EQUICOM SAVINGS BANK (FORMERLY ANCHOR SAVINGS BANK), PLAINTIFF-APPELLEE, VS. SPOUSES JOSE C. GO AND CARLOTA C. GO, CONCEPCION CHIONG AND DANILO CHIONG, DEFENDANTS-APPELLANTS.

Ponente: CORALES, J.

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CORALES, J.:

This is an appeal[1] from the January 2, 2012[2] Decision of the Regional Trial Court (RTC), Branch 62, Makati City granting plaintiff-appellee Equicom Savings Bank's[3] (Equicom) complaint for recovery of sum of money in Civil Case No. 08-368.

The Antecedents

On February 2002, defendants-appellants Spouses Jose (Jose) and Carlota Go, as principal borrowers, together with Danilo Chiong (Danilo) and Concepcion Chiong, as co-makers, jointly and severally, obtained a P1,055,653.50 loan from Equicom which was secured by a chattel mortgage[4] over three (3) vehicles, viz., an Isuzu Forward Dropside, a 1982 Isuzu Forward Cargo and an Isuzu Tractor Head. Under the promissory note,[5] the principal obligation is payable in 60 months per schedule indicated therein and would be subject to 17% interest per annum. It also contain an acceleration clause stating that any default in paying the installment or interest due would render all such obligations due and payable without demand or notice.

Defendants-appellants defaulted in paying their loan sometime in August 2002 and surrendered the Isuzu Forward Dropside to Equicom which was appraised at P265,000.00. Equicom applied the value of the surrendered vehicle to defendants-appellants' loan who only continued paying P5,000.00 monthly from October 13, 2004 until December 19, 2005.

On February 7, 2007, Equicom sent a demand letter[6] to defendants-appellants who, in turn, offered their property located in Cauayan, Isabela[7] or the surrender of the Isuzu Forward Cargo and Isuzu Tractor Head as settlement of the loan. Equicom refused to accept the offers[8] because the property was landlocked with no existing right of way and the P30,000.00 appraised value for each of the remaining mortgaged vehicles was less than the amount due.[9] Hence, the complaint for sum of money filed on May 8, 2008.[10] Equicom prayed for the payment of the principal obligation amounting to P941,180.58 as of its April 7, 2008 statement of account[11] plus interest and late payment charges until fully paid. It also sought the award of actual damages equivalent to 5% penalty per month or a fraction thereof on all unpaid monthly installments, and liquidated damages and attorney's fees, each equivalent to 25% of the amount due.

Defendants-appellants did not deny signing the promissory note and the chattel mortgage but claimed that the mortgaged vehicles were among those repossessed by Equicom from its former clients and offered to them by the bank's manager. They have an agreement with Equicom that in case of default, the bank would simply repossess the vehicles anew. Defendants-appellants did not also deny their failure to pay their loan. However, they insisted that when the second default occurred, the two (2) remaining vehicles were offered to Equicom as partial

settlement. Purportedly, the bank already scheduled the repossession of the two (2) vehicles but later on insisted that defendants-appellants should make the delivery and that the market value thereof would be fixed only at P30,00.00 each. The new terms for repossession resulted to a stand-off in their negotiation, but defendants-appellants eventually agreed to voluntary surrender the vehicles after signing a document entitled “dacion en pago”. They argued that their sincerity in settling their obligation is tantamount to good faith and there is already a consummated settlement from the time Equicom agreed to take the vehicles from their garage, thus, they should not be held liable for interest and penalties.[12] They also countered that the Isuzu Forward Cargo and Isuzu Tractor Head were not in good running condition at the time of Equicom's delivery and the amount of P196,450.00[13] they spent for the reconditioning should be considered in the appraisal. According to Jose, the total appraised value of the vehicles is P700,000.00 which is sufficient to settle their loan.[14]

The Ruling of the RTC

In its January 2, 2012 Decision,[15] the RTC ruled in favor of Equicom on the rationale that the parties are bound to comply with the clear terms and conditions of the promissory note. It held that dacion en pago, as a form of novation, cannot simply be presumed in the absence of an agreement that the vehicles would be returned in case of default. However, the court a quo reduced the 17% interest per annum, 5% monthly late payment charges and the 25% attorney's fees for being iniquitous and unconscionable, and considering defendants-appellants' good faith in showing their willingness to settle their obligation. It then disposed the case as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff, ordering the defendants to pay, jointly and severally the following:
>
> 1.) The amount of Php941,180.58 as of April 7, 2008 plus finance charge at the rate 12% per annum and late payment charge at the rate of 12% per annum until fully paid;
>
> 2.) 15% of the total amount due as and by way of attorneys' fee;
>
> 3.) Costs of suit.
>
> **SO ORDERED.**

Aggrieved, defendants-appellants interposed the instant appeal with the following assignment of errors:[16]

> [1] THE TRIAL COURT ERRED IN CLAIMING THAT THE TERMS OF THE UNDERTAKING ARE CLEAR WITHOUT CONSIDERING THAT THE DEFENDANTS-APPELLANTS NEVER REFUSED TO SETTLE THEIR OBLIGATION WITH THE PLAINTIFF-APPELLEE.
>
> [2] THE TRIAL COURT DID NOT DISCUSS IN ITS DECISION THE OFFER OF SURRENDER OF ALL THE MOTOR VEHICLES THAT HAVE BEEN UPGRADED IN APPLICATION OF THE WHOLE OBLIGATION.
>
> [3] THE TRIAL COURT ERRED IN GRANTING FINANCE CHARGE OF 12% PER ANNUM APART FROM THE LATE PAYMENT CHARGE OF 12% PER ANNUM.
>
> [4] THE TRIAL COURT ERRED IN AWARDING TO THE PLAINTIFF-APPELLEE 15% OF THE AMOUNT DUE AS AND FOR ATTORNEY'S FEES.

At the outset, defendants-appellants are not denying any liability under the promissory note and the chattel mortgage. They are only assailing the award of finance and late payment charges in favor of Equicom on the ground that there was a consummated settlement when they signed the document entitled “dacion en pago” but

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the bank refused without justifiable reason to repossess the two (2) remaining mortgaged vehicles. They also insist that with their good faith in settling the obligation, the interest and late payment charges must be deleted. Thus, the issues for Our resolution are: (1) whether or not there was a consummated settlement of defendants-appellants' obligations by way of dacion en pago; (2) whether or not the award of interest and late payment charges must be deleted due to Equicom's refusal to accept the surrender of the two (2) mortgage vehicles; and (3) whether the award of finance and late payment charges as well as attorney's fees are proper.

This Court's Ruling

The appeal is partially meritorious.

Existence of Dacion En Pago, Consummated Settlement and Unjustified Refusal to Accept Surrender of Mortgaged Vehicles Not Proven

Dacion en pago or dation in payment is a special mode of payment whereby a property is alienated to the creditor in satisfaction of a debt in money. It is actually a novation of contract which partakes the nature of a sale, the thing offered as an accepted equivalent of the performance of an obligation is considered as the object of the contract of sale while the debt is considered as the purchase price. As such, the elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present.[17] These elements are wanting in this case. There is no dispute that defendants-appellants offered to return the two (2) remaining mortgaged vehicles as settlement for their outstanding obligation and Equicom sent an appraiser to determine their value. However, there is no concrete showing that after the appraisal, Equicom accepted the offer of settlement. Defendants-appellants claim that there was a document entitled dacion en pago wherein Equicom allegedly agreed to take the vehicles from their premises but the document itself was not produced in court. It is a hornbook rule that he who alleges must prove.[18] Thus, defendants-appellants' defense of dacion en pago necessarily fails. They cannot therefore compel Equicom to accept the mortgaged vehicles in lieu of payment of money.

It cannot also be said that Equicom unjustifiably refused defendants-appellants' offer to return the two (2) mortgaged vehicles. In contracts of loan, the debtor is expected to deliver the sum of money due to creditor[19] and pursuant to Article 1244 of the New Civil Code (NCC), Equicom, cannot be compelled to receive a different thing other than the agreed prestation, although the latter may be of the same value as, or more valuable than that which is due. Ergo, Equicom has more reason to refuse the surrender of the two (2) remaining mortgaged vehicles considering that their total appraised value is lower than defendants-appellants' outstanding obligation.

Defendants-appellants argue that the appraised value given by Equicom was tainted with bad faith and the vehicles should be valued at P700,000.00. Bad faith is in essence a question of intention. It should be established by clear and convincing evidence since the law always presumes good faith. The onus of proving bad faith lies with defendants-appellants[20] but they failed to show any indication of ill motive or ill will on the part of Equicom. There is no showing that the vehicles were actually undervalued by Equicom or that the same were still in good condition at the time of the appraisal. This Court cannot simply rely on defendants-appellants' mere allegations of bad faith sans proof thereof. Basic is the rule that mere allegation is not evidence, and is not equivalent to proof.[21]

Defendants-Appellants Liable for Late Payment Charges, Interest and Attorney's Fees

Under the promissory note, defendants-appellants are only required to pay the following charges, viz.:

x x x

> with interest thereon at the rate of seventeen percent (17) per annum, payable 60 months plus bank charges at such rate as may be authorized by law or by the Monetary Board until fully paid.

x x x

> Likewise, the undersigned Borrower hereby jointly and severally promise to pay a late payment charge on any overdue sum under this note at the rate of five percent (5%) per month.

x x x

> In case of non-payment of this Note on demand/maturity or upon the happening of any events of default, the undersigned jointly and severally agree to pay, by way of liquidated damages, xxx, and if this Note is referred to an attorney-at-law or collection agency for collection, the further sum of 25% of the said amount thereof but in case less than P2,000 exclusive of costs and other judicial extrajudicial expenses. xxx (Emphasis supplied)

Clearly, the promissory note does not contain any provision on payment of finance charges. Thus, the 12% finance charges awarded by the RTC must be deleted for lack of basis.

Nevertheless, defendants-appellants are still liable for late payment charges. We do not find any merit in their contention that they were never in default due to their timely manifestation of their willingness to return the mortgaged vehicles to Equicom.[22] Under Article 1169 of the NCC, delay is incurred from the time the obligee judicially or extrajudicially demands the fulfillment of their obligation but when there is an express waiver thereof, demand is no longer necessary. The promissory note explicitly states that upon defendants-appellants' failure to pay any installment or interest due, the whole unpaid amount shall immediately become due and payable without demand or notice. Indisputably, defendants-appellants incurred delay when they failed to pay their monthly amortizations on their due date. As such, they must be held liable for late payment charges which was justly reduced by the RTC considering defendants-appellants' good faith in trying to settle their loan obligation with Equicom. It must be emphasized, however, that such good faith could only be a factor in reducing the rate of late payment charges from 5% per month or a total of 60% per annum to only 12% per annum, but is not sufficient to relieve defendants-appellants from paying interest, late payment charges and attorney's fees which are stipulated in the promissory note.

We also sustain the award of interest in favor of Equicom which is distinct and separate from the late payment charges[23] and is allowed under Article 1956[24] of the NCC. The reduction of the stipulated 17% interest per annum is also proper considering that it is unconscionable and iniquitous. Considering that the stipulated rate is void, it is as if there was no express agreement on said interest;[25] therefore, the applicable rate should be the prevailing legal interest as enunciated in the recent case of Nacar v. Gallery Frames,[26] viz.:

x x x

- When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

x x x

- When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, such interim period being deemed to be by then an equivalent to a forbearance of credit.

> And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein. x x x (Emphasis supplied)

Accordingly, the interest imposed on defendants-appellants' principal obligation must be reduced to 6% per annum from the time of the judicial demand, or the filing of the complaint, until its full satisfaction.

With respect to attorney's fees, the same may be awarded in favor of Equicom pursuant to Article 2208[27] of the NCC which allows the parties to stipulate for its recovery. Under the promissory note, defendants-appellants expressly bound themselves to pay attorney's fees irrespective of their good faith or bad faith that impelled Equicom in filing the suit against them. However, and as aptly ruled by the RTC, the stipulated rate for attorney's fees, which is 25% of the amount due, must likewise be reduced for being unconscionable.

WHEREFORE, the appeal is PARTIALLY GRANTED. The January 2, 2012 Decision of the Regional Trial Court, Branch 62, Makati City in Civil Case No. 08-368 is hereby AFFIRMED with MODIFICATION. Accordingly, defendants-appellants are ordered to jointly and severally pay Equicom Savings Bank the following amounts:

- P941,180.58 with interest of 6% per annum and late payment charges of 12% per annum from the filing of the complaint on May 8, 2008 until its full satisfaction;

- 15% of the amount due as attorney's fees; and

- Cost of suit.

SO ORDERED.

CERTIFICATION

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

Castillo, M.J., Chairperson and Lazaro-Javier, A., JJ., concur.

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[1] See Notice of Appeal in relation to the February 3, 2012 Order of the RTC giving due course to said appeal, records, pages 350-351 and 353, respectively.

[2] Penned by Judge Selma Palacio Alaras, rollo, pages 8-11.

[3] By virtue of the Amended Articles of Incorporation the name of the bank was changed from Anchor's Savings Bank into Equicom Savings Bank, Inc.

[4] See Chattel Mortgage Contract, records, pages 164-167.

[5] See Promissory Note, ibid., pages 162-163.

[6] See Demand Letter dated January 31, 2007, ibid., page 169.

[7] See Reply Letter of Spouses Go to Anchor Savings Bank through their counsel Atty. Ricardo C. Pilares, Jr., ibid., page 171.

[8] See Judicial Affidavit of Margie C. Aldover dated March 11, 2010, ibid., pages 129; TSN, Jose C. Go, February 25, 2011, ibid., pages 342-343; and TSN, Margie Aldover, August 13, 2010, ibid., pages 293-299.

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[9] See Judicial Affidavit of Margie C. Aldover dated March 11, 2010 and TSN, Margie Aldover, August 13, 2010, ibid.

[10] Ibid., pages 1-4.

[11] Ibid., page 168.

[12] See Answer, ibid., pages 33-42.

[13] P94,700.00 for the Isuzu Forward Cardo and P101,750.00 for the Isuzu Tractor Head

[14] See Jose C. Go's Affidavit in Lieu of Oral Testimony and TSN, Jose C. Go, February 25, 2011, ibid., pages 193-198 and 325-340, respectively.

[15] Supra, at note 2.

[16] See Appeal Brief for the Defendants-Appellants, rollo, page 34.

[17] See Dao Heng Bank, Inc. v. Spouses Laigo, G.R. No. 173856. November 20, 2008.

[18] Reyes-Rayel v. Philippine Luen Thai Holding, G.R. No. 174893. July 11, 2012.

[19] Morla v. Belmonte, G.R. No. 171146. December 7, 2011.

[20] See China Airlines, Ltd. v. Court of Appeals, G.R. No. 129988. July 14, 2003.

[21] See Hyatt Elevators v. Cathedral Heights, G.R. No. 173881. December 1, 2010.

[22] See Defendants-appellants' Reply Brief, rollo, page 90.

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

[24] Art. 1956. No interest shall be due unless it has been expressly stipulated in writing.

[25] See Macalino v. BPI, G.R. No. 175490. September 17, 2009.

[26] G.R. No. 189871. August 13, 2013.

[27] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

1) When exemplary damages are awarded;

2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

3) In criminal cases of malicious prosecution against the plaintiff;

4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

6) In actions for legal support;

7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

8) In actions for indemnity under workmen's compensation and employer's liability laws;

9) In a separate civil action to recover civil liability arising from a crime;

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10) When at least double judicial costs are awarded;

11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation could be recovered.

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