-65.

⁴² Id. at 211-236, 264-289.

⁴³ Id. at 225.

⁴⁴ Id. at 273.

⁴⁵ Id. at 280.

Nevertheless, after carefully examining the Petition and its annexes, the Court finds that the CA did not commit any error that would warrant a reversal of its assailed Decision.

Gutierrez is liable

Gutierrez had been availing of the credit or loan facilities of PBCOM since 1985 and it is clear from the timeline below that it was Gutierrez – not BGC I - who entered into a contract of loan with PBCOM:

The Real Estate Mortgage over the Malabon properties was executed on December 12, 1985. By July 23, 1996, the mortgage debt of Gutierrez amounted to ₱10,000,000.00. BCGCI was only incorporated in April 1996. It was only after the incorporation of BCGCI when the Real Estate Mortgage over the Malabon properties was amended to include BCGCI as additional beneficiary. Further amendment was made on October 3, 1996 to increase the obligation to ₱11,000,000.00.⁴⁶

Hence, the CA correctly applied Article 1953⁴⁷ of the Civil Code and ruled that Gutierrez, and not BCGCI, is liable.

On the other hand, the Real Estate Mortgage over the Ayala Heights property was executed on January 28, 1997 to secure a ₱12,600,000.00 loan. The said loan was admittedly a personal loan of Gutierrez.⁴⁸

The Court notes that when the ₱12,600,000.00 loan was obtained, Gutierrez still owed PBCOM the amount of ₱11,000,000.00 from the previous promissory notes executed. PBCOM, hence, had every reason to apply the ₱12,600,000.00 loan proceeds to the outstanding loan obligations of Gutierrez.⁴⁹ It is also important to emphasize that Gutierrez never denied that PBCOM released the loan proceeds; he merely questioned why the money not given or released to him *directly*.

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⁴⁶ Id. at 13.

⁴⁷ Article 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

⁴⁸ *Rollo*, p. 39.

⁴⁹ Id. at 21.

Piercing the veil of corporate entity not applicable

The argument on piercing of the corporate entity is misplaced.

First of all, and as already explained above, there is no corporate entity to speak of since BCGCI was not yet incorporated at the time of the promissory notes and Real Estate Mortgage over the Malabon properties. Logically, Gutierrez was made liable for them.

Second, the extrajudicial foreclosure was made based on the proven fact that Gutierrez used his Ayala Heights and Malabon properties as collateral for the payment of a principal obligation. Whether the principal obligation was a personal one or that of BCGCI is, therefore, immaterial. Besides, Gutierrez did not question his signatures on the Promissory Notes and Real Estate Mortgages in issue.

Lastly, even if the Court agrees that BCGCI is liable for the principal obligation, Article 2085 of the Civil Code states that third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. The fact that Gutierrez, aside from being the President and the Chairman of the Board, is the majority owner of BCGCI reasonably explains his use of personal property as collateral for the loan, allegedly, of BCGCI.

Payment made for prior obligations

Records show that Gutierrez issued two (2) checks with the total amount of ₱13,270,000.00 in favor of PBCOM as payment for his obligations.⁵⁰

The CA diligently reviewed the records and correctly found that the payment was for prior loan obligations of Gutierrez. The CA supported this finding with an enumeration of the relevant promissory notes, together with the computation of Gutierrez' outstanding balance at the time of payment.⁵¹ The acknowledgment receipt⁵² issued by PBCOM likewise provides the same enumeration of promissory notes for which the total amount of ₱13,270,000.00 was paid. Indeed, the promissory notes relevant to the case at bar were not included in the enumeration.

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⁵⁰ Id. at 28.

⁵¹ Id.

⁵² Id. at 116.

In addition, it is important to note that the checks issued were dated August 16, 1996, or *before* the execution of promissory notes for the ₱11,000,000.00 and ₱12,600,000.00 loans. Reasonably, the amount of ₱13,270,000.00 cannot be credited as payment for an obligation that was not yet in existence.

WHEREFORE, premises considered, the Petition is **DENIED**. Accordingly, the Decision dated July 24, 2015 and Resolution dated March 8, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 99887 are hereby **AFFIRMED**.

SO ORDERED.”

By authority of the Court:

LIBRADA C. BUENA

Division Clerk of Court *librada*

by:

mtbulo

MARIA TERESA B. SIBULO

Deputy Division Clerk of Court

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AUG 12 2022

GUTIERREZ & NITURA LAW OFFICE
Counsel for Petitioner
GF, Richardson Steel Corp. Building
No. 668 Quirino Highway, Brgy. Bagbag
Novaliches, 1123 Quezon City

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Manila
(CA-G.R. CV No. 99887)

Attys. Jaypee Orlando C. Pedro &
Jerry P. Agnes, Jr.
Counsel for Respondent PBCOM
3/F, PBCOM Tower, 6795 Ayala Avenue
cor. V.A. Rufino Street, 1226 Makati City

VILLARAZA & ANGANGCO
Counsel for Resp. Star Asset Management
NPL, Inc.
V&A Law Center
11th Avenue cor. 39th Street, Bonifacio Triangle
Bonifacio Global City, 1630 Taguig City

Atty. Tagumpay B. Ponce
Respondent
78-B Maginhawa St.
Teachers Village, Diliman
1101 Quezon City

The Hon. Presiding Judge
Regional Trial Court, Branch 58
1200 Makati City
(Civil Case Nos. 02-868 & 02-869)