# PLAINTIFF-APPELLANT, VS. NELSON L. LU AND JOCELYN T. WU, DOING BUSINESS AS NEW COLONY MARKETING, DEFENDANTS-APPELLEES, JOCELYN T. WU, DEFENDANT-APPELLANT.

Ponente: CORALES, J.

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**CORALES, J.:**

This is an appeal[2] from the May 29, 2009 Decision[3] of the Regional Trial Court (RTC), Branch 143, Makati City in Civil Case No. 06-534 directing Spouses Nelson L. Lu and Jocelyn T. Wu (Spouses Nelson and Jocelyn) to pay their P4,000,000.00 principal obligation but reducing the interest and deleting the penalty charges.

The Antecedents

On separate occasions, Nelson L. Lu (Nelson), doing business under the name of New Colony Marketing (NCM), obtained various loans from Metropolitan Bank & Trust Co. (Metrobank). These loans were secured by non-negotiable promissory notes, viz., Note No. 123773.14345.147.99[4] for P300,000.00, Note No. 123773.14345.148.99[5] for P3,400,000.00, and Note No. 123773.14345.149.99[6] for another P300,000.00, wherein Nelson bound himself to pay 13% interest rate and 18% penalty charges per annum in case of default and an additional 10% of the amount due as attorney's fees in the event that payment would be enforced judicially.

Nelson failed to pay when the loan fell due, prompting Metrobank to institute a complaint for sum of money to recover the loan obligations amounting to P4,310,268.05 as of April 30, 2006. Metrobank also impleaded Jocelyn T. Wu (Jocelyn), Nelson's wife, on the basis of a Continuing Surety Agreement[7] (CSA) she had allegedly executed on January 28, 2005 in order to secure NCM's obligations up to the amount of P4,800,000.00. Metrobank prayed that Spouses Nelson and Jocelyn be ordered to pay the outstanding balance of their loans including interests and penalty charges, as well as attorney's fees, expenses of litigation, and costs of suit.[8]

Only Jocelyn has been properly served with summons because Nelson was no longer residing at the spouses address on record.[9]

In her Answer with Counterclaim, Jocelyn disclaimed the apparent signature on the CSA and denied having allowed anyone to sign on her behalf as surety or guarantor of NCM's loans. According to her, at the time the CSA was supposedly executed, Nelson has already abandoned her to live with his paramour. Jocelyn also raised the following arguments: Metrobank's complaint failed to state a cause of action against her since the promissory notes had been executed only between Lu and Metrobank; the obligation had already been extinguished or barred; the action was premature as the period should have first been fixed by the courts; the interests were baseless, unreasonable and unconscionable; the complaint was not properly verified, its certification against forum shopping was invalidly executed, and the venue was improperly laid; and the RTC had not acquired jurisdiction over the case for failure of Metrobank to pay the correct filing fees considering its inexact prayers for payment of interests and attorney's fees.[10]

In support of its complaint, Metrobank presented the Senior Assistant Manager of its Grace Park Center, Rene Villa-real (Villa-real), who testified that he handled NCM's loans and identified the CSA and the promissory notes with their respective accompanying disclosure statements. Villa-real also presented Nelson and Jocelyn's respective deposit account information and specimen signature cards bearing their signatures for themselves and for NCM.[11] He also claimed having witnessed Jocelyn sign the CSA but could not specify the circumstances under which she had done so. He added that a signature and stamp impression on the CSA meant that Jocelyn's signature thereon had been satisfactorily compared with those in her specimen signature card.[12] Villa-real further testified that despite receipt of the demand letters sent by Metrobank's Law Division and its external counsel,[13] Spouses Nelson and Jocelyn did not pay their obligations amounting to P5,253,605.55 as of January 31, 2007.[14] As a result the bank incurred litigation expenses, such as filing and appearance fees, and charges for transcripts of stenographic notes.[15]

Jocelyn and her counsel repeatedly failed to appear at the scheduled hearings for presentation of their evidence, thus, the RTC deemed waived their right to do so.[16]

The Ruling of the RTC

In its May 29, 2009 Decision,[17] the RTC pointed out that jurisdiction over the person of Nelson was not acquired because the summons addressed to him was returned unserved. Nonetheless, it held that the totality of the evidence presented sufficiently established Metrobank's claims against Spouses Nelson and Jocelyn. The court a quo further ruled that the stipulated 13% interest rate and 18% penalty charges per annum are highly unconscionable, hence, it reduced the interest rate to 12% per annum and eliminated the penalty charges.

The dispositive portion of the assailed Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff directing the defendants Nelson Lu doing business under the name and style of New Colony Marketing and Jocelyn Wu jointly and severally liable to pay plaintiff Metropolitan Bank and Trust Company the following:
>
> - FOUR MILLION PESOS (Php 4,000,000.00) representing the total amount of defendants' outstanding principal obligation;
>
> - an interest of 12% per annum to be computed from the date of extrajudicial demand on 03 May 2006 until the amount due is fully paid.
>
> - ten percent (10%) of the principal obligation as attorney's fees;
>
> - EIGHTY TWO THOUSAND EIGHT HUNDRED SEVENTY SEVEN PESOS AND THIRTY SEVEN CENTAVOS (Php 82,877.37) as litigation expenses and costs of suit.


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> SO ORDERED. (Emphasis supplied)

Metrobank moved for partial reconsideration insisting that the stipulated interest rate and penalty charges in the promissory notes should be upheld and reiterating their claim that the total obligation of Spouses Nelson and Jocelyn already amounted to P5,253,605.55 as of January 31, 2007.[18] Jocelyn filed her own motion for reconsideration[19] and pleaded that she be exonerated from liability because Metrobank failed to prove the genuineness of her signature on the CSA.

The RTC denied the parties' motion for reconsideration.[20] Hence, Metrobank and Jocelyn filed their respective Notice of Appeal which were both given due course by the RTC.[21] However, Jocelyn failed to file her appellant's brief despite notice; consequently, it was considered abandoned and was dismissed by the Twelfth Division of this Court through a Resolution dated March 25, 2011.[22] Jocelyn's counsel moved for reconsideration admitting that he inadvertently failed to file the appellant's brief but pleaded for a liberal interpretation of the rules on procedure. The Court denied[23] Jocelyn's motion and she elevated the same to the Supreme Court via a petition for review on certiorari, docketed as G.R. No. 197787.[24]

In a Resolution[25] dated November 21, 2013, We required Metrobank and Jocelyn to update Us of the status of the latter's petition for review on certiorari. Jocelyn failed to comply with such directive while Metrobank filed its Manifestation informing the Court of the October 3, 2011 Resolution of the Supreme Court in G.R. No. 197787, the pertinent portions of which reads:[26]

"xxx

> The Court further resolves to DEFER ACTION on the petition for review on certiorari assailing the Resolutions dated 25 March 2011 and 21 July 2011 of the Court of Appeals, Manila, in CA-G.R. CV No. 94778, and to REQUIRE petitioner to submit within five (5) days from notice : (1) a legible duplicate riginal or certified true copy of the assailed Resolution dated 25 March 2011 pursuant to Sections 4(d) and 5, Rule 45 in relation to Section 5(d), Rule 56 of the 1997 Rules of Civil Procedure, as amended; (2) a proper verification in accordance with Section 1, Rule 45 in relation to Section 4, Rule 7 of the Rules, and a valid certification of non-forum shopping in accordance with Section 5, Rule 7, there being no properly accomplished jurat sowing that the affiant exhibited before the notary public at least one current identification document issued by an official agency bearing the photograph and signature of the affiant as required under Sections 6 and 12, Rule II of the 2004 Rules on Notarial Practice, as amended by Court En Banc Resolution dated 19 February 2008 in A.M. No. 02-8-12-SC; and (3) a valid affidavit of service pursuant to Sections 3 and 5, Rule 45, Section 5(d), Rule 56, and Section 13, Rule 13 of the Rules, the affidavit of service having been notarized on 10 September 2011 prior to the actual service of the petition on 12 September 2011. Reyes, J., on leave; Mendoza, J., designated additional member per S.O. No. 1107." (Emphasis and italics appear in the original text of the Notice)

Accordingly, this Court is only tasked to resolve the issues raised by Metrobank in its appeal, to wit:[27]

- THE TRIAL COURT COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT REFUSED TO AWARD THE CLAIM OF PLAINTIFF-APPELLANT AS ALLEGED IN THE COMPLAINT AND PROVEN DURING TRIAL.


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- THE TRIAL COURT COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT REFUSED TO AWARD THE INTERESTS AND PENALTY CHARGES AGREED UPON BY THE PARTIES.

Invoking Article 1159 of the Civil Code,[28] Metrobank reiterates its claim to the interest rate and penalty charges set forth in the promissory notes.

This Court's Ruling

The appeal of Metrobank is partially meritorious.

As a general rule, parties are free to enter into agreements and stipulate on the terms and conditions of their contract. Courts are generally not at liberty to simply ignore or override such freedom, although stipulated penalties may be equitably reduced where these are iniquitous or unconscionable or the obligation has been partly complied with.[29] So long as the stipulations are valid, the parties are bound to comply with them in good faith because the contract is the law between the parties.[30]

In this case, the 13% interest rate per annum cannot be deemed unconscionable considering that even a 24% interest rate has been allowed by the Supreme Court in the cases of Villanueva v. Court of Appeals[31] and Spouses Bacolor v. Banco Filipino Savings and Mortgage Bank, Dagupan City Branch.[32]

The RTC's rationale in its November 5, 2009 Order that the combined 13% interest rate and 18% penalty charges are highly unconscionable cannot also be sustained. Penalty clauses are distinct and separate from a stipulation on interest rate.[33] As an accessory obligation attached to a principal obligation in order to ensure the performance thereof, the borrower bears the burden of proving an excuse to avoid payment of the penalty charges, whether this be force majeure or the creditor's own acts. Failing to discharge this burden, the borrower may not simply renege on his obligation to pay the agreed penalty charge[34] As such, the RTC definitely erred when it failed to award any penalty charges in favor of Metrobank.

With respect to Metrobank's argument that the loan obligation already ballooned to P5,253,605.55 as of January 31, 2007 as shown by the statement of account which was offered in evidence before the RTC, this Court notes that the bank's computation as to the principal obligation did not differ with the award made by the RTC; both of them were based on the P4,000,000.00 face value of the three (3) promissory notes. Metrobank's computation is slightly higher because it already included the stipulated interest and penalty charges for 2006 and 2007 while the RTC did not make a final determination of the amount that should be paid by Spouses Nelson and Jocelyn because it merely stated that the 12% interest rate should be computed from the date of extrajudicial demand on May 3, 2006 until the amount is fully paid. We therefore find no compelling reason to modify the award of the RTC as to the principal obligation.

However, it must be clarified that the RTC Decision is binding only on Jocelyn. Well-entrenched is the rule that jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court; otherwise, the judgment would be null and void.[35] As earlier mentioned, the assailed May 29, 2009 Decision even acknowledged that Nelson has not been served with summons, thus, any decision in this case would not be valid with respect to Nelson considering that the RTC did not acquire jurisdiction over his person.

WHEREFORE, the appeal is partially GRANTED. Accordingly, the May 29, 2009 Decision of the Regional Trial Court Makati City in Civil Case No. 06-534 is hereby MODIFIED as follows: defendant-appellee Jocelyn T. Wu is held liable to plaintiff-appellant Metropolitan Bank & Trust Company for the principal obligation amounting to P4,000,000.00 plus interest, penalties, and attorney's fees as set forth in Promissory Note Nos. 123773.14345.147.99, 123773.14345.148.99, and 123773.14345.149.99, in relation to the January 28, 2005

Continuing Surety Agreement.

**SO ORDERED.**

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Villon, J., Chairperson and [1]Inting JJ., concur.

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[1] Vice Justice Florito S. Macalino, per Office Order No. 224-14-ABR in relation to Office Order No. 227-14-ABR.

[2] See Notices of Appeal in relation to the February 4, 2010 Order of the RTC giving due course thereto, records, pages 190-191, 193-194, and 195, respectively.

[3] Penned by Presiding Judge Zenaida T. Galapate-Laguilles, now a member of this Court, rollo, pages 8-12.

[4] Exhibit “B” and series, records, pages 134-135.

[5] Exhibit “A” and series, ibid., pages 132-133.

[6] Exhibit “C” and series, ibid., pages 136-137.

[7] Exhibit “D” and series, ibid., page 138.

[8] See Complaint, ibid., pages 1-8.

[9] See Sheriff's Report, ibid., page 45.

[10] See Answer with Counterclaim, ibid., pages 50-54.

[11] See Deposit Account Information and Specimen Signature Cards, Exhibits “H” and “I” and their respective series, ibid., pages 145-147.

[12] See TSN, Rene R. Villa-real, June 5, 2008 and July 17, 2008.

[13] See May 3, 2006 demand letters, Exhibits “E” and “F” and their respective series, ibid., pages 139-143.

[14] See Statement of Account, Exhibit “G” and series, ibid., page 144.

[15] See Villa-real's Judicial Affidavit, ibid., pages 93-100; TSN, Rene R. Villa-real, January 17, 2008.

[16] See January 28, 2009 Order, records, pages 154-155.

[17] Supra, at note 3.

[18] See Metrobank's Motion for Partial Reconsideration, records, pages 161-167.

[19] Ibid., pages 170-176.

[20] See November 5, 2009 Order, ibid., pages 186-188.

[21] Supra, at note 2.


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[22] Penned by Associate Justice Romeo F. Barza with the concurrence of Justices Rosalinda Asuncion-Vicente and Edwin D. Sorongon, rollo, pages 55-58.

[23] See Motion for Reconsideration with Notice of Change of Address in relation to the July 21, 2011 Resolution denying the same, ibid., pages 59-63 and 71-73.

[24] See Motion for Extension of Time to File a Petition for Review, ibid., pages 74-75.

[25] Ibid., pages 79-80.

[26] See Notice from the Second Division of the Supreme Court dated October 3, 2011, attached as Annex “A” in Metrobank's Manifestation, ibid., pages 81-87.

[27] Pages 1-2 of Brief for Plaintiff-Appellant Metrobank, ibid., pages 27-28.

[28] Art. 1159. Obligations arising from contracts have legal force of law between the contracting parties and should be complied with in good faith.

See Brief for Plaintiff-Appellant, ibid., pages 25-39.

[29] See RGM Industries v. United Pacific, G.R. No. 194781. June 27, 2012; Philippine Export v. Amalgamated Management, G.R. No. 177729. September 28, 2011.

[30] See Mallari v. Prudential Bank, G.R. No. 197861. June 5, 2013.

[31] See Villanueva v. Court of Appeals, G.R. No. 163433. August 22, 2011.

[32] G.R. No. 148491. February 8, 2007.

[33] See Tan v. Court of Appeals, G.R. No. 116285. October 19, 2001.

[34] See Development Bank v. Family Foods, G.R. No. 180458. July 30, 2009.

[35] Manotoc v. Court of Appeals, G.R. No. 130974. August 16, 2006.


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