

**FIRMWOOD DEVELOPMENT CORPORATION,
PLAINTIFF-APPELLANT, VS. HOME SAVINGS BANK & TRUST
COMPANY AND MANUELA P. LORENZO, MARINO V. CACHERO, IN
THEIR CAPACITIES AS EX-OFFICIO SHERIFF ...**

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The defaulting borrower-mortgagor, rejected on its effort to stave off the foreclosure of its mortgage and the resulting sale of its collateral through injunction, is now before us on appeal.

But, first, the antecedents.

On May 27, 1987, defendant Home Savings Bank & Trust Company (Home Savings)[1] lent the plaintiff P600,000.00, to be fully paid in 7 quarterly installments of P71,568.00 each, commencing 3 months from release of the loan, to wit:

Upon default in the payment of any of the installments/amortizations when due, the outstanding balance plus interest thereon shall likewise become due and demandable. This acceleration clause shall apply automatically and there shall be no need of any demand to make the entire amount due and payable.

In case of default in the payment of any of the installments or portions thereof, the debtors agree to pay by way of penalty two percent (2%) per month on arrearages due and payable computed monthly.

The bank or its assigns shall have full power and authority upon default in any of the terms of this obligation or at any time the said bank shall deem itself insecure to declare without notice this obligation due and payable forthwith whether due according to its face or not, anything to the contrary notwithstanding, and I/We further agree that no extension of time, acceptance or payment of any defaulted installment or any other arrangement regarding the payment of this note nor any delay in the exercise of such right to accelerate, shall be deemed a waiver or loss of such right to accelerate, nor shall affect my / our joint and several obligations.

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In case it is necessary to collect on this note by or through an attorney-at-law, the makers shall jointly and severally pay twenty-five percent (25%) of the amount due on this note as attorney's fees which in no case shall be less than five hundred (P500.00) pesos, exclusive of all costs, fees and damages allowed by law. [2]

To secure the loan, the plaintiff executed a deed of mortgage over 2 real properties located in Quezon City, covered by Transfer Certificate of Title (TCT) No. 358888 and TCT No. 342787 of the Register of Deeds of Quezon City.[3]

The plaintiff did not pay the installments, making only 1 payment of P74,430.72 on November 16, 1987.[4] Thus, Home Savings demanded payment of the entire balance and initiated foreclosure proceedings against the plaintiff's mortgaged properties. Upon due application of Home Savings, defendant Ex-Officio Sheriff of Quezon City scheduled the extra-judicial foreclosure sale on May 16, 1988.

On May 12, 1988, the plaintiff made another payment of P150,000.00,[5] leading Home Savings to accede to the plaintiff's plea to postpone the foreclosure sale to June 10, 1988.[6] Nonetheless, the plaintiff failed to update its account, giving only P80,000.00 more on June 9, 1988, the day before the re-scheduled sale.[7] Home Savings again agreed not to proceed with the sale due to such payment. [8]

Thereafter, the plaintiff only paid twice more: P17,261.06 on July 15, 1988 (Official Receipt No. 38250); and P75,000.00 on December 6, 1988 (Official Receipt No. 39621). Consequently, on March 16, 1989, Home Savings issued its final demand for the plaintiff to pay its past due obligations then amounting to P583,282.44.[9]

On April 10, 1989, the plaintiff responded by acknowledging its indebtedness to be P629,343.56 but proposed to pay P503,474.85 and pleading for the waiver of the balance which accounted for attorney's fees.[10] Home Savings rejected the plaintiff's proposal through its letter dated April 12, 1989.[11]

On April 26, 1989, the plaintiff made 2 more payments:- P250,000.00 on April 25, 1989; and P200,000.00 on May 4, 1989,[12] but Home Savings conditionally accepted the payments and would not defer the foreclosure sale unless the plaintiff paid the balance of the indebtedness. When the plaintiff made no further payments, Home Savings re-initiated on June 1, 1989 the extrajudicial foreclosure. The Ex-Officio Sheriff of Quezon City scheduled the sale on July 10, 1989.

On July 7, 1989, or 3 days prior to the sale, the plaintiff commenced this suit for damages, seeking a temporary restraining order (TRO) or injunction to prevent the sale from proceeding. Although the RTC issued a TRO on July 10, 1989, the TRO was issued and served late inasmuch as the auction sale had already been held earlier in the day. The mortgaged properties were sold to Home Savings as the highest bidder for P267,414.25.

The plaintiff amended its complaint under date of July 14, 1989,[13] praying for the following reliefs:

WHEREFORE, it is respectfully prayed that after due hearing, judgment be rendered:

- Annulling and declaring as null and void the Sheriff's foreclosure of plaintiff's collaterals mentioned in Annex "B" hereof and the corresponding Sheriff's Certificate of Sale dated 10 July 1989;
- Declaring as null and void, illegal, excessive and unconscionable the demand of defendant Home for attorney's fees;
- Ordering defendant Home to make a definite statement as regards the balance of plaintiff's account so that plaintiff can in due time liquidate the same and to prevent the accruing of needless interest thereon;
- Ordering the reduction of the interests and penalty charges thus charged on plaintiff's loan since they are excessive and/or exorbitant vis-à-vis the decision of the Supreme Court promulgated on 25 March 1988 in G.R. No. 82082, entitled "Insular Bank of Asia and America vs. Spouses Epifania Salazar and Ricardo Salazar";
- Ordering defendant Home to pay plaintiff the sum of P500,000.00 as and for moral damages and another sum of P100,000.00 for exemplary damages; and
- Ordering defendant Home to pay plaintiff the sum of P100,000.00 as and by way of attorney's fees at this instance and another sum of P50,000.00 in case of appeal, plus such other amounts as plaintiff will have proved during the hearing as having been spent by it in connection with the instant case.

Plaintiff prays for such other relief as this Honorable Court may deem just and equitable in the premises.

Home Savings presented its answer with counterclaim,[14] seeking the following reliefs:

WHEREFORE, premises considered, and in the interest of substantial justice, after due hearing, judgment be

rendered:

- Dismissing the plaintiff's Complaint for utter lack of merit; and
- In the Counterclaim, ordering plaintiff to pay defendant Bank the sum of P150,000.00 as and by way of attorney's fees and such amount as this Honorable Court may have deemed fit and reasonable against the plaintiff as and by way of exemplary damages on the basis of the evidence presented.

Defendant Bank further prays for such other reliefs and remedies just and equitable under the premises.

At pre-trial, the RTC defined the issues for trial to be:[15]

- 1) Whether the extrajudicial foreclosure of plaintiff's collaterals was justified in the light of defendant bank's failure to comply with plaintiff's request for an accounting of the application of its payment;
- 2) Whether defendant bank's demand for alleged attorney's fees in the exorbitant amount of P125,868.71 was justified considering the amount of indebtedness as of the date of the application of extrajudicial foreclosure on May 31, 1989;
- 3) Whether plaintiff is entitled to damages.

Subsequently, on July 20, 1990, the RTC issued a writ of preliminary injunction upon the plaintiff's application,[16] to wit:

NOW, THEREFORE, you Home Savings Bank and Trust Company and all persons acting for and in your behalf and direction, and Manuel F. Lorenzo/Marino V. Cachero in your capacities as Ex-Officio Sheriff and Senior Deputy Sheriff, respectively, Regional Trial Court, National Capital Judicial Region, Quezon City, are hereby enjoined from consolidating ownership of the foreclosed properties of plaintiff subject matter of the instant case until final determination of the instant proceedings, until further order of this court.

On March 21, 1995, the RTC rendered its decision,[17] disposing as follows:

WHEREFORE, judgment is hereby rendered upholding the validity of the extrajudicial foreclosure sale, but reducing the total obligation of the plaintiff by removing 15% of the attorney's fees, in other words, the total debt obligation, with penalties, plus 10% attorney's fees. The plaintiff is now entitled to redeem the property sold at the foreclosure at that reduced amount.

IT IS SO ORDERED.

The plaintiff filed its notice of appeal on May 24, 1995,[18] and on May 29, 1995 the RTC directed the transmittal of the original records to the Court of Appeals.[19]

For its part, Home Savings moved on May 29, 1995 for the partial reconsideration of the decision, insisting that the plaintiff had already lost its right of redemption due to the certificate of sale issued to it on July 17, 1989 being registered in the Registry of Deeds on July 19, 1989 yet and without any timely redemption being made within the requisite period for the purpose. [19]

After seeking and obtaining several extensions of its period to comment on Home Savings' motion for partial reconsideration, the plaintiff finally filed its opposition on September 5, 1997, or more than 2 years after the motion was filed.[20]

On December 28, 1997, the RTC granted Home Savings' motion for partial reconsideration,[21] to wit:

Considering the arguments raised in the defendant's Motion for Partial Reconsideration to be well taken, the same is hereby GRANTED.

Wherefore, the Court hereby sets aside the portion of the decision dated March 21, 1995 allowing plaintiff to redeem the property. Any act of redemption done during the pendency of the motion shall have no effect on this ruling.

SO ORDERED.

On February 23, 1998, the plaintiff filed a . in relation to the order dated December 28, 1997, alleging that the RTC did not state the basis of its findings and conclusions why the plaintiff had lost its right of redemption.[22] Home Savings opposed the plaintiff's motion for reconsideration,[23] indicating thereby that the motion was belated by 21 days and that the order dated December 28, 1997 had already become final and executory. In turn, the plaintiff replied to its opposition.[24]

On August 30, 1999, the RTC, still presided by Judge Elsie Ligot Telan, issued an order, as follows:

WHEREFORE, the Decision of this Court dated March 21, 1995 upholding the validity of the foreclosure sale is partially reconsidered, in the sense that the portion thereof which entitles plaintiff the right to redeem the property sold at the foreclosure sale is deleted considering that plaintiff's right of redemption had long expired.

SO ORDERED. [22]

The order of August 30, 1999 prompted the plaintiff to file its so-called manifestation, clarification and motion to resolve motion for reconsideration dated February 23, 1998,[23] essentially seeking the clarification as to what the order of August 30, 1999 was for "considering that the Honorable Court has already issued an earlier order dated December 28, 1997 resolving defendant bank's partial motion for reconsideration."

The RTC, through Judge Teodoro A. Bay, set hearings for the clarification of the 2 orders issued relative to the order dated December 28, 1997.

On April 16, 2001, the RTC, through Judge Fatima Gonzales-Asdala, denied the plaintiff's motion for reconsideration "for having been filed out of time." [25]

Only the appeal of the plaintiff is before us upon the following errors, namely:

- THE COURT A QUO'S DECISION WAS SELF-CONTRADICTIONARY.
- THE FORECLOSURE SHOULD HAVE BEEN ANNULLED.

Firstly, Home Savings wants us to dismiss the appeal due to the appellant's supposed failure to include page references to the records, which it claims is a non-compliance with Sec. 13, (c), (d) and (f), Rule 44, in relation to Sec. 1, (f), Rule 50, 1997 Rules of Civil Procedure.

The cited rules respectively provide as follows:

Rule 44

Sec. 13. Contents of appellant's brief. — The appellant's brief shall contain, in the order herein indicated, the following:

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(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, with page references to the record;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;

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(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;

xxx

Rule 50

Sec. 1. Grounds for dismissal of appeal. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

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Our perusal of the appellant's brief reveals that the plaintiff has substantially (if not sufficiently) complied with the requirements of the cited rules. The appellant's brief contains referencing to the original records of the case in its specific places. In particular, the plaintiff's reference to the pertinent exhibits as the basis for the relevant statements of fact, particularly the matters for the appeal, satisfies the requirements, for, thereby, the appellees as well as this reviewing Court are easily directed to the specific places in the original records.

Any deficiencies that might attend the appellant's brief are forgivable. They would not justify the dismissal of the appeal. Worth stressing is that the right to appeal of an aggrieved party should not be unduly restricted. An aggrieved party will not be deprived of his appeal without just cause.[24] In the Philippines, appeal is an essential part of the judicial system and is regarded as a matter of right under the Rules of Court[25] when taken from a court acting in the exercise of original jurisdiction. We bear in mind that our courts are cautioned not to deprive any party of his right to appeal,[26] for every litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.[27] Thus, a party is entitled to appeal from the order declaring him in default, and the dismissal of the appeal constituted his unlawful exclusion from the use and enjoyment of his statutory right to appeal.[28] To that end, therefore, the appellate courts may overlook the deficiencies, if any, including the absence of page references to the record in the appellant's brief in order to do justice.[29] "Pleadings as well as remedial laws should be construed liberally in order that the litigants may have ample opportunity to prove their respective claims, and that a possible denial of substantial justice, due to legal technicalities, may be avoided." [30]

Before going further in this adjudication, we must state for the sake of clarity that we limit the review to the decision dated March 21, 1995, as modified by the orders of December 28, 1997 and August 30, 1999. This clarification takes into account the fact that the notice of appeal of the plaintiff was filed only with respect to the decision dated March 21, 1995 and in light of the subsequent declaration that the order of December 28, 1997 was, as to the plaintiff, already final and executory.

The plaintiff argues in the main that the RTC erroneously found that its only claim at the time of the foreclosure was for the removal of the attorney's fees and alleged exorbitant penalty charges it had prayed in page 13 of the

original complaint and in page 14 of the amended complaint for the “reduction of the interests and penalty charges thus charged on plaintiff’s loan since they are excessive and/or exorbitant vis-à-vis the decision of the Supreme Court promulgated on 25 March 1988 in G.R. No. 82082, entitled *Insular Bank of Asia and America vs. Spouses Epifania Salazar and Ricardo Salazar*.”

The plaintiff submits that the outstanding obligations assessed against it by Home Savings included attorney’s fees pegged at 25%, interests and penalties; that the RTC reduced the rate of attorney’s fees to only 10% of P267,414.25, the amount due, which the RTC subsequently clarified in the order of November 6, 1995 to amount to only P26,741.42;^[31] that such reduction in the computation demonstrated that the mortgage had been foreclosed based on an excessive demand of at least P40,112.13; that the plaintiff was thereby forced to redeem the property at that excessive amount; that had the demand of Home Savings not been unconscionable, the plaintiff could have either prevented the foreclosure or redeemed the properties with its obligations substantially reduced; that the plaintiff’s liabilities would have been further reduced had the RTC not forgotten to rule also on the validity of the 24% per annum interests and 24% per annum penalty charges imposed on the plaintiff; and that such rates of interests and penalty charges were unconscionable and should have been reduced to only 12% per annum.

The plaintiff explains that Home Savings’ inclusion of the 24% per annum penalty charges for purposes of foreclosure of the mortgage even if such penalty charges were stipulated in the promissory note was unfounded considering that they were not provided for in the real estate mortgage.

On the other hand, Home Savings argues that the foreclosure was valid and effective, not harsh and unkind, because the plaintiff had admittedly failed to pay its obligations; that the plaintiff’s payments were made only to abort impending foreclosure; that it accommodated the plaintiff’s pleas for leniency despite foreclosure being long overdue only because it relied in good faith on the plaintiff’s representations to settle the unpaid account; that the plaintiff was bound by the stipulations contained in the promissory note that they had freely, knowingly and voluntarily entered into and constituted the law between the parties; that the inclusion of attorney’s fees, interest and penalty charges were authorized in the promissory note; that the plaintiff’s challenge against the attorney’s fees would come only after it refused to be placated by the plaintiff’s “last minute” payments to prevent the third attempt to foreclose; that the contractual provisions on attorney’s fees were valid under prevailing jurisprudence; that the imposition of the fees was also justified by the time and expense incurred by it in trying to collect the long overdue loan; that the plaintiff itself acknowledged its indebtedness of P503,474.85, pleading only for the waiver of attorney’s fees of P125,868.71 through its letter dated April 10, 1989;^[32] that from April 10, 1989, the plaintiff only paid the total sum of P450,000.00 as of May 4, 1989; that even assuming that it had waived attorney’s fees, the plaintiff would still owe a balance of at least P53,474.85, excluding the accrued interest and penalty charges; that having chosen not to fulfill its own undertaking, the plaintiff could not lay blame in it for merely enforcing the contract between them; that after it rejected the plaintiff’s proposal through its letter of April 12, 1989,^[33] it demanded that the plaintiff immediately and fully settle the indebtedness; that the last 2 payments worth P450,000.00 were conditionally accepted only, but, even so, it fairly treated the payments by applying them to the reduction of the liabilities to only P267,414.25 as of July 10, 1989, the date of the auction sale; and that with the plaintiff’s admission of indebtedness, the foreclosure sale could no longer be assailed.

Home Savings further argues that the interest and penalty charges, being contractual, should not be reduced; that the plaintiff failed to pay any of the amortizations on time according to its contractual commitments; and that before March 16, 1989, when final demand was issued, the plaintiff had only made 5 payments worth P396,691.78,^[34] with 2 of them – worth P150,000.00 and P80,000.00 – being made only to forestall the 2

foreclosure sales scheduled by the ex officio sheriff of Quezon City.

The appeal is partly meritorious.

I

We agree with Home Savings that the foreclosure of the mortgage cannot be properly challenged in the face of the plaintiff's admission of its unpaid indebtedness. Under the terms of the mortgage, such admitted liability rendered the plaintiff susceptible to the foreclosure of the mortgage.

The amount computed by Home Savings as basis for the foreclosure might have included excessive attorney's fees, but that fact alone did not taint the foreclosure since the plaintiff made no earnest effort to rectify the computation prior to the foreclosure. Instead, the plaintiff sought the waiver of the attorney's fees of P125,868.71 through its letter dated April 10, 1989,[35] but the request for waiver was rejected by Home Savings. Hence, the plaintiff remained liable for such fees due to them being contractual or stipulated,[36] but at the rate of only 10% of P267,414.25, the amount due, or P26,741.42, as specified in the order of November 6, 1995.

The plaintiff's contention, that foreclosure of its mortgage despite the attorney's fees being excessive by at least P40,112.13 forced it to redeem the property at that excessive amount, was too argumentative to be given any serious consideration in this review. To begin with, the records demonstrated no assurance that the plaintiff could have redeemed the auctioned properties had the amount of attorney's fees not been excessive. And, too, the plaintiff, had it been as sincere as it now claimed to be, could have timely appealed the order of December 28, 1997, whereby the RTC modified its judgment about the right of redemption, in order to keep its right of redemption as a live issue for this review, but it did not; hence, its contention remained a purely academic statement devoid of any practical value.

We cannot modify or reverse the RTC on the basis of theoretical suppositions and academic submissions because we are authorized to modify or reverse only upon substantial errors, that is, errors that affected the substantial rights of the parties or that compromised the demands and interest of substantial justice. As to that, Rule 51, 1997 Rules of Civil Procedure, clearly states:

Sec. 6. Harmless error. — No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect which does not affect the substantial rights of the parties. (5a)

II

The plaintiff urges a second look at the imposition of the 24% per annum interests and 24% per annum penalty charges, asserting that such rates were unconscionable and should each be reduced to only 12% per annum.

We first deal with the interest rates of 24% per annum.

After the Usury Law was suspended by Central Bank Circular No. 905, Series of 1982, effective on January 1, 1983, parties to a loan agreement have been given a wide latitude to agree on any interest rate, but, nonetheless, nothing in the circular grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets; thus, the stipulated interest rates are illegal if they are unconscionable.[37] We have had instances wherein the courts have interfered with the autonomy of the parties in the fixing of interest rates and reduced the rates for being excessive, iniquitous, unconscionable and exorbitant.[38] According to Cuaton v. Salud,[39] stipulations authorizing iniquitous or unconscionable interests

are contrary to morals (contra bonos mores), if not against the law.[40]

Is 24% interest per annum excessive, iniquitous, unconscionable and exorbitant?

The rates were plainly excessive (e.g., 5.5%/month, 6%/month, 8%/month, 10%/month) in the instances where the Supreme Court struck down or reduced interest rates. In *Segovia Development Corp. v. J. L. Dumatol Realty and Development Corporation*,[41] the rate of 3%/month was reduced to 1%/month because:

xxx The penalty interest at that rate translates to a yearly penalty interest of 36% per annum, and can virtually wipe out the substantial payments of the buyer if the penalty interest is applied to the account balance. With more reason is the wisdom of such a stipulation to be questioned considering that the buyer stands to lose 3 condominium units subject of the contract to sell notwithstanding its substantial compliance with its contractual obligations.

Yet, in *Ruiz v. Court of Appeals*,[42] the Supreme Court found the occasion to point out:

xxx On the other hand, in *Bautista vs. Pilar Development Corp.*, this Court upheld the validity of a 21% per annum interest on a P142,326.43 loan, and in *Garcia vs. Court of Appeals*, sustained the agreement of the parties to a 24% per annum interest on an P8,649,250.00 loan. It is on the basis of these cases that we reduce the 36% per annum interest to 12%. An interest of 12% per annum is deemed fair and reasonable. While it is true that this Court invalidated a much higher interest rate of 66% per annum in *Medel* and 72% in *Solangan* it has sustained the validity of a much lower interest rate of 21% in *Bautista* and 24% in *Garcia*. We still find the 36% per annum interest rate in the case at bar to be substantially greater than those upheld by this Court in the two (2) aforecited cases.

Given the situation of the parties herein, we cannot consider the 24% interest per annum on the loan of P600,000.00 to be contra bonos mores. In *Garcia v. Court of Appeals*,[43] the agreement of the parties to a 24% per annum interest on the loan of P8,649,250.00 was upheld. Hence, we affirm the RTC on this aspect of interest.

Is the 24% per annum penalty charges unconscionable?

We observe, as a basic premise for a proper ruling, that the Civil Code authorizes the imposition of penalty in addition to interest,[44] but the courts have the power to regulate the imposition of the penalty by equitably reducing it when the principal obligation has been partly or irregularly complied with by the debtor, and, even where there has been no performance, by reducing the penalty if it is iniquitous or unconscionable.[45]

In *Ligutan v. Court of Appeals*,[46] Justice Vitug expounded on the imposition of penalties and surcharges on debtors, thus:

A penalty clause, expressly recognized by law,[47] is an accessory undertaking to assume greater liability on the part of an obligor in case of breach of an obligation. It functions to strengthen the coercive force of the obligation[48] and to provide, in effect, for what could be the liquidated damages resulting from such a breach. The obligor would then be bound to pay the stipulated indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach.[49] Although a court may not at liberty ignore the freedom of the parties to agree on such terms and conditions as they see fit that contravene neither law nor morals, good customs, public order or public policy, a stipulated penalty, nevertheless, may be equitably reduced by the courts if it is iniquitous or unconscionable or if the principal obligation has been partly or irregularly complied with.[50]

The question of whether a penalty is reasonable or iniquitous can be partly subjective and partly objective. Its resolution would depend on such factors as, but not necessarily confined to, the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties, and the like, the application of which, by and large, is addressed to the

sound discretion of the court. In *Rizal Commercial Banking Corp. vs. Court of Appeals*,^[51] just an example, the Court has tempered the penalty charges after taking into account the debtor's pitiful situation and its offer to settle the entire obligation with the creditor bank. The stipulated penalty might likewise be reduced when a partial or irregular performance is made by the debtor.^[52] The stipulated penalty might even be deleted such as when there has been substantial performance in good faith by the obligor,^[53] when the penalty clause itself suffers from fatal infirmity, or when exceptional circumstances so exist as to warrant it.^[54]

Accordingly, the imposition of penalty charges can be proper, and 24% per annum (or 2%/month) may easily be regarded to be reasonable.

We are told by the plaintiff, however, that the imposition, though stipulated in the promissory note, was not provided for in the real estate mortgage. As such, the plaintiff argues, Home Savings had no right to include the 24% per annum penalty charges in the amount covered by the mortgage.

We agree with the plaintiff.

Where the penalty charges have not been stipulated in the mortgage contract, they should not be included in the amounts to be recovered through foreclosure. In *Philippine Bank of Communication v. Court of Appeals*,^[55] cited by the plaintiff, the Supreme Court said:

A reading, not only of the earlier quoted provision, but of the entire mortgage contract yields no mention of penalty charges. Construing this silence strictly against the petitioner, it can fairly be concluded that the petitioner did not intend to include the penalties on the promissory notes in the secured amount. This explains the finding by the trial court, as affirmed by the Court of Appeals, that "penalties and charges are not due for want of stipulation in the mortgage contract."

Indeed, a mortgage must sufficiently describe the debt sought to be secured, which description must not be such as to mislead or deceive, and an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage.^[56] In this case, the mortgage contract provides that it secures notes and other evidence of indebtedness. Under the rule of *ejusdem generis*,^[57] where a description of things of a particular class or kind is "accompanied by words of a generic character, the generic words will usually be limited to things of a kindred nature with those particularly enumerated....."^[58] A penalty charge does not belong to the species of obligations enumerated in the mortgage; hence, the said contract cannot be understood to secure the penalty.

There is also sufficient authority to declare that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it.^[59]

A mortgage and a note secured by it are deemed parts of one transaction and are construed together,^[60] thus, an ambiguity is created when the notes provide for the payment of a penalty but the mortgage contract does not. Construing the ambiguity against the petitioner, it follows that no penalty was intended to be covered by the mortgage. The mortgage contract consisted of three pages with no less than seventeen conditions in fine print; it included provisions for interest and attorney's fees similar to those in the promissory notes; and it even provided for the payment of taxes and insurance charges. Plainly, the petitioner can be as specific as it wants to be, yet it simply did not specify nor even allude to, that the penalty in the promissory notes would be secured by the mortgage. This can then only be interpreted to mean that the petitioner had no design of including the penalty in the amount secured.

As a result, we rule for the plaintiff and order Home Savings to reimburse to the plaintiff the amounts realized from the foreclosure sale of the mortgaged properties that corresponded to the 24% per annum penalty charges. Since the determination of the amounts was not done below, the RTC should make the determination upon the finality of this decision.

WHEREFORE, the decision dated March 21, 1995 is AFFIRMED subject to the MODIFICATIONS, as follows:

- The attorney's fees due from the plaintiff are only 10% of P267,414.25, or P26,741.42, as specified in the order of November 6, 1995; and
- The penalty charges of 24% per annum charged against the plaintiff shall be reimbursed to the plaintiff.

Upon finality of this decision, the Regional Trial Court, Branch 87, in Quezon City is directed: (a) to determine the amounts corresponding to the 24% per annum penalty charges collected from the proceeds of the foreclosure sale; and (b) to command defendant Home Savings Bank & Trust Company or its successor-in-interest, Insular Life Savings and Trust Company, to forthwith reimburse the plaintiff in said amounts.

No pronouncement on costs of suit.

SO ORDERED.

Villarama, Jr., (Chairman) and Librea-Leagogo, JJ., concur.

[1] On May 10, 2005, Home Savings moved for its substitution by Insular Life Savings and Trust Company (rollo, pp. 132-145). On January 16, 2006, we granted the motion for substitution (rollo, p. 163). For convenience of reference, however, this decision continues to refer to Home Savings as one of the appellees.

[2] Exhibit A (Promissory Note No. 3367); at records, p. 389.

[3] Exhibit B (Deed of Real Estate Mortgage); at records, p. 390.

[4] Exhibit 5 (Official Receipt No. 36638); at records, p. 455.

[5] Exhibit 5 (Official Receipt No. 37881).

[6] Exhibit 2; at records, p. 453.

[7] Exhibit 5.

[8] Exhibit 3; at records, p. 454.

[9] Exhibits C and D; at records, pp. 392-393.

[10] Exhibit F; at records, pp. 395-396.

[11] Exhibit G; at records, p. 397.

[12] See Exhibits I and J; at records, p. 400.

[13] Records, pp. 38-53.

[14] Records, pp. 66-82.

[15] Records, pp. 495-496.

[16] Records, pp. 268-269.

[17] Records, pp. 492-499.

[18] Records, p. 500.

[19] Records, p. 501.

[19] Records, pp. 502-508.

[20] Records, pp. 545-547.

[21] Records, p. 559.

[22] Records, pp. 560-564.

[23] Records, pp. 566-572.

[24] Records, pp. 573-576.

[22] Records, pp. 597-599.

[23] Records, pp. 600-603.

[25] Records, pp. 626-627.

[24] Re & Re, Brief Writing & Oral Argument, Seventh Ed., Oceana Publications, p. 47

[25] Appeal as a matter of right is recognized in criminal actions by Sec. 1, i), Rule 115; and in civil actions, by Sec. 1, Rule 40; and Sec. 1, Rule 41

[26] Velasco v. Gayapa, Jr., L-58651, July 30, 1987, 152 SCRA 440; NAWASA v. Municipality of Libmanan, 97 SCRA 138; Republic v. Judge Gomez, L-17852, May 31, 1962; 5 SCRA 368, 370.

[27] United Feature Syndicate, Inc. v. Munsingwear Creation Manufacturing Co., G.R. No. 76193, Nov. 9, 1989; 179 SCRA 260; Silverio v. Court of Appeals, G.R. No. 39861, March 17, 1986; A-One Feeds, Inc. v. Court of Appeals, 100 SCRA 590.

[28] Fernandez v. Judge Caluag, L-16124, December 30, 1961; 3 SCRA 857, 863.

[29] Philippine Veterans Bank v. CA, 173 SCRA 544, 548; Velayo v. CA, 99 SCRA 101 .

[30] Cruz v. The Payatas Estate Improvement Co., Inc. , 103 Phil. 1017 [1958].

[31] The pertinent portion of the order of November 6, 1995 states:

xxx

Pursuant to the above decision, the court reiterates that only 10% of P267,414.25 (the amount due) or Twenty Six Thousand Seven Hundred Forty One Pesos and Forty Two Centavos (P26,741.42), shall be due as attorney's fees.

SO ORDERED.

[32] Exhibit F; at records, p. 395.

[33] Exhibit G; at records, p. 397.

[34] Exhibit 5, at records, p. 455.

[35] Exhibit F; at records, p. 395.

[36] See the cases cited by Home Savings in its appellee's brief, specifically, Law Firm of Raymundo A. Armovit v. Court of Appeals, 202 SCRA 24 [1991]; Reparations Commission v. Visayan Packing Corporation, 193 SCRA 531, 540 [1991]; and Papa v. Alonzo, 198 SCRA 564, 572 [1991].

[37] Ruiz v. Court of Appeals, G. R. No. 146942, April 22, 2003; 401 SCRA 410.

[38] E.g., *Medel v. Court of Appeals*, 359 Phil. 820; 299 SCRA 491 (1998) - The Supreme Court annulled a stipulated 5.5% per month or 66% per annum interest on a P500,000.00 loan; in *Spouses Solangon v. Salazar*, 412 Phil. 816; 360 SCRA 379 (2001) - A stipulated 6% per month or 72% per annum interest on a P60,000 loan was nullified. Both were to 12% per annum.

[39] G. R. No. 158382, January 27, 2004; 421 SCRA 278.

[40] Citing *Medel v. Court of Appeals*, 359 Phil. 820; 299 SCRA 491 (1998); *Ibarra v. Aveyro*, 37 Phil. 274 (1917); and *Almeda v. Court of Appeals*, 326 Phil. 309; 256 SCRA 292 (1996).

Under Art. 1409, Civil Code, these contracts are inexistent and void from the beginning and cannot be ratified nor the right to set up their illegality as a defense be waived.

[41] G. R. No. 141283, August 30, 2001; 364 SCRA 159.

[42] G. R. No. 146942, April 22, 2003; 401 SCRA 410.

[43] 167 SCRA 815.

[44] Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code. (1152a)

See also *Tan v. Court of Appeals*, 367 SCRA 571 (2001).

[45] Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. (1154a)

[46] G.R. No. 138677, February 12, 2002; 376 SCRA 560.

[47] Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code. (1152a)

[48] *SSS vs. Moonwalk Development and Housing Corporation*, 221 SCRA 119.

[49] Article 1228, Civil Code; *Manila Racing Club vs. Manila Jockey Club*, 69 Phil. 55.

[50] Article 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

Article 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

[51] 289 SCRA 292.

[52] *Insular Bank of Asia and America vs. Spouses Salazar* (159 SCRA 111), for instance, the Court reduced the penalty charge of 2% a month to 1% a month, considering that, on a loan of P42,050.00, the debtor spouses paid a

total of P68,676.75 which was applied by the creditor to satisfy the penalty and interest charges.

[53] Art. 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

[54] Garcia v. Court of Appeals, 167 SCRA 815; See Palmares v. Court of Appeals, 288 SCRA 423; Ibarra v. Aveyro, 37 Phil. 278.

[55] G.R. No. 118552, February 5, 1996; 253 SCRA 241, 254-255.

[56] Citing 55 Am Jur 2d, Mortgages, S 152, 290.

[57] Citing Empire Insurance Company vs. Rufino, 90 SCRA 437 [1979].

[58] Citing R. AGPALO, Statutory Construction, 154 [1990 ed.].

[59] Citing Art. 1377, Civil Code; De Leon vs. Court of Appeals, 205 SCRA 612 [1992]; Nacu vs. Court of Appeals, 231 SCRA 23' [1994]; Cadalin vs. POEA Administrator, 238 SCRA 721 [1994]

[60] Citing 55 Am Jur 2d, Mortgages, S 176, 303.

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