

LORNA GONZALES AND SUSAN PAPA, PLAINTIFFS-APPELLANTS, VS. PENTA CAPITAL FINANCE CORPORATION, DEFENDANT-APPELLEE.

CV No. 70566, October 22, 2010

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Court of Appeals

The Case

On appeal by plaintiffs Lorna Gonzales ("Gonzales") and Susan Papa ("Papa") is the Decision[1] dated December 21, 1998 of the Regional Trial Court ("RTC") of Makati City,[2] in Civil Case No. 96-665 for Rescission and Damages entitled "Lorna Gonzales and Susan Papa, Plaintiffs, vs. Penta Capital Finance Corporation, Defendant", the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered denying plaintiffs' prayer in the Complaint, with double costs. On defendant's counterclaim, judgment is hereby rendered in favor of defendant and:

- Against plaintiff Lorna Gonzales, ordering her to pay defendant the total amount of P321,978.16 plus interest at 12% per annum until the amount is paid in full, and P80,000.00 as attorney's fees; and
- Against plaintiffs, to pay defendant, jointly, severally and solidarily, the sum of P50,000.00 as exemplary damages, plus double costs.

SO ORDERED.[3]

The Facts

This is a Complaint for rescission of promissory notes, chattel mortgage and deed of assignment filed by plaintiffs-appellants Gonzales and Papa against defendant-appellee Penta Capital Finance Corporation ("Penta Capital"). The allegations in the Complaint, as culled from the assailed Decision, are as follows:

"The Complaint alleges, that: On April 16, 1994 and May 04, 1994 plaintiffs Gonzales and Papa purchased from Philippine Multicor ('PMI') a 1994 Kia Pride for P264,000.00 and a 1994 Daihatsu Charade for P305,000.00, respectively; PMI thereafter issued the respective Vehicle Invoice xxx and Vehicle Delivery Receipt xxx; plaintiffs were made to sign as they did, promissory notes and chattel mortgage agreements with deeds of assignment, in blank; before she received a copy of the promissory note and chattel mortgage agreement from defendant, plaintiff Gonzales never knew that defendant was the assignee thereof; as to plaintiff Papa, she knew of such assignment only when she received a copy of the complaint-affidavit filed against her for violation of Batas Pambansa Blg. 22 ('BP 22') where a copy each, of the promissory note and mortgage agreement were attached; from these documents plaintiffs discovered that the purchase price indicated in the promissory notes are different from the price appearing in the said Vehicle Invoices and Vehicle Delivery Receipts; as required by PMI, plaintiffs issued postdated checks for one (1) year; plaintiffs have been in good faith in paying their monthly amortizations; on November 29, 1995, because of financial reverses and their discovery of the material discrepancies in the purchase price of the vehicles purchased, plaintiffs wrote to defendant for the voluntary surrender of the vehicles xxx; defendant refused to accept the vehicles and filed a criminal complaint against plaintiff Papa for violation of BP 22 xxx before the City Prosecutor of Makati, involving five (5) checks docketed as IS No. 96-1065; in spite of the fact that she had

already paid part of the aforementioned postdated checks the amounts thereof; because of defendant's non-acceptance of the voluntary surrender 'as what has been verbally agreed upon and represented by defendant's representative,' and the malicious filing of the aforesaid criminal complaint, plaintiffs suffered acute anxiety, sleepless nights, social humiliation and other similar injuries for which defendant should pay plaintiffs P300,000.00 each, in moral damages; because of defendant's bad faith, it should be made to pay plaintiffs exemplary damage of P100,000.00 each; and because of defendant's unjustified acts, plaintiffs were compelled to engage the services of counsel for a fee of P50,000.00 and appearance of P2,500.00 per hearing. Plaintiff Papa likewise prayed for a writ of preliminary mandatory injunction for the return of the checks subject of the said criminal complaint for BP 22." [4] (emphasis Ours)

In its Answer, [5] defendant Penta Capital denied the material allegations in the complaint and made some admissions, which were stated in the Decision, viz.:

"xxx, (D)efendant filed its Answer admitting plaintiffs' purchase of said cars from PMI; the issuance of Vehicle Invoices and Delivery Receipts xxx; its refusal to accept the voluntary surrender of the cars; and the filing of a criminal complaint against plaintiff Papa; and denying the rest of the allegations. It further interposed its counterclaim against plaintiff Gonzales for her unpaid obligation under the contracts sought to be rescinded amounting to P150,159.53 plus penalty charges thereon at the rate of 4% per month from 11 July 1996, attorney's fees and costs of suit; for exemplary damages in the amount of P100,000.00 against both plaintiffs." [6] (emphasis Ours)

During the pre-trial conference on January 31, 1997, [7] the following facts were admitted:

"Plaintiffs' Admissions

- Defendant is the assignee of Philippine Multicor Inc. from whom the plaintiffs purchased the two (2) vehicles;
- two (2) promissory notes were transferred from Philippine Multicor Inc. to defendant physically;
- because of the assignment of the chattels, the deeds of chattel mortgage were likewise assigned;
- plaintiffs upon acquisition from Philippine Multicor Inc. gave downpayments to said corporation; and
- the balance appearing in the invoices was proposed to be paid in installments xxx. The amount of P211,200.00 was the balance after the downpayment to be amortized for 48 months as to defendant Gonzales and the balance of P244,000.00 shall be amortized for 36 months for plaintiff Papa as 'vehicles receivables - amount to be financed';
- the amounts in the promissory notes were payable in 36 months for plaintiff Papa and 48 months for plaintiff Gonzales.

Defendant's Sole Admission

- Defendant filed cases of BP 22 against plaintiff Susan Papa." [8]

The parties agreed that the following issues be resolved:

"Plaintiff

- Whether or not Philippine Multicor Inc. employed misrepresentation, deceit or fraud (dolo causante) against plaintiff in securing the contract;
- whether or not the promissory notes, the chattel mortgages and the deeds of assignment can be rescinded in consequence of the fraud allegedly employed by Philippine Multicor Inc. against plaintiff;

- whether or not defendant was in bad faith in refusing to cancel this contract, (the promissory notes, the chattel mortgages and the deeds of assignment)

Defendant's Issues:

- Defendant is not under any legal obligation to accept voluntary surrender of the subject vehicles;
- business reverses is not a ground to rescind a perfected and partially executed contract;
- plaintiffs were in bad faith in filing the instant action against defendant;
- plaintiff Gonzales is liable to defendant for the unpaid obligation under her promissory note and the counterclaim; and
- plaintiff Papa acknowledged her obligation to defendant when she offered to collateralize her past due obligation by way of a real estate mortgage."^[9]

Only plaintiff-appellant Papa testified for the plaintiffs. On the other hand, Arthur M. Regala, Ramiro Hermoso, and Atty. Ma. Loreto Navarro, the accountant, marketing manager and legal counsel, respectively, of Penta Capital testified as witnesses in its behalf.

The Ruling of the Trial Court

In arriving at the disputed decision, the RTC explained:

"From the totality of the evidence presented and the pleadings filed, the Court is convinced that plaintiffs were not deceived when they each entered into a car financing transaction with Philippine Multicor Inc. xxx, either as to the identity of the assignee of PMI, or as to the price of the cars purchased. Neither did PMI make any misrepresentation to plaintiffs that would constitute a ground for the rescission of the contracts now in the hands of defendant as PMI's assignee. Plaintiff clearly and voluntarily contracted with PMI with full knowledge that their loan accounts inclusive of interest or finance charge, were payable over a period of time and that they would be assigned to defendant. Before the cars were delivered to them, plaintiffs filled out, accomplished and signed defendant's Loan Application form xxx and agreed to be interviewed and investigated by defendant's credit and loan officers. As early as then, plaintiffs could not have mistaken their transaction with PMI for other than a financing transaction. Further, the name of defendant was already indicated on the Vehicle Invoices xxx where on the space provided for 'Term' appear '(48 mos.)' for plaintiff Gonzales and '(36)' for plaintiff Papa, preceded by 'Penta Capital Finance Corporation'. Plaintiffs (who are business partners), especially plaintiff Papa, could not have overlooked the import of such entry in the invoices considering that she graduated with a banking and finance degree and she had been a businesswoman for the past fifteen (15) years (TSN, 3 April 1997, p. 7). They are expected to know that because they paid only a portion of the purchase price to PMI, the balance would be the subject of a loan or car financing, for which reason promissory notes had to be signed, not just for formality but as an essential documentary requirement of PMI. The loan was to be secured by a mortgage on the cars purchased. Thus, plaintiffs likewise executed a deed of mortgage. In the case of plaintiff Gonzales, the promissory note xxx is in the amount of P362,640.00, equivalent to the sum of P211,200.00, the balance on the purchase price, and the interest or finance charge of P151,440.00 for the 48-month period. The same formula was applied to the account of plaintiff Papa.

Plaintiffs hinge their charge of fraud, deceit and misrepresentation on the alleged discrepancy between the purchase price allegedly shown in the promissory note as P362,640.00 for plaintiff Gonzales and P376,656.00 (sic) for plaintiff Papa, and the amounts appearing in the Vehicle Invoices. A cursory examination of the invoices, however, show that said amounts are not the purchase price of the cars but the loan amount. Expectedly, they will be, as they are indeed different. As indicated on the dorsal side of the promissory note signed by plaintiff Gonzales xxx, the price of the car she purchased is P264,000.00, the same amount appearing in Vehicle Invoice No. 3379 xxx as the purchase price. As presented thereon, P362,640.00 is the

sum of 'Vehicle Receivable/Amount to be Financed' or the purchase price (net of the downpayment) and the applicable finance charge. On cross-examination, plaintiff Papa admitted, that: As a banking and finance graduate, she knew and understood that her transaction with PMI was one of financing; there will be a finance charge on the balance of the purchase price, the total of which would be paid over a period of time; they issued twelve (12) postdated checks corresponding to the first 12 monthly installments; and, these checks were just in partial payment of the loan (TSN April 3, 1997, p. 103). Clearly, plaintiff Papa was well aware of the nature of the transaction between her and PMI. Business partners that they are, it is not unlikely that plaintiff Papa had relayed to plaintiff Gonzales what she understood of the transaction with PMI. 'Courts have no power to relieve parties from obligations voluntarily assumed simply because their contracts turned out to be disastrous deals and unwise investments.' (Sanchez vs. Court of Appeals, 270 SCRA 684 citing Villacorte vs. Mariano, 89 Phils. 341, 349 (1951)).

Plaintiff Papa also testified that the fraud and misrepresentation consisted in [sic] PMI's failure to make good its promise to inform them how much more, after the twelve (12) amortizations, they need to pay as they intend to pay their account in full at that time. Assuming *arguendo* that there was such a promise and PMI reneged thereon, such did not constitute breach, fraud or misrepresentation sufficient to warrant a rescission of the contracts.

The High Court has ruled time and again that rescission will not be allowed if the breach is not substantial or fundamental to the fulfillment of the obligation. As borne out by [the] evidence, defendant had fulfilled its part of the obligation while plaintiffs had already availed of the benefits thereunder. Plaintiffs have availed of the term under the promissory note: they already commenced payment on the loan, however unimpressive their repayment record might be, as the loan ledgers xxx would show. Further, they have had possession and use of the cars purchased from PMI from mid-1994 until mid-1996, when they filed the instant case. This Court cannot but notice that the instant case was filed after the criminal case was filed against plaintiff Papa for violation of Batas Pambansa Blg. 22 and after a demand letter was sent by defendant's counsel to plaintiff Gonzales, coupled with defendant's refusal of plaintiffs' offer to voluntarily surrender the mortgaged cars. Suffice it to say at this point, defendant was not under any obligation to accept the voluntary surrender of said cars, not even on the ground of financial reverses especially when, after inspection by defendant's representative, it was found that the cars have been converted to taxi, in violation of the contract.

Other than plaintiff Papa's testimony, no other evidence was presented by plaintiffs to prove fraud. Fraud must be established by clear and convincing evidence—mere preponderance of evidence not being adequate. A party's attempt to prove fraud must fail where it was evidenced only by his own uncorroborated and self-serving testimony (Inciong Jr. vs. Court of Appeals, 257 SCRA 578).

Parenthetically, plaintiffs action or inaction after the execution of the promissory notes and the deeds of mortgage are inconsistent with their claim that they really intended to pay their loans in full after the 12[th] amortization. As shown in the aforesaid ledgers and as testified to by Arturo Regala, defendant's accountant, plaintiff Gonzales began to default in the payment of her loan by the 9[th] amortization, which delay persisted up [to] the time the witness was testifying. As of 27 June 1997, the total amount due from plaintiff is P399,981.91 xxx, inclusive of penalty equivalent to 4% per month or fraction thereof that a monthly installment remains overdue xxx, attorney's fees equivalent to 25% of all amounts outstanding and unpaid xxx and insurance premium payable. On the other hand, plaintiff Papa began to default by the 2[nd] monthly amortization and her account had been in arrears since then. In fact, also as shown in said ledgers, plaintiff Gonzales has paid only 15 out of the 48 amortizations, while plaintiff Papa, 10 out of 36 amortizations." [10] (emphasis Ours; underscoring supplied)

Hence, as earlier quoted, the RTC's disposition of the case, viz.:

"WHEREFORE, premises considered, judgment is hereby rendered denying plaintiffs' prayer in the Complaint, with double costs. On defendant's counterclaim, judgment is hereby rendered in favor of defendant and:

- Against plaintiff Lorna Gonzales, ordering her to pay defendant the total amount of P321,978.16 plus interest at 12% per annum until the amount is paid in full, and P80,000.00 as attorney's fees; and
- Against plaintiffs, to pay defendant, jointly, severally and solidarily, the sum of P50,000.00 as exemplary damages, plus double costs.

SO ORDERED."[11]

The plaintiffs-appellants filed a motion for reconsideration[12] dated January 22, 1999, but the same was denied in an Order[13] dated January 3, 2001. Hence, their Notice of Appeal.[14]

Issues:

In their Brief, plaintiffs-appellants Gonzales and Papa argue that:

"1.

THE TRIAL COURT ERRED WHEN IT RULED ON THE QUESTION NOT AN ISSUE IN THIS CASE, BUT FAILED TO MAKE ITS FINDINGS OF FACTS AND LAWS ON THE REAL CLAIMS OF THE PLAINTIFF-APPELLANTS DESPITE THE PRESENCE OF TESTIMONIAL AND DOCUMENTARY EVIDENCE IN SUPPORT THEREOF.

2.

THE TRIAL COURT ERRED WHEN IT GRANTED THE PERMISSIVE COUNTERCLAIM OF DEFENDANT-APPELLANT AGAINST PLAINTIFF-APPELLANT LORNA GONZALES DESPITE THE NON-PAYMENT OF THE CORRESPONDING DOCKET FEE.

3.

THE COURT A QUO ERRED WHEN IT AWARDED ATTORNEY'S FEES.

4.

THE COURT A QUO ERRED WHEN IT AWARDED EXEMPLARY DAMAGES.

5.

THE COURT A QUO ERRED WHEN IT DID NOT RULE ON THE CLAIM OF PLAINTIFFS-APPELLANTS FOR DAMAGES IN PENTA'S ACT OF MALICIOUSLY FILING THE CRIMINAL CASE FOR VIOLATION OF B.P. 22 AGAINST PLAINTIFF-APPELLANT SUSAN PAPA."[15]

In fine, the sole issue submitted for Our resolution is:

WHETHER OR NOT THE TRIAL COURT ERRED IN RENDERING THE DECISION DATED DECEMBER 21, 1998.

OUR RULING

Plaintiffs-appellants Gonzales and Papa posit that the RTC's factual findings are inconsistent with the evidence presented; the RTC had no jurisdiction over defendant-appellee's counterclaim since the docket fee was not paid; the award of attorney's fees and exemplary damages was improper; and defendant-appellee is liable for damages for maliciously filing a criminal case against Papa.

We are not persuaded.

Plaintiffs-appellants allege that the RTC's factual findings are not in accord with the evidence adduced. However, they did not point out which of said findings are in conflict with the evidence on record. They also aver that the RTC discussed a non-issue, i.e., plaintiffs-appellants' knowledge of the transaction, which is admitted, but failed to make a factual finding on their real claims constituting fraud, viz.: (1) they were made to sign the loan documents in blank and told that it was just a formality to facilitate the release of the vehicles; (2) PMI did not discuss with them the loan amount, finance charges and penalty rates; (3) PMI failed to inform them of the remaining balance after the 12 amortizations as they intended to pay their obligation in full; and (4) they were not furnished with copies of the loan documents. Yet, a close perusal of the decision shows that the RTC considered and discussed the aforesaid claims and found that no misrepresentation was employed by Philippine Multicor, Inc. ("PMI") on plaintiffs-appellants that would warrant a rescission of the promissory notes and the other loan documents.

Regarding the assertion that plaintiffs-appellants were made to sign the promissory notes in blank, the same cannot be sustained because private transactions are presumed to be fair and regular.[16] The burden of proof to overcome this presumption rests upon plaintiffs-appellants,[17] and here, they failed in this burden. The self-serving testimony of Papa, their lone witness, sans any convincing evidence, does not warrant a conclusion that the promissory notes were irregularly executed. More so that the law presumes that a person takes ordinary care of his concerns.[18] Besides, the Court can hardly believe that Papa, admittedly a Banking and Finance graduate and businesswoman for fifteen years, would simply sign, together with her business partner Gonzales, blank promissory notes for the purpose of formality, just so the vehicles would be released.

We cannot therefore agree that their knowledge about the transactions is a non-issue. It is in fact pivotal to the determination of the existence of fraud grounded on PMI's alleged concealment of the loan amounts, charges, penalties, and the like. The extent of their knowledge about the transaction is important as from there, one would know if there was really failure of PMI to divulge vital information. Besides, the Court finds it strange that while the plaintiffs-appellants impute to PMI a serious charge of fraud, they did not include PMI as party-defendant in the case below.

The Court likewise finds plaintiffs-appellants' contention that the trial court erred in granting appellee's permissive counterclaim sans payment of docket fees, to be untenable. The exhaustive discussion in the analogous case of *Tan vs. Kaakbay Finance Corporation*, [19] wherein plaintiff there sued for nullity of promissory notes and the defendant set up a counterclaim for payment of the loan, is in fact instructive:

"In *Intestate Estate of Dalisay v. Hon. Marasigan*, we held that a counterclaim is compulsory where: (1) it arises out of, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim; (2) it does not require the presence of third parties of whom the court cannot acquire jurisdiction; and (3) the trial court has jurisdiction to entertain the claim. To determine whether a counterclaim is compulsory or not, we have devised the following tests: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (2) Would *res judicata* bar a subsequent suit on defendant's claims absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiffs claim as well as the defendant's counterclaim? and (4) Is there any logical relation between the claim and the

counterclaim?

In *Quintanilla v. Court of Appeals*, we said a 'compelling test of compulsoriness' is whether there is 'a logical relationship between the claim and counterclaim, that is, where conducting separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court.'

Tested against the abovementioned standards, we agree with the appellate court's view that respondents' counterclaims are compulsory in nature. Petitioner's complaint was for declaration of nullity, invalidity or annulment of the promissory notes purportedly attached to the Real Estate Mortgage dated November 16, 1995 and the usurious and void interest rates appearing therein and the Deed of Sale Under Pacto De Retro. Respondents' counterclaim was for the payment of the principal amount of the loan, compounded monthly interest and annual penalty interest arising out of the non-payment of the principal loan, litigation expenses and attorney's fees. There is no dispute as to the principal obligation of P4,000,000, but there is a dispute as to the rate and amount of interest. Petitioner insists that the amount of interest is only 12% yearly until fully paid, while respondents insist on 3.5% monthly. Also, respondents allege that petitioner owes them P9,333,750.00 representing the compounded monthly interest and annual penalty, which is disputed by petitioner. Petitioner further seeks the nullification of the Deed of Sale Under Pacto de Retro for being falsified, while respondents aver the deed is valid. It thus appears that the evidence required to prove petitioner's claims is similar or identical to that needed to establish respondents' demands for the payment of unpaid loan from petitioner such as amount of interest rates. In other words, petitioner's claim is so related logically to respondents' counterclaim, such that conducting separate trials for the claim and the counterclaim would result in the substantial duplication of the time and effort of the court and the parties. Clearly, this is the situation contemplated under the 'compelling test of compulsoriness.' The counterclaims of respondents herein are obviously compulsory, not permissive. As aptly held by the Court of Appeals, the issues of fact and law raised by both the claim and counterclaim are largely the same, with a logical relation, considering that the two claims arose out of the same circumstances requiring substantially the same evidence. Any decision the trial court will make in favor of petitioner will necessarily impinge on the claim of respondents, and vice versa. In this light, considering that the counterclaims of respondents are compulsory in nature, payment of docket fees is not required. The CA did not err in holding that the trial court had acquired jurisdiction on the matter." (emphasis Ours)

Since, similarly, the counterclaim here is compulsory, there clearly is no need to pay any docket fees.[20]

Besides, what We pertinently have now is plaintiffs-appellants' new defense that cannot be ventilated in this appeal. Points of law, theories, issues and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal.[21]

Anent the award of attorney's fees, the power of the courts to grant attorney's fees demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture.[22] Here, contrary to plaintiffs-appellants' contention, the body of the appealed decision states the basis for the award of attorney's fees, i.e., the stipulation in the promissory note[23] (Exh. "3-B"). Hence, the award thereof was proper.

However, the award of exemplary damages is not warranted. Such kind of damages is imposed by way of example for correction for the public good. The complained wrongful act must be accompanied by bad faith, and an award of damages is allowed only if the guilty party acted in a wanton, fraudulent, oppressive or malevolent manner.[24] There being no showing that plaintiffs-appellants acted in such manner, the award of exemplary damages must therefore be deleted.

Parenthetically, plaintiffs-appellants failed to adduce adequate proof to establish that Penta Capital maliciously filed the criminal case against Papa for violation of B.P. 22. Consequently, their claim for damages must be

denied for lack of factual and legal bases.

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION in that the award for exemplary damages is DELETED.

SO ORDERED.

Acosta and Gaerlan, [*]JJ., concur.

[*] Acting Junior Member for fifteen (15) days only; Per Office Order No. 286-10-ABR dated October 4, 2010.

[1] Rollo, pages 57-63.

[2] Branch 58, Judge Escolastico U. Cruz, Jr.

[3] Rollo, page 630.

[4] Rollo, pages 57-58.

[5] Records, pages 64-71.

[6] Rollo, page 58.

[7] Records, pages 123-125.

[8] Ibid., pages 123-124.

[9] Records, pages 124-125.

[10] Rollo, pages 60-63.

[11] Note 3, *supra*.

[12] Records, pages 257-261.

[13] Ibid., page 278.

[14] Ibid., pages 279-280.

[15] Rollo, page 22.

[16] Sec. 3(p), Rule 131, Revised Rules of Court; *Mendoza vs. Court of Appeals*, 359 SCRA 438, 451 (2001).

[17] Ibid.

[18] Sec. 3(d), Rule 131, Revised Rules of Court.

[19] 404 SCRA 518, 525-527 (2003), citing *Intestate Estate of Dalisay vs. Hon. Marasigan*, 257 SCRA 509 (1996), *Financial Building Corporation vs. Forbes Park Association, Inc.*, 338 SCRA 346, 352; *Quintanilla vs. Court of Appeals*, 279 SCRA 397 (1997) and *Cabaero vs. Cantos*, 271 SCRA 391 (1997).

[20] *Cabaero vs. Cantos*, 271 SCRA 391 (1997), citing *Sun Insurance Office, Ltd.(SIOL) vs. Asuncion* [170 SCRA 274, 285 (1989)]; cf. OCA Circular No. 96-2009.

[21] *Tay Chun Suy vs. Court of Appeals*, 229 SCRA 151, 165 (1994).

[22] *Ranola vs. Court of Appeals*, 322 SCRA 1,11 (2000).

[23] Page 7, Decision; Rollo, page 63.

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