



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

KT CONSTRUCTION SUPPLY,
INC., represented by WILLIAM
GO,

Petitioner,

- versus -

G.R. No. 228435

Present:

CARPIO,* J.,
PERALTA,** *Acting Chairperson*,
MENDOZA,
LEONEN,*** and
MARTIRES, JJ.

Promulgated:

PHILIPPINE SAVINGS BANK,
Respondent.

21 JUN 2017

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DECISION

MENDOZA, J.:

This petition for review on *certiorari* seeks to reverse and set aside the April 22, 2016 Decision¹ and November 23, 2016 Resolution² of the Court of Appeals (CA) in CA-G.R. CV No. 103037, which affirmed with modification the June 11, 2014 Decision³ of the Regional Trial Court, Branch 133, Makati City (RTC).

On October 12, 2006, petitioner KT Construction Supply, Inc. (*KT Construction*) obtained a loan from respondent Philippine Savings Bank (*PSBank*) in the amount of ₱2.5 million. The said loan was evidenced by a Promissory Note⁴ executed on the same date. The said note was signed by William K. Go (*Go*) and Nancy Go-Tan (*Go-Tan*) as Vice-President/General

* On Official Leave.

** Per Special Order No. 2445 dated June 16, 2017.

*** On Leave.

¹ Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justice Mario V. Lopez and Associate Justice Ramon A. Cruz, concurring; *rollo*, pp. 30-43.

² Id. at 45-46.

³ Penned by Presiding Judge Elpidio R. Calis; id. at 98-102.

⁴ Id. at 72.

Manager and Secretary/Treasurer of KT Construction, respectively. In addition, both Go and Go-Tan signed the note in their personal capacities.

The promissory note stipulated that the loan was payable within a period of sixty (60) months from November 12, 2006 to October 12, 2011. In addition, the said note provided for the payment of attorney's fees in case of litigation.

On January 3, 2011, PSBank sent a demand letter to KT Construction asking the latter to pay its outstanding obligation in the amount of ₱725,438.81, excluding interest, penalties, legal fees, and other charges. For its failure to pay despite demand, PSBank filed a complaint for sum of money against KT Construction.

The RTC Ruling

In its June 11, 2014 Decision, the RTC ruled in favor of PSBank. It opined that the promissory note expressly declared that the entire obligation shall immediately become due and payable upon default in payment of any installment. The trial court, nevertheless, reduced the interest rate and stipulated interest fees for being unconscionable. Thus, it declared KT Construction, Go and Go-Tan solidary liable and it ordered them to pay PSBank the loan in the amount of ₱725,438.81 subject to twelve percent (12%) interest *per annum* and ₱50,000.00 as attorney's fees. The *fallo* reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Philippine Savings Bank and against the defendant KT Construction Supply, Inc., represented by William Go and Nancy Go Tan, ordering the defendant to pay the plaintiff, jointly and severally, the following:

- 1) The amount of Seven Hundred Twenty Five Thousand Four Hundred Thirty Eight Pesos and 81/100 (Php725,438.81) plus twelve percent (12%) interest per annum from January 13, 2011 until fully paid.
- 2) Php50,000.00 as and for attorney's fees.

SO ORDERED.⁵

Aggrieved, KT Construction appealed before the CA.

⁵ Id. at 102.

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The CA Ruling

In its April 22, 2016 Decision, the CA affirmed the RTC decision. It explained that due to the acceleration clause, the loan became due and demandable upon KT Construction's failure to pay an installment. In addition, the CA disagreed that the promissory note was a contract of adhesion because KT Construction was not in any way compelled to accept the terms of the promissory note.

The CA held that the trial court rightfully awarded attorney's fees as the same was stipulated in the promissory note. It stated that the award of attorney's fees was in the nature of a penal clause, which was valid and binding between the parties. Likewise, the CA agreed that Go and Go-Tan were solidarily liable with KT Construction for the judgment amount because, when they signed the promissory note in their personal capacities, they became co-makers thereof. It added that the parties themselves stipulated in the promissory note that their liability was solidary. The CA disposed the case in this wise:

WHEREFORE, in view of the foregoing premises, the instant appeal is DENIED. The Decision of Branch 133 of the Regional Trial Court, Makati City, National Capital Judicial Region dated June 11, 2014 in Civil Case No. 11-060, is hereby AFFIRMED with the MODIFICATION that KT Construction, represented by William K. Go and Nancy Go-Tan, is ordered to pay PS Bank the amount equivalent to 6% per *annum* of the total of the monetary awards from the finality of this Decision until full payment thereof, as legal interest. In addition, the Clerk of Court of Branch 133 of the Regional Trial Court in Makati City, or his duly authorized deputy is DIRECTED to assess and collect the additional docket fees from Philippine Savings Bank as fees in lien in accordance with Section 2, Rule 141 of the Rules of Court.

SO ORDERED.⁶

KT Construction moved for reconsideration, but its motion was denied by the CA in its November 23, 2016 resolution.

Hence, this appeal instituted by KT Construction raising the following errors:

⁶ Id. at 42-43.

ISSUES**I**

THE COURT OF APPEALS GRAVELY AND PALPABLY ERRED, AS DID THE LOWER COURT, IN HOLDING WILLIAM GO AND NANCY GO TAN JOINTLY AND SEVERALLY LIABLE WITH THE PETITIONER TO THE RESPONDENT BANK;

II

THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN NOT FINDING THAT THE COMPLAINT IN THIS CASE WAS PREMATURELY FILED;

III

THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN FAILING TO DECLARE THE PROMISSORY NOTE IN QUESTION AS NULL AND VOID FOR BEING A CONTRACT OF ADHESION; AND

IV

THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN AWARDING ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT BANK.⁷

KT Construction insists that Go and Go-Tan could not be held solidarily liable for the judgment award because they were neither impleaded nor served with summons. Moreover, they did not voluntarily appear before the court. Thus, the courts never acquired jurisdiction over their persons.

KT Construction further asserts that the complaint was premature because it was not alleged that it had defaulted in paying any of the installments due and that it had received a demand letter from PSBank. It reiterates that the promissory note was null and void for being a contract of adhesion. KT Construction also argues that the award of attorney's fees was improper because it was contrary to the policy that no premium should be placed on the right to litigate.

In its Comment,⁸ dated March 3, 2017, PSBank countered that Go and Go-Tan were solidarily liable with KT Construction because they signed the promissory note in favor of PSBank as officers of the corporation and in their personal capacities. It averred that the obligation was already due and

⁷ Id. at 10.

⁸ Id. at 151-158.

demandable in view of the acceleration clause in the promissory note. Further, PSBank pointed out that the promissory note was consensual as the parties voluntarily signed the same. Finally, it claimed that attorney's fees were rightfully awarded because the same formed part of the terms and conditions of the loan agreement.

The Court's Ruling

The petition is partly meritorious.

It has long been settled that an acceleration clause is valid and produces legal effects.⁹ In the case at bench, the promissory note explicitly stated that default in any of the installments shall make the entire obligation due and demandable even without notice or demand. Thus, KT Construction was erroneous in saying that PSBank's complaint was premature on the ground that the loan was due only on October 12, 2011. KT Construction's entire loan obligation became due and demandable when it failed to pay an installment pursuant to the acceleration clause.

Moreover, KT Construction could not evade responsibility by claiming that it had not received any demand letter for the payment of the loan. PSBank had sent a demand letter,¹⁰ dated February 3, 2011, asking KT Construction to pay the remaining obligation within five (5) days from receipt of the letter. More importantly, even granting that KT Construction did not receive the demand letter, the loan still became due and demandable because the parties expressly waived the necessity of demand.¹¹

Further, KT Construction is mistaken that it could not be held liable for the entire loan obligation because PSBank failed to prove how many installments it had failed to pay. In *Bognot v. RRI Lending Corporation*,¹² the Court explained that once the indebtedness had been established, the burden is on the debtor to prove payment, to wit:

Jurisprudence tells us that one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. Indeed, once the existence of an indebtedness is duly established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests on the debtor.¹³

⁹ *Premiere Development Bank v. Central Surety & Insurance Company, Inc.*, 598 Phil. 827, 849 (2009).

¹⁰ *Rollo*, p. 74.

¹¹ *Spouses Agner v. BPI Family Savings Bank, Inc.*, 710 Phil. 82, 85-86 (2013).

¹² 736 Phil. 357 (2014).

¹³ *Id.* at 367.

In the case at bench, KT Construction admitted that it obtained a loan with PSBank. It, nevertheless, averred that it had been regularly paying the loan. Thus, KT Construction could have easily provided deposit slips and other documentary evidence to prove the fact of payment. It, however, merely alleged that it religiously paid its obligation without presenting any evidence to substantiate the said obligation.

In a further attempt to absolve itself from the loan obligation, KT Construction argued that the promissory note was null and void because it was a contract of adhesion. It may be true that KT Construction had no hand in its preparation. Still, it has been ruled in a plethora of cases that a contract of adhesion is not invalid *per se*.¹⁴ Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.¹⁵

KT Construction also claimed that attorney's fees should not be awarded for lack of legal basis. The promissory note, however, categorically provided for the payment of attorney's fees in case of default. The said stipulation constituted a penal clause to which the parties were bound, it being part of the contract between the parties.¹⁶ KT Construction was mistaken in relying on Article 2208 of the Civil Code because the same applies only when there is no stipulation as to the payment of attorney's fees in case of default.

*Only parties to the case
may be bound by the
court's decision*

The courts *a quo*, however, erred in holding Go and Go-Tan solidarily liable for the judgment award in PSBank's favor. In *Guy v. Gacott*,¹⁷ the Court ruled that a judgment binds only those who were made parties in the case, to wit:

In relation to the rules of civil procedure, it is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court. A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not

¹⁴ *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 620 Phil. 381, 392 (2009).

¹⁵ *Id.* at 392.

¹⁶ *Baron Marketing Corp. v. CA*, 349 Phil. 769, 779-780 (1998).

¹⁷ G.R. No. 206147, January 13, 2016.

impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law.

In short, jurisdiction over the person of the parties must be acquired so that the decision of the court would be binding upon them. It is a fundamental rule that jurisdiction over a defendant is acquired in a civil case either through service of summons or voluntary appearance in court and submission to its authority.¹⁸

In the case at bench, Go and Go-Tan were neither impleaded in the civil case nor served with summons. They merely acted as representatives of KT Construction, which was impleaded as the defendant in the complaint. It is for this reason that only KT Construction filed an answer to the complaint. Thus, it is clear that the trial court never acquired jurisdiction over Go and Go-Tan.

Consequently, it was improper for the trial court to declare in its dispositive portion that Go and Go-Tan were jointly and severally liable with KT Construction for the judgment award. It is noteworthy that their liability as co-makers was never discussed in the body of the decision and that their solidary liability was a mere conclusion in the dispositive portion.

WHEREFORE, the April 22, 2016 Decision and November 23, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 103037, are **AFFIRMED with MODIFICATION**, in that, only petitioner KT Construction Supply, Inc. is bound by the judgment award.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

¹⁸ *Prudential Bank v. Magdamit, Jr.*, G.R. No. 183795, November 12, 2014, 740 SCRA 1, 13.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

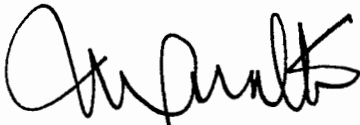


MARIA LOURDES P. A. SERENO
Chief Justice



WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

(On Leave)
MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division