

AURELIO G. BRIONES, PLAINTIFF-APPELLEE, VS. PRIMITIVO P. CAMMAYO, ET AL., DEFENDANTS-APPELLANTS.

G.R. No. L-23559. October 04, 1971

Ponente: DIZON, J.

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DIZON, J.:

On February 22, 1962, Aurelio G. Briones filed an action in the Municipal Court of Manila against Primitivo, Nicasio, Pedro, Hilario and Artemio, all surnamed Cammayo, to recover from them, jointly and severally, the amount of P1,500.00 plus damages, attorney's fees and costs of suit. The defendants answered the complaint with specific denials and the following special defenses and compulsory counterclaim:

"x x x;

By way of –

SPECIAL DEFENSES

Defendants allege:

4. Defendants executed the real estate mortgage, Annex 'A' of the complaint, as security for the loan of P1,200.00 given to defendant Primitivo P. Cammayo upon the usu-rious agreement that defendant pays to the plaintiff and that the plaintiff reserve and secure, as in fact plain-tiff reserved and secured to himself, out of the alleged loan of P1,500.00 as interest the sum of P300.00 for one year;

5. That although the mortgage contract, Annex 'A' was executed for securing the payment of P1,500.00 for a period of one year, without interest, the truth and the real fact is that plaintiff delivered to the defendant Primitivo P. Cammayo only the sum of P1,200.00 and withheld the sum of P300.00 which was intended as advance interest for one year;

6. That on account of said loan of P1,200.00, defendant Primitivo P. Cammayo paid to the plaintiff during the period from October 1955 to July 1956 the total sum of P330.00 which plaintiff, illegally and unlawfully refuse to acknowledge as part payment of the account but as in interest of the said loan for an exten-sion of another term of one year;

7. That said contract of loan entered into between plaintiff and defendant Pri-mitivo P. Cammayo is a usurious contract and is contrary to law, morals, good cus-toms, public order or public policy and is, therefore, inexistent and void from the beginning (Art 1407 Civil Code);

And as –

COMPULSORY COUNTERCLAIM

Defendants replead all their allegations in the preceding paragraphs;

8. That plaintiff, by taking and re-ceiving interest in excess of that allowed by law, with full intention to

violate the law, at the expense of the defendants, committed a flagrant violation of Act 2655, otherwise known as the Usury Law, causing the defendants damages and attorney's fees, the amount of which will be proven at the trial;

9. That this is the second time this same case is filed before this court, the first having been previously filed and docketed in this court as Civil Case No. 75845 (Branch VII) and the same was dismissed by the Court of First Instance of Manila on July 13, 1961 in Civil Case No. 43121 (Branch XVII) and for repeatedly bringing this case to the court, harassing and persecuting defendants in that manner, defendants have suffered mental anguish and anxiety for which they should be compensated for moral damages."

On September 7, 1962, Briones filed an unverified reply in which he merely denied the allegations of the counterclaim. Thereupon the defendants moved for the rendition of a summary judgment on the ground that, upon the record, there was no genuine issue of fact between the parties. The Municipal Court granted the motion and rendered judgment sentencing the defendants to pay the plaintiff the sum of P1,500.00 with interests thereon at the legal rate from February 22, 1962, plus the sum of P150.00 as attorney's fees. From this judgment, the defendants appealed to the Court of First Instance of Manila where, according to the appealed decision, "defendant has asked for summary judgment and plaintiff has agreed to the same." (Record on Appeal p. 21). Having found the motion for summary judgment to be in order, the court then proceeded to render judgment as follows:

"Judgment is, therefore, rendered, ordering Defendant to pay Plaintiff the sum of P1,180.00 with interest thereon at the legal rate from October 16, 1962 until fully paid. This judgment represents Defendant's debt of P1,500.00 less usurious interest of P120.00 and the additional sum of P200.00 as attorney's fees or a total deduction of P320.00. Plaintiff shall pay the costs."

In the present appeal defendants claim that the trial court erred in sentencing them to pay the principal of the loan notwithstanding its finding that the same was tainted with usury, and erred likewise in not dismissing the case.

It is not now disputed that the contract of loan in question was tainted with usury. The only questions to be resolved, therefore, are firstly, whether the creditor is entitled to collect from the debtor the amount representing the principal obligation; secondly, in the affirmative, if he is entitled to collect interests thereon, and if so, at what rate.

The Usury Law penalizes any person or corporation who, for any loan or renewal thereof or forbearance, shall collect or receive a higher rate or greater sum or value than is allowed by law, and provides further that, in such case, the debtor may recover the whole interest, commission, premiums, penalties and surcharges paid or delivered, with costs and attorney's fees, in an appropriate action against his creditor, within two (2) years after such payment or delivery (Section 6, Act 2655, as amended by Acts 3291 and 3998).

Construing the above provision, We held in *Go Chioco vs. Martinez*, 45 Phil. 256 that even if the contract of loan is declared usurious the creditor is entitled to collect the money actually loaned and the legal interest due thereon.

In *Gui Jong & Co. vs. Rivera, et al.*, 45 Phil. 778, this Court likewise declared that, in any event, the debtor in a usurious contract of loan should pay the creditor the amount which he justly owes him, citing in support of this ruling its previous decisions in *Go Chioco Supra*, *Aguilar vs. Rubiato, et al.*, 40 Phil. 570, and *Delgado vs. Duque Valgona*, 44 Phil. 739.

In all the above cited cases it was recognized and held that under Act 2655 a usurious contract is void; that the creditor had no right of action to recover the interest in excess of the lawful rate; but that this did not mean that

the, debtor may keep the principal received by him as loan – thus unjustly enriching himself to the damage of the creditor.

Then in *Lopez and Javelona vs. El Hogar Filipino*, 47 Phil. 249, We also held that the standing jurisprudence of this Court on the question under consideration was clearly to the effect that the Usury Law, by its letter and spirit, did not deprive the lender of his right to recover from the borrower the money actually loaned to and enjoyed by the latter. This Court went further to say that the Usury Law did not provide for the forfeiture of the capital in favor of the debtor in usurious contracts, and that while the forfeiture might appear to be convenient as a drastic measure to eradicate the evil of usury, the legal question involved should not be resolved on the basis of convenience.

Other cases upholding the same principle are *Palileo vs. Casio*, 97 Phil. 919 and *Pascua vs. Perez*, G.R. No. L-19554, January 31, 1964, 10 SCRA 199, 200-202. In the latter We expressly held that when a contract is found to be tainted with usury "the only right of the respondent (creditor) x x was merely to collect the amount of the loan, plus interest due thereon."

The view has been expressed, however, that the ruling thus consistently adhered to should now be abandoned because Article 1957 of the new Civil Code - a subsequent law - provides that contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury, shall be void, and that in such cases "the borrower may recover in accordance with the laws on usury." From this the conclusion is drawn that the whole contract is void and that, therefore, the creditor has no right to recover - not even his capital.

The meaning and scope of our ruling in the cases mentioned heretofore is clearly stated, and the view referred to in the preceding paragraph is adequately answered in *Angel Jose, etc. vs. Chelda Enterprises, et al.* (G.R. No. L-25704, April 24, 1968). On the question of whether a creditor in a usurious contract may or may not recover the principal of the loan, and, in the affirmative, whether or not he may also recover interest thereon at the legal rate, We said the following:

"x x x.

The court found that there remained due from defendants an unpaid principal amount of P20,287.50; that plaintiff charged usurious interests, of which P1,048.15 had actually been deducted in advance by plaintiff from the loan; that said amount of P1,048.15 should therefore be deducted from the unpaid principal of P20,287.50 leaving a balance of P19,247.35 still payable to the plaintiff. Said court held that notwithstanding the usurious interests charged, plaintiff, is not barred from collecting the principal of the loan or its balance of P19,247.35. Accordingly, it stated in the dispositive portion of the decision, thus:

"WHEREFORE, judgment is hereby rendered, ordering the defendant partnership to pay to the plaintiff the amount of P19,247.35, with legal interest thereon from May 29, 1964 until paid, plus an additional sum of P2,000.00 as damages for attorney's fee; and, in case the assets of defendant partnership be insufficient to satisfy this judgment in full, ordering the defendant David Syjuco to pay to the plaintiff one-half (1/2) of the unsatisfied portion of this judgment.

"With costs against the defendants."

Appealing directly to Us, defendants raise two questions of law: (1) In a loan with usurious interest, may the creditor recover the principal of the loan? (2) Should attorney's fees be awarded in plaintiff's favor?"

"Great reliance is made by appellants on Art. 1411 of the New Civil Code which states:

"ART. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other,

and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract."

"This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise."

Since, according to the appellants, a usurious loan is void due to illegality of cause or object, the rule of *pari delicto* expressed in Article 1411, *supra*, applies, so that neither party can bring action against each other. Said rule, however, appellants add, is modified as to the borrower, by express provision of the law (Art. 1413, New Civil Code), allowing the borrower to recover interest paid in excess of the interest allowed by the Usury Law. As to the lender, no exception is made to the rule; hence, he cannot recover on the contract. So - they continue - the New Civil Code provisions must be upheld as against the Usury Law, under which a loan with usurious interest is not totally void, because of Article 1961 of the New Civil Code, that: "Usurious contracts shall be governed by the Usury Law and other special laws, so far as they are not inconsistent with this Code." (*Italics ours.*)

We do not agree with such reasoning. Article 1411 of the New Civil Code is not new; it is the same as Article 1305 of the Old Civil Code. Therefore, said provision is no warrant for departing from previous interpretation that, as provided in the Usury Law (Act No. 2655, as amended), a loan with usurious interest is not totally void only as to the interest.

True, as stated in Article 1411 of the New Civil Code, the rule of *pari delicto* applies where a contract's nullity proceeds from illegality of the cause or object of said contract.

However, appellants fail to consider that a contract of loan with usurious interest consists of principal and accessory stipulations; the principal one is to pay the debt; the accessory stipulation is to pay interest thereon.

And said two stipulations are divisible in the sense that the former can still stand without the latter. Article 1273, Civil Code, attests to this: "The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force."

The question therefore to resolve is whether the illegal terms as to payment of interest likewise renders a nullity the legal terms as to payments of the principal debt. Article 1420 of the New Civil Code provides in this regard: "In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced."

In simple loan with stipulation of usurious interest, the prestation of the debtor to pay the principal debt, which is the cause of the contract (Article 1350, Civil Code), is not illegal. The illegality lies only as to the prestation to pay the stipulated interest; hence, being separable, the latter only should be deemed void, since it is the only one that is illegal.

Neither is there a conflict between the New Civil Code and the Usury Law. Under the latter, in Sec. 6, any person who for a loan shall have paid a higher rate or greater sum or value than is allowed in said law, may recover the whole interest paid. The New Civil Code, in Article 1413 states: "Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of payment." Article 1413, in speaking of "interest paid in excess of the interest allowed by the usury laws" means the whole usurious interest; that is, in a loan of P1,000, with interest of 20% per annum or P200 for one year, if the borrower pays said P200, the whole P200 is the usurious interest, not just that part thereof in excess of the interest allowed by law. It is in this case that the law does not allow division. The whole stipulation as to interest is void, since payment of said interest is illegal. The only change effected, therefore, by Article 1413, New Civil Code, is not to provide for the recovery of the interest paid in excess of that allowed by law, which the Usury Law already provided for, but to add that the same can be recovered "with interest thereon from the date of payment."

The foregoing interpretation is reached with the philosophy of usury legislation in mind; to discourage stipulations on usurious interest, said stipulations are treated as wholly void, so that the loan becomes one without stipulation as to payment of interest. It should not, how-ever, be interpreted to mean forfeiture even of the principal, for this would un-justly enrich the borrower at the expense of the lender. Furthermore, penal sanc-tions are available against a usurious lender, as a further deterrence to usury.

The principal debt remaining without stipulation for payment of interest can thus be recovered by judicial action. And in case of such demand, and the debtor incurs in delay, the debt earns interest from the date of the demand (in this case from the filing of the complaint). Such interest is not due to stipulation, for there was none, the same being void. Rather, it is due to the general provision of law that in obligations to pay money, where the debtor incurs in delay, he has to pay interest by way of damages (Art. 2209, Civil Code). The court a quo there-fore, did not err in ordering defendants to pay the principal debt with interest thereon at the legal rate, from the date of filing of the complaint."

In answer to the contention that the forfeiture of the principal of the usurious loan is necessary to punish the usurer, We say this: Under the Usury Law there is already provision for adequate punishment for the usurer, namely, criminal prosecution where if convicted, he may be sentenced to pay a fine of not less than P50 nor more than P500, or imprisonment of not less than 30 days nor more than one year, or both, in the discretion of the court. He may further be sentenced to return the entire sum received as interest, with subsidiary imprisonment in case of non-payment thereof. It is, of course, to be assumed that this last penalty may be imposed only if the return of the entire sum received as interest had not yet been the subject of judgment in a civil action involving the usurious contract of loan.

In arriving at the above conclusion We also con-sidered our decision in *Mulet vs. The People of the Philippines* (73 Phil. p. 60), but found that the same does not apply to the present case. The facts therein involved were as follows:

"On July 25, 1929, Alejandra Rubillos and Espectacion Rubillos secured from peti-tioner Miguel Mulet a loan of P550, payable within 5 years at 30 per cent interest per annum. In the deed of mortgage executed by the Rubillos as a security, the sum of P1,375 was made to appear as the capital of the loan. This amount obviously represented the actual loan of P550 and the total inter-est of P825 computed at 30 per cent per annum for 5 years. Within four years following the execution of the mortgage, the debtors made partial payments aggregating P278.27, on account of interest. Thereafter, the debtors paid the whole capital of P550, due to peti-tioners promise to condone the unpaid in-terest upon payment of such capital. But to their surprise, petitioner informed them that they were still indebted in the sum of P546.73 which represented the balance of the usurious interest. And in consideration of this amount, petitioner pressed upon the debtors to execute in October, 1933, in his favor, a deed of sale with pacto de retro of a parcel of land, in substitution of the original mortgage which was cancelled. From the date of the execution of the new deed up to 1936, petitioner received, as his share of the products of the land, the total sum of P480. Prosecuted on November 18, 1936, for the violation of the Usury Law, peti-tioner was convicted by the trial court, and on appeal, the judgment was affirmed by the Court of Appeals. The instant petition for certiorari is directed at that portion of the decision of the appellate court ordering peti-tioner to return to the offended parties the sum of P373.27, representing interests re-ceived by him in excess of that allowed by law."

It was Mulet's claim that, as the amount of P373.27 had been paid more than two years prior to the filing of the complaint for usury against him, its return could no longer be ordered in accordance with the prescriptive period provided therefor in Section 6 of the Usury Law. Said amount was made up of the usurious interest amount-ing to P278.27 paid to Mulet, in cash, and the sum of P480.00 paid to him in kind, from the total of which two amounts 14% interest allowed by law – amounting to P385.00 - was deducted. Our decision was that Mulet should return the amount of P480.00 which represented the value of the produce of the land sold to him under pacto de retro

which, with the unpaid balance of the usurious interest, was the consideration of the transaction – meaning the pacto de retro sale. This Court then said:

"x x x. This last amount is not usurious interest on the capital of the loan but the value of the produce of the land sold to petitioner under pacto de retro, with the unpaid balance of the usurious interest (P546.73) as the consideration of the trans-action. This consideration, because contrary to law, is illicit, and the contract which results therefrom, null and void. (Art. 1275, Civil Code). And, under the provisions of article 1305, in connection with article 1303, of the Civil Code, when the nullity of a contract arises from the illegality of the consideration which in itself constitutes a felony, the guilty party shall be subject to criminal proceeding while the innocent party may recover whatever he has given, including the fruits thereof." (underlines supplied).

It is clear, therefore, that in the Mulet case, the principal of the obligation had been fully paid by the debtor to the creditor; that the latter was not sentenced to pay it back to the former, and that what this Court declared re-coverable by the debtor were only the usurious interest paid as well as the fruits of the property sold under pacto de retro.

IN VIEW OF THE FOREGOING, the decision appealed from is modified in the sense that appellee may recover from appellant the principal of the loan (P1,180.00) only, with interest thereon at the legal rate of 6% per annum from the date of the filing of the complaints. With costs.

Concepcion, C.J., concurs in the dissent of J. Castro.

Reyes, J.B.L., J., concurs with J. Barredo.

Makalintal, Zaldivar, Fernando, Teehankee, Villamor and Makasiar, JJ., concur.

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CONCURRING OPINION

BARREDO, J.:

I concur.

I believe that this decision expresses the fair and just intent of our usury laws and sufficiently effectuates the public policy that should be pursued in usury cases.

I consider usury to be unchristian and inhuman, particularly because it thrives best in the misery of people by taking advantage of them when they are pre-cisely in urgent need of money to save themselves from a tight situation. Usury has always been consi-dered as a scourge everywhere in the world since the time of the Holy Scriptures. All these notwithstand-ing, I do not believe in condoning the whole indebted-ness of a person who borrows money, only because he has been made to agree, directly or indirectly, to pay more interest than that authorized by law. It is my considered view that what the law proscribes and declares null and void is not the lending of money, but only the collection of excessive interest. There is nothing morally wrong in allowing a money-lender to get back the money he has loaned because, after all, the borrower has used the same for his own needs, and it is only fair that he should not be enriched at the expense of another. And this, to my mind, is obvious from the language of Article 1957 of the Civil Code which provides that:

"Contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury shall be void. The borrower may recover in accordance with the laws on usury. (n)"

Properly construed, the phrase "contracts and stipulations" in this provision does not contemplate the totality of the contract of loan but only the portion thereof that is "intended to circumvent the laws against usury", and that necessarily is no more than any term, "cloak or device" which results in the collection of interest in excess of the rate allowed by law. In fact, the same provision expressly provides that in spite of the nullity it ordains, "the borrower may recover in accordance with the laws on usury." In other words, instead of leaving the consequences of the declared nullity to be in accordance with general principles, the article itself spells out in black and white what should be done with the proceeds of the proscribed act, and it says that the special laws on usury shall be followed in that respect.

To the same effect is Article 1961 of the Civil Code. It provides that:

"Usurious contracts shall be governed by the Usury Law and other special laws, so far as they are not inconsistent with this Code. (n)"

And I see no point of collision between the Civil Code and the Usury Law for the simple reason that even before Art. 1957 declared usurious contracts and transactions null and void, section 7 of the Usury Law already provided thus:

"All covenants and stipulations contained in conveyances, mortgages, bonds, bills, notes, and other contracts or evidences of debts, and all deposits of goods or other things, whereupon or whereby there shall be stipulated, charged, demanded, reserved, secured, taken, or received, directly or indirectly, a higher rate or greater sum or value for the loan or renewal thereof or forbearance of money, goods, or credits than is hereinbefore allowed, shall be void: Provided, however, That no merely clerical error in the computation of interest, made without intent to evade any of the provisions of this Act, shall render a contract void: And provided, further, That nothing herein contained shall be construed to prevent the purchase by an innocent purchaser of a negotiable mercantile paper, usurious or otherwise, for valuable consideration before maturity, when there has been no intent on the part of said purchaser to evade the provisions of this Act and said purchase was not a part of the original usurious transaction. In any case, however, the maker of said note shall have the right to recover from said original holder the whole interest paid by him thereon and, in case of litigation, also the costs and such attorney's fees as may be allowed by the court."

In this connection, it is to be noted that Section 6 of the Usury Law provides:

"Any person or corporation who, for any such loan or renewal thereof or forbearance, shall have paid or delivered a higher rate or greater sum or value than is hereinbefore allowed to be taken or received, may recover the whole interest, commissions, premiums penalties and surcharges paid or delivered with costs and attorney's fees in such sum as may be allowed by the court in an action against the person or corporation who took or received them if such action is brought within two years after such payment or delivery: Provided, however, That the creditor shall not be obliged to return the interest, commissions and premiums for a period of not more than one year collected by him in advance when the debtor shall have paid the obligation before it is due, provided such interest, and commissions and premiums do not exceed the rates fixed in this Act."

As a matter of fact, then, even as the Civil Code yields to the Usury Law in Articles 1967 and 1413, in reality there is no conflict between their corresponding provisions. To say that because these laws specify only the remedies in favor of the borrower, they impliedly deny to the lender any remedy to recover the principal of the loan is, I submit, a non sequitur. It appears to me more logical to construe the provisions allowing the borrower to recover all the interest he has paid, as Article 1413 of the Civil Code and Section 6 of the Usury Law have been construed together to mean in *Angel Jose v. Chelda Enterprises*, cited in the main opinion, as indicating that the

borrower may not reco-ver from the lender the amount he has paid as payment of his principal debt, and conversely, that the lender may collect the same if it has not been paid by the borrower.

In brief, my point is that while it is true that Article 1957 of the Civil Code declares that all usurious contracts and stipulations are void, this is not-hing new, for such has been the law even under the Usury Law before the Civil Code went into effect, and, moreover, it is evident that the Civil Code itself yields to the Usury Law when it comes to the question of how much of the loan and interests paid by the borrower may be recovered by him, and the Usury Law is clear that he may recover only all the interests, in-cluding, of course, the legal part thereof, with le-gal interest from the date of judicial demand, without maintaining that he can also recover the principal he has already paid to the lender.

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DISSENTING OPINION

CASTRO, J.:

Beyond the area of debate is the principle that in a contract of loan of a sum of money, the cause, with respect to the lender, is generally the borrower's prestation to return the same amount. It is my view, however, that in a contract which is tainted with usury, that is, with a stipulation (whether written or unwritten) to pay usurious interest, the prestation to pay such interest is an integral part of the cause of the contract.[1] It is also the controlling cause, for a usurer lends his money not just to have it returned but indeed to acquire inordinate gain. Article 1957, which is a new provision in the Civil Code, provides as follows: "Contracts and stipulations, under any cloak or device whatever, intended to circumvent the laws against usury shall be void. The borrower may recover in accordance with the laws on usury." This article which declares the contract itself - not merely the stipulation to pay usurious interest - void, necessarily regards the prestation to pay such usurious interest as an integral part of the cause, making it illegal.

Undoubtedly, the motive of the usurer is his desire to acquire inordinate gain; this motive becomes an integral and controlling part of the cause because its realization can be achieved only by compliance by the borrower with the stipulated prestation to pay usurious interest.

The law never proscribes a contract merely because of the immoral motive of a contracting party, for the reason that it does not concern itself with motive but only with cause.[2] An exception is where such motive becomes an integral part of the cause, like the stipulated usurious interest in a contract of loan.

While the old law, according to El Hogar,[3] considered the usurious loan valid as to the loan and void as to the usurious interest, the new law, in article 1957 of the new Civil Code, declares the usurious loan void as to the loan and void as to the usurious interest. What is the reason for the new law? In my view, it is none other than its intention to regard the usurious interest as an integral part of the cause, thus making it illegal; otherwise, the new law would be devoid of reason. Any interpretation that divests the new law of reason, that declares the usurious contract void and in the same breath permits recovery of the principal of the loan - which was the same result under the old law, as well as under El Hogar that considered the usurious contract valid as to the loan - renders article 1957 of the new Civil Code meaningless and pointless.

The prestation to pay usurious interest being an integral and controlling part of the cause, making it illegal and the contract of loan void, article 1411 of the new Civil Code should be applied. This article provides:

"When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

"This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise."

An exception is, however, provided in the second sentence of article 1957 which states: "The borrower may recover in accordance with the laws on usury." As an exception to the general rule in article 1411, the debtor is allowed in accordance with the Usury Law to recover the amount he has paid as usurious interest. Thus, article 1413 explicitly authorizes that "Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of payment." But the lender is not allowed to recover the principal, because no such exception is made; hence, he falls within the general rule stated in article 1411.

In *Mulet vs. People*,^[4] the Supreme Court, in effect, reconsidered its opinion in *El Hogar*. In *Mulet*, the plaintiff extended a usurious loan to *Rebillos*. When the debtor failed to pay the whole usurious interest, the creditor, in consideration of the said unpaid interests, made the debtor execute a *pacto de retro* sale of certain properties to him. He then sought to be exempt from returning the value of the produce of the lands so transferred. Mr. Justice Moran, speaking for the Supreme Court, said:

"* * * We are of the opinion that the petitioner should be ordered to return * * * the amount * * * of P480.00. This last amount is not usurious interest on the capital of the loan but the value of the produce of the land sold to petitioner under *pacto de retro*, with the unpaid balance of the usurious interest as the consideration of the transaction. This consideration, because contrary to law, is illicit, and the contract which results therefrom, null and void.

"If the unpaid usurious interests as the consideration of the *pacto de retro* sale render such sale null and void, *a fortiori*, the usurious interest as consideration of the contract of loan, also renders such loan null and void."

In *Asturias, et al. vs. Court of Appeals*,^[5] the Supreme Court, speaking through Mr. Justice Jesus Barrera, stressed that: "A contract designed to hide a usurious agreement not only violates the law but contravenes public policy. Such a contract can not be countenanced and is therefore illegal and void from its inception."

The ruling in *El Hogar* that a usurious loan was valid as to the principal but void as to the usurious interest was based upon the laws then in force, namely, the old Civil Code and the Usury Law, both of which did not contain any specific explicit provision proscribing the contract itself. I am fully persuaded that in drafting Chapter 2, Title XI of Book IV of the new Civil Code, the Code Commission knew of the majority opinion in *El Hogar*, took note of it, and, to offset any doubt concerning the intention of the Commission to overrule *El Hogar*, formulated articles 1957 and 1961. And it is of great significance to me that when the Commission formulates article 1957, knowing that under *El Hogar* the usurer may recover the principal of the loan, it omitted affirmance of the right of the lender to recover the principal, and instead emphasized that "the borrower may recover in accordance with the laws on usury."

[1] See articles 1933, 1950 and 1957, new Civil Code.

[2] *De Jesus vs. Urrutia & Company*, 32 Phil. 171.

[3] Lopez and Javelona vs. El Hogar Filipino, 47 Phil. 249

[4] 73 Phil. 60.

[5] L-17895, promulgated Sept. 30, 1963, 9 SCRA 131.

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