

MANUEL A. TAN, PLAINTIFF-APPELLEE, VS. TED SY CO, DEFENDANT-APPELLANT.

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an appeal interposed by defendant-appellant Ted Sy Co from the order issued by the Regional Trial Court of Manila Br. 11 (RTC) dated January 6, 2010[1] in Civil Case No. 08-119955. The dispositive portion of the appealed order reads:

“WHEREFORE, the foregoing premises considered, the motion for Summary Judgment is GRANTED. Summary judgment is rendered in favor of the plaintiff to the effect that: 1) the Promissory Note executed between plaintiff and defendant is declared NULL and VOID; 2) the Extrajudicial Foreclosure of the Real Estate Mortgage is likewise declared NULL and VOID; 3) defendant pay the plaintiff Php3,362,037.50 as grossly excessive, highly outrageous and iniquitous interest, plus interest computed from the date thereof; and 4) to pay plaintiff Php250,000.00 as attorney's fees.

SO ORDERED.”

The facts based on the record are as follows:

On September 8, 2008, plaintiff-appellee Manuel A. Tan filed a complaint[2] with application for preliminary attachment with the RTC alleging that sometime in September 2003, he and his sister availed a loan with defendant-appellant Ted Sy Co in the amount of One Million Two Hundred Thousand (Php1,200,000.00) Pesos with three percent (3%) interest and seven percent (7%) penalty, to be paid from December 1, 2003 to June 1, 2004; that the loan was evidenced by a promissory note[3] and secured by a real estate mortgage[4] over a parcel of land registered under Transfer Certificate of Title No. 167707; that the terms and conditions in the real estate mortgage are different from the terms in the promissory note; that while defendant-appellant promised that the promissory note and real estate mortgage will not be registered with the Register of Deeds and will not be foreclosed, defendant-appellant caused the documents to be notarized and registered with the Register of Deeds; that plaintiff-appellee was shocked when defendant-appellant filed a petition for extrajudicial foreclosure of real estate mortgage; and that plaintiff-appellee received a notice of extrajudicial sale[5] stating that the bid price is Four Million Four Hundred Thousand Nine Hundred Thirty-Seven Pesos and 50/100 (Php4,490,937.50), which includes the 3% monthly interest rate and 7% penalty charge. Defendant-appellant acquired the property during the public auction, as evidenced by the certificate of sale[6] dated December 21, 2005 and when TCT No. 167707 was cancelled, TCT No. 277233[7] was issued in the name of defendant-appellant.

Plaintiff-Appellee claimed that the 3% monthly interest rate and 7% monthly penalty charge, or a total of 120% per annum, which are stated in the promissory note and real estate mortgage are null and void because the same is grossly outrageous, highly excessive, and iniquitous. Plaintiff-appellee sought to declare the interest null and void; and to hold defendant-appellant liable to former in the amount of Php3,362,037.50, representing the excessive interest, and attorney's fees in the amount of Php250,000.00.

Meanwhile, the RTC issued an order on September 10, 2008[8] granting the application for preliminary attachment and directing the issuance of a writ of preliminary attachment against the properties of defendant-appellant. Defendant-appellant moved for the discharge of the notice of garnishment by offering to substitute a parcel of land covered by Transfer of Certificate No. 277233 which is allegedly more valuable than the garnished property. In its order dated November 28, 2008[9], the RTC granted the motion to discharge the notice of garnishment and ordered defendant-appellant to turnover the original of TCT No. 277233 for proper disposition.

In his answer[10], defendant-appellant admitted the terms of the promissory note and real estate mortgage and stated that they are the same; that the stipulated interest is lawful because the usury law was suspended and plaintiff-appellee failed to prove fraud, undue influence, or any vice of consent; that the monthly interest and penalty charge are not excessive or unconscionable considering that it is lower than the interest being charged by banks and other financial institutions; that plaintiff-appellee is estopped from assailing the interest because he had agreed to the terms of the agreement; and that defendant-appellant is well within his rights to foreclose the property because plaintiff-appellee did not pay his loan. Defendant-appellant also alleged that plaintiff-appellee is guilty of forum shopping because the latter previously filed an action for annulment of foreclosure and sale under Civil Case No. 07116503 with the Regional Trial Court of Manila, Br. 173, where one of the issues raised pertained to the excessive interest of the loan. By way of counterclaim, defendant-appellant contended that plaintiff-appellee should pay him at least Php100,000.00 for attorney's fees and litigation fees, as well as Php100,000.00 as exemplary damages.

During pre-trial, plaintiff-appellee submitted the following issues for resolution: 1) Whether the interest imposed by defendant-appellant as stated in the promissory note and in the real estate mortgage is exorbitant and therefore, null and void; 2) Whether the provisions on the interest on the loan obtained by plaintiff-appellee from defendant-appellant is exorbitant and the foreclosure of the real estate mortgage on the payment of the exorbitant interest is null and void; 3) Whether defendant-appellant is liable to plaintiff-appellee in the amount of Php3,362,937.55, representing the grossly excessive and highly outrageous payment and iniquitous interest; and 4) Whether defendant-appellant is liable to the plaintiff-appellee for attorney's fees and litigation expenses in the amount of Php250,000.00. Defendant-appellant raised the issue of whether the real estate mortgage is valid.[11]

On September 2, 2009, plaintiff-appellee filed a motion for summary judgment[12] with the RTC, arguing that there are no questions of facts involved in the case considering that defendant-appellant already admitted during pre-trial that the promissory note and real estate mortgage stated that the 36% per annum interest rate (3% per month) and 84% per annum penalty charge (7% per month) shall be imposed; that defendant-appellant stated in his answer that the terms stated in the promissory note and deed of real estate mortgage are the same; that both parties adopted as common documentary evidence the deed of real estate mortgage and promissory note; and that the parties stipulated during pre-trial that the winning bid of P4,500,000.00 in the public auction included the interest rate of 36% per annum and penalty charge of 84% per annum.

The RTC issued the order dated January 6, 2010[13] granting the motion for summary judgment and explained that:

“Defendant in his Answer and also during the pre-trial conference admitted that the interest rate stipulated in the real estate mortgage and in the promissory note was 35% per annum and the penalty imposed for the delay or non-payment of monthly amortization is 84% per annum. At the pre-trial conference proper, both parties adopted as common documentary exhibit the real estate mortgage (Exhibit “C” and Exhibit “1”) and the promissory note (Exhibit “B” and Exhibit “2”). There appears therefore to be no questions or issues of fact as the defendant's answer do not raise the same. Summary judgment can therefore be granted.

As correctly pointed out by plaintiff, a court may indeed nullify a contract with stipulations on excessive and exorbitant interest. Usually, a party who enters into a real estate mortgage urgently need a financial boost. And furthermore, said party is always compelled to hesitantly affix their signature and agree to the terms of the said contract due to the said dire need. This situation appears to prevail in this case.

It would thus be a travesty of justice, if the Court would not grant the annulment of the promissory note and invalidate the extrajudicial foreclosure of the real estate mortgage. For this would violate the basic tenet that no person should unjustly enrich himself at the expense of another. *Nemo ex alterius incommode debet lecupletari* (no man ought to be made rich out another's injury). The said tenet and law were formulated as basic principles to be observed for the rightful relationship between human beings and for the stability of the social order. It was designed further to indicate certain norms that spring from the fountain of good conscience. It was also intended to guide human conduct to run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice.

Attorney's fees are granted only under the specific provisions of Article 2208 of the Civil Code. Defendant's inclusion of the astronomic interest rate, has forced the plaintiff to litigate and incur expenses to protect his interest. Ergo, plaintiff is entitled to attorney's fees." [Citations omitted.]

Defendant-appellant moved[14] to reconsider the order dated January 6, 2010. Plaintiff-appellee moved ex-parte to strike the motion for reconsideration.[15] In the order dated February 15, 2010[16], the RTC denied the motion to strike and ordered the plaintiff-appellee to file his comment on the motion for reconsideration. Plaintiff-appellee filed a motion for reconsideration from the order dated February 15, 2010[17].

Meanwhile, defendant-appellant moved for the inhibition of the Judge of the RTC Br. 11 on March 17, 2010, contending that the judge failed to observe the cold neutrality of an impartial judge in deciding the case. The Judge of the RTC granted the motion for inhibition in the order dated March 17, 2010.[18] The case was re-raffled to the Regional Trial Court (RTC) of Manila Br. 50 (RTC Manila Br. 50).

In the order dated June 15, 2010[19], the RTC Manila Br. 50 denied both defendant-appellant's motion for reconsideration from the order dated January 6, 2010 and plaintiff-appellee's motion for reconsideration from the order dated February 15, 2010. The RTC Manila Br. 50 affirmed the findings of the RTC Manila Br. 11 saying:

“ xxx As correctly pointed out by the said branch, herein defendant in his answer and also during the pre-trial conference of this case had already admitted that the interest rate stipulated by the parties in the real estate mortgage and in the promissory note was thirty five percent (35%) per annum and the penalty imposed for the delay of non-payment of monthly amortization is eight four percent (84%) per annum. To the mind of this Court, these interest rates are clearly exorbitant and excessive. Thus, this Court re-affirms the findings of the Regional Trial Court, Branch 11, Manila, for the nullification of the subject promissory note between herein plaintiff and defendant and eventually the nullification of the extra-judicial foreclosure sale of the subject property. The issue therefore on whether or not the instant case is ripe for summary judgment must be resolved in the affirmative. xxx”

Hence, this appeal. Defendant-appellant submits the following issues in this appeal:

1. WHETHER OR NOT DEFENDANT-APPELLANT IS LIABLE TO PAY PLAINTIFF-APPELLEE THE AMOUNT OF PHP3,362,037.50 AS GROSSLY EXCESSIVE, HIGHLY OUTRAGEOUS AND INIQUITOUS INTEREST;
2. WHETHER SUMMARY JUDGMENT IS PROPER IN THE INSTANT CASE;
3. WHETHER OR NOT THE PROMISSORY NOTE AND THE EXTRAJUDICIAL FORCLOSURE OF REAL ESTATE MORTGAGE ARE NULL AND VOID.

A summary judgment is apt when the essential facts of the case are uncontested or the parties do not raise any genuine issue of fact. In *Bank of the Philippine Islands vs. Spouses Yu*[20], the Supreme Court stated that to resolve the issue of the excessive charges allegedly incorporated into the auction bid price, the court simply had to look at a) the pleadings of the parties; b) the loan agreements, the promissory note, and the real estate mortgages between them; c) the foreclosure and bidding documents; and d) the admissions and other disclosures between the parties during pre-trial. Considering that the parties admitted not only the existence, authenticity, and genuine execution of these documents but also what they stated, the RTC did not need to hold a trial for the reception of evidence of the parties. Considering that the same circumstances are present in this case, this Court holds that the summary judgment was proper.

Anent the issue on the validity of the interest and penalty stipulated by the parties, the Supreme Court in *Benavidez vs. Salvador*[21] stated that while the parties to a loan contract have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, interest rates, whenever unconscionable, may still be declared illegal. The High Court said that there is nothing in said circular which 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.

The standard to determine whether the interest imposed is excessive has already been discussed in many cases. In *Spouses Mallari vs. Prudential Bank*, the Supreme Court recalled:

“In *Medel v. Court of Appeals*, we found the stipulated interest rate of 66% p.a. or a 5.5% per month on a P500,000.00 loan excessive, unconscionable and exorbitant, hence, contrary to morals if not against the law and declared such stipulation void. In *Toring v. Spouses Ganzon-Olan*, the stipulated interest rates involved were 3% and 3.81% per month on a P10 million loan, which we find under the circumstances excessive and reduced the same to 1% per month. While in *Chua v. Timan*, where the stipulated interest rates were 7% and 5% a month, which are equivalent to 84% and 60% p.a., respectively, we had reduced the same to 1% per month or 12% p.a. We said that we need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, unconscionable and exorbitant, hence, the stipulation was void for being contrary to morals.”[22] [Citations omitted.]

In line with the foregoing, this Court finds that the 3% monthly interest imposed by the defendant-appellant on plaintiff-appellee's loan is excessive, exorbitant, unconscionable, and iniquitous. In *Asian Cathay Finance and Leasing Corporation vs. Spouses Cesario Gravador and Norma De Vera, et al.*[23], the Supreme Court held that “[t]he nullity of the stipulation on the usurious interest does not, however, affect the lender's right to recover the principal of the loan. Neither would it affect the terms of the real estate mortgage. The right to foreclose the mortgage remains with the creditors, and said right can be exercised upon the failure of the debtors to pay the debt due. The debt due is to be considered without the stipulation of the excessive interest. A legal interest of 12% per annum will be added in place of the excessive interest formerly imposed.” However, in *Spouses Andal vs. Philippine National Bank, et al.*,[24] the Supreme Court stated that the rate of 12% per annum has been modified by Circular No. 799, series of 2013, issued by the Office of the Governor of the Bangko Sentral ng Pilipinas on June 21, 2013, the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum effective July 1, 2013.

In line with the foregoing, and pursuant to the Supreme Court's ruling in *Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*[25] as well as *Spouses Andal vs. Philippine National Bank, et al.*,²⁶ the rate of interest of 12% per annum on the obligation shall apply from the date of default until June 30, 2013 only. From July 1, 2013 until fully paid, the legal rate of 6% per annum shall be applied to plaintiff-appellee's unpaid obligation.

This Court also finds the 7% monthly penalty charge to be excessive, and unconscionable and finds that a penalty charge of 1% per month is appropriate. The Supreme Court explained in *Spouses Mallari vs. Prudential Bank*, that:

“In *Ruiz v. CA*, we held:

The 1% surcharge on the principal loan for every month of default is valid. This surcharge or penalty stipulated in a loan agreement in case of default partakes of the nature of liquidated damages under Art. 2227 of the New Civil Code, and is separate and distinct from interest payment. Also referred to as a penalty clause, it is expressly recognized by law. It is an accessory undertaking to assume greater liability on the part of an obligor in case of breach of an obligation. The obligor would then be bound to pay the stipulated amount of indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach. x x x And in *Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd.*, we held that:

x x x The enforcement of the penalty can be demanded by the creditor only when the non-performance is due to the fault or fraud of the debtor. The non-performance gives rise to the presumption of fault; in order to avoid the payment of the penalty, the debtor has the burden of proving an excuse - the failure of the performance was due to either force majeure or the acts of the creditor himself.”[27] [Citations omitted.]

In line with the Supreme Court's ruling in *Heirs of Zoilo Espiritu vs. Spouses Maximo Landrito*,^[28] this Court affirms the RTC's finding declaring the annulment of the extrajudicial foreclosure sale. While the terms of the Real Estate Mortgage remain effective, the foreclosure proceedings held on December 20, 2005 cannot be given effect because the notice of sale does not reflect the correct amount and because plaintiff-appellee was not given an opportunity to settle his debt at the correct amount and without the iniquitous interest and penalty charge. If the foreclosure proceedings were considered valid, this would result in an inequitable situation wherein plaintiff-appellee will have his land foreclosed for failure to pay an over-inflated loan with only a small part of which they were obligated to pay.

In *Zoilo Espiritu vs. Spouses Maximo Landrito*^[29], the Supreme Court further held that:

“A judgment ordering a foreclosure sale is conditioned upon a finding on the correct amount of the unpaid obligation and the failure of the debtor to pay the said amount. In this case, it has not yet been shown that the Spouses Landrito had already failed to pay the correct amount of the debt and, therefore, a foreclosure sale cannot be conducted in order to answer for the unpaid debt. The foreclosure sale conducted upon their failure to pay P874,125 in 1990 should be nullified since the amount demanded as the outstanding loan was overstated; consequently it has not been shown that the mortgagors – the Spouses Landrito, have failed to pay their outstanding obligation. Moreover, if the proceeds of the sale together with its reasonable rates of interest were applied to the obligation, only a small part of its original loans would actually remain outstanding, but because of the unconscionable interest rates, the larger part corresponded to said excessive and iniquitous interest.

As a result, the subsequent registration of the foreclosure sale cannot transfer any rights over the mortgaged property to the Spouses Espiritu. The registration of the foreclosure sale, herein declared invalid, cannot vest title over the mortgaged property. The Torrens system does not create or vest title where one does not have a rightful claim over a real property. It only confirms and records title already existing and vested. It does not permit one to enrich oneself at the expense of another. Thus, the decree of registration, even after the lapse of one (1) year, cannot attain the status of indefeasibility.” [Citations omitted, underscore supplied.]

WHEREFORE, the appeal is DENIED. The order dated January 6, 2010 issued by the Regional Trial Court of Manila Br. 11 which was affirmed by the Regional Trial Court of Manila Br. 50 in Civil Case No. 08-119955 is AFFIRMED with modification, to wit:

1. The promissory note covering the principal obligation and real estate mortgage are declared valid;
2. The stipulation in the promissory note and real estate mortgage on the imposition of three percent (3%) monthly interest is void and the rate of interest of 12% per annum on the principal obligation shall apply from the date of default until June 30, 2013. From July 1, 2013 until fully paid, the legal rate of 6% per annum shall be applied to the unpaid obligation of Manuel A. Tan;
3. The stipulation in the promissory note and real estate mortgage on the imposition of seven percent (7%) penalty charge is void and set aside and instead, a penalty charge of one percent (1%) per month shall be imposed on the unpaid obligation of Manuel A. Tan.
4. The extrajudicial foreclosure sale held on December 20, 2005, as well as the issuance of the certificate of sale and issuance of TCT No. 277233 in the name of Ted Sy Co are declared null and void without prejudice to the right of the latter to foreclose the mortgage upon failure of the debtor to pay the correct amount of debt due.

SO ORDERED.

Tijam, Noel G., Chairperson and [*]Cruz, Ramon A., JJ., concur.

[*] Vice Justice Mario V. Lopez per Office Order No. 88-15-RSF dated March 20, 2015.

[1] Rollo, pp. 11-12.

[2] Record, pp. 1-7.

[3] Record, p. 11.

[4] Record, pp. 12-14.

[5] Record, pp. 15-16.

[6] Record, pp. 17-18.

[7] Rollo, p. 60.

[8] Record, p. 30.

[9] Record, p. 130.

[10] Record, pp. 92-102.

[11] Record, pp. 225-227.

[12] Record, pp. 231-235.

[13] Rollo, pp. 11-12.

[14] Record, pp. 260-267.

[15] Record, pp. 269-271.

[16] Record, p. 272.

[17] Record, pp. 291 – 293.

[18] Record, pp. 282-283.

[19] Record, p. 313-317.

[20] Bank of the Philippine Islands vs. Spouses Yu, et al., G.R. No. 184122, January 20, 2010.

[21] Benavidez vs. Salvador, G.R. No. 173331, December 11, 2013

[22] Spouses Mallari vs. Prudential Bank, G.R. No. 197861, June 5, 2013.

[23] Asian Cathay Finance and Leasing Corporation vs. Spouses Cesario Gravador and Norma De Vera, et al., G.R. No. 186550, July 5, 2010. [Citations omitted.]

[24] Sps. Andal vs. PNB, et al., G.R. No. 194201, November 27, 2013.

[25] Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr., G.R. No. 189871, August 13 2013.

[26] Sps. Andal vs. PNB, et al., G.R. No. 194201, November 27, 2013.

[27] Spouses Mallari vs. Prudential Bank, G.R. No. 197861, June 5, 2013.

[28] Heirs of Zoilo Espiritu, et al. vs. Spouses Landrito, et al., G.R. No. 169617, April 4, 2007.

[29] Heirs of Zoilo Espiritu, et al. vs. Spouses Landrito, et al., G.R. No. 169617, April 4, 2007.

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