

QUEZON DEVELOPMENT BANK, PETITIONER, VS. THE COURT OF APPEALS, CONSTRUCTION SERVICES OF AUSTRALIA-PHILIPPINES, INC. (CONSAPHIL), LEOCADIO J. DOMINGUEZ, ISIDRO D. CARIÑO, AND ME...

G.R. No. 101240. December 16, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

On April 22, 1983, petitioner Quezon Development Bank and private respondent Construction Services of Australia-Philippines, Inc. (CONSAPHIL) entered into a loan agreement pursuant to which petitioner granted CONSAPHIL loans in the amounts of P490,000.00 and P415,163.00, for which CONSAPHIL, through individual private respondents, executed two (2) promissory notes on April 27, 1982 and June 15, 1982, respectively.[1]

On April 9, 1986, petitioner brought an action for recovery of the amounts stated in the promissory notes, plus interest, penalties, and attorney's fees against private respondents. The case was filed with the Regional Trial Court of Makati which, after trial, rendered judgment on September 18, 1987 ordering respondents, jointly and severally, to pay petitioner the sum of P850,545.72 (sic)[2] with interest at the rate of 48% per annum, from July 1, 1986 until the amount was fully paid, plus attorney's fees of 10% of the amount due, and the costs of the suit.

Private respondents appealed to the Court of Appeals which, on August 8, 1990, rendered a decision,[3] the dispositive portion of which states:

WHEREFORE, the decision appealed from is hereby modified, ordering the appellants to pay, jointly and severally, the appellee the amount of P905,163.00 with interest at the rate of 14% per annum and service of 7% per annum from August 25, 1982 until fully paid plus a penalty of 36% per annum on said obligation from October 25, 1982 until it is fully paid. The payment made by appellants in the total sum of P1,669,510.90 as of October 30, 1986, either in cash or by assignment of loan proceeds from PAG-IBIG take-outs shall be applied to the outstanding obligation of appellant as of the date they were made. This case is remanded to the court a quo to determine and fix the amount of the loan obligations of the appellants in accordance with this judgment, and the appellee Bank is ordered to return to the appellants the excess, if any, of the aforementioned P1,669,510.90 amount paid.

The amount of attorney's fees in favor of appellee Bank is hereby reversed and set aside.

Without pronouncement as to costs.

SO ORDERED.

However, on motion of private respondents, the appellate court modified its judgment. In its resolution, dated April 19, 1991, it ordered as follows:

WHEREFORE, the decision of August 8, 1990 is modified in the sense that the appellants are absolved from paying the penalty of 36% per annum on their obligation. The award of said penalty is reversed and set aside.

The rest of the judgment is affirmed.

SO ORDERED.[4]

On May 10, 1991, petitioner in turn filed a motion for reconsideration, but its motion was denied by the court in its resolution, dated July 31, 1991. Hence, the present petition for review on certiorari.

Three (3) issues are raised in the petition, to wit:

1. Whether the question of applicability of the penalty charges to the loans covered by the promissory notes was an issue before the trial court and could thus properly be decided by the Court of Appeals;
2. Whether petitioner can appeal from the resolution of the Court of Appeals insofar as it denies recovery of penalty charges considering that petitioner did not appeal from the judgment of the trial court; and
3. Whether the penalty charges are applicable to the amounts stated in the promissory notes.

First. Petitioner contends that the appellate court erred in modifying its decision, dated August 8, 1990, by absolving private respondents from liability for payment of the penalty charges. It claims that private respondents' liability for such charges was not raised in issue before the trial court and, consequently, could not be passed upon on appeal by the Court of Appeals.

This contention has no merit. The applicability of the penalty clause in the two (2) promissory notes was squarely raised by the parties before the trial court which, in its decision, in part stated:

. . . Defendants claim that the additional interest and penalty charges under the Promissory notes cannot apply in this case because the payments are not made in installments or amortization but in a lump sum. The Court finds that this was not the intention or interpretation of the parties when the promissory notes were executed in 1982. As a matter of fact, on 7 May 1985, or almost three years after the execution of the Notes, defendant CONSAPHIL made a written request (Exh. G) asking the plaintiff for a waiver of the penalty charges.[5]

Indeed, in its pre-trial order,[6] dated October 30, 1986, the trial court stated the first issue to be whether private respondents had paid the two promissory notes in full. This issue was raised because private respondents precisely contended that penalty charges applied only to arrears in the payment of the amortizations and not to defaults in the payment of lump sums.

Second. Private respondents contend, however, that petitioner would nonetheless be barred from seeking such charges because the trial court did not order private respondents to pay such charges and petitioner did not appeal from the decision of the trial court. It is true that a party who has not appealed from a decision cannot seek any relief other than what is provided in the judgment appealed from. As stated in *Lumibao v. Intermediate Appellate Court*:[7]

It is well-settled in this jurisdiction that whenever an appeal is taken in a civil case, an appellee who has not himself appealed may not obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed, and he can assign errors in his brief if such is required to strengthen the views expressed by the court a quo. These assigned errors in turn may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of reversing or modifying the judgment in the appellee's favor and giving him other reliefs.

But in seeking recovery of the 36% penalty charge stipulated in the promissory notes, petitioner is not really seeking something not ordered to be paid in its favor by the trial court and for which it should have appealed to the Court of Appeals. As already stated, the trial court ordered private respondents to pay petitioner the amount of

P859,545.72. This amount is "inclusive of interest, penalty and other charges." [8] As the amount awarded in its favor by the trial court included the 36% penalty charge, there was no reason for petitioner to appeal the decision to the Court of Appeals. Consequently, it is only now, after the Court of Appeals disallowed the amount, that petitioner appealed in this case.

Third. Petitioner argues that the promissory notes clearly stipulate for the payment of penalty charges in the event of failure of the borrowers to pay the notes on maturity and that the parties fully understood this to be the case. Petitioner cites private respondent CONSAPHIL's letter, dated May 7, 1985, requesting waiver by petitioner of the penalty charges, as indicative of CONSAPHIL's understanding that penalty charges formed part of private respondents' contractual obligation. On the other hand, private respondents deny this and claim that the penalty charges apply only in the event the amounts of the loan were subject to amortizations.

We find this contention of petitioner to be without merit. The promissory note executed by respondents, dated April 27, 1982, provides:

QUEZON DEVELOPMENT BANK
City of Lucena

PROMISSORY NOTE
Due August 25, 1982 Number REL-HFC-01
P490,000.00 April 27, 1982

-ONE HUNDRED TWENTY (120) DAYS AFTER DATE- for value received, I/We jointly and severally, promise to pay the QUEZON DEVELOPMENT BANK, or order, at its Office at the City of Lucena, Philippines, the sum of -FOUR HUNDRED NINETY THOUSAND PESOS ONLY- Philippine Currency, with interest at the rate of FOURTEEN per centum (14%) per annum. Before the date of maturity, I/We hereby bind myself/ourselves to make partial payments, the first payment to be made only on August 25, 1982 and the subsequent payments on _____ and each of all such payments shall be _____ (P _____), which shall cover amortization on the principal and interest at the abovementioned rate plus 7% annual service fee and 1.7% commitment fee. All unpaid amortizations shall bear interest at the rate of FOURTEEN per centum (14%), per annum. In addition, this loan shall be subject to penalty charges as follows: Penalty charges of 24% per annum based on loan amortization in arrears for sixty (60) days or less. Penalty charges of 36% per annum based on loan amortization in arrears for more than sixty (60) days. . . . [9]

It is to be noted that the instrument is on a standard form used by petitioner. It is for this reason that there are stipulations regarding amortizations although the loans in this case were payable in lump sums and that the loan agreement did not provide for them much less for the payment by the borrower of penalty charges. Except for the amount of the loan and the date of its execution, the other promissory note, dated June 15, 1982, is substantially the same as the note above reproduced.

Clearly, the stipulations regarding "penalty charges of 24% per annum based on loan amortization in arrears for sixty (60) days or less" and "penalty charges of 36% per annum based on loan amortization in arrears for more than sixty (60) days" have no application to the loans in this case which are payable in lump sum. As the Court of Appeals observed in its questioned resolution:

A re-examination of the subject promissory notes shows that the penalty charges of 36% per annum are applicable to loan amortization in arrears for more than sixty (60) days. The loan agreement (Exh. "A") in accordance with which the subject promissory notes (Exhs. "B" and "C") were drawn does not provide for any penalty charges but only the 14% interest per annum plus an annual 7% service charge and 1.7% commitment fee (p. 4). The subject promissory notes speak of penalty charges of 36% per annum based on loan amortization in arrears, but the loans evidenced by said promissory notes were not subject to amortization, as

both were entirely due on August 25, 1982. Accordingly, that stipulation on penalty is not applicable to appellants. Considering that the subject promissory notes were prepared by appellee bank which are contracts of adhesion with respect to the appellants whose only participation was the affixing of their signature or their adhesion thereto (*Sucat Lines, Inc. vs. Teves*, 83 SCRA 261; *Angeles vs. Calasang*, 135 SCRA 323, 334), the ambiguity therein must be construed against the author thereof (*Eastern Shipping Lines, Inc. vs. Margarine-Verkaufs Union*, 93 SCRA 257). The appellants shall not be liable for the penalty of 36% per annum.[10]

It is nevertheless contended that by requesting waiver of the penalty charges private respondents acknowledged liability for the payment of penalty charges, in addition to the principal, in the event of failure to pay on time. As private respondents explain, however, they were mistaken concerning a question of law and this cannot be the basis of a finding of liability.

WHEREFORE, the decision of the Court of Appeals, as modified in its resolutions of April 19, 1991 and July 31, 1991, is AFFIRMED.

SO ORDERED.

Bellosillo (Chairman), Puno, and Martinez JJ., concur

[1] Rollo, pp. 16-19, 20-21.

[2] The amount should be P859,545.72.

[3] Per Associate Justice Celso L. Magsino, and concurred in by Justices Nathanael P. De Pano, Jr. and Cesar D. Francisco.

[4] Rollo, p. 74.

[5] *Id.*, pp. 34-35.

[6] *Id.*, pp. 28-29.

[7] 189 SCRA 469, 474-475 (1990).

[8] RTC Decision, p. 3, Rollo, p. 30.

[9] Emphasis added.

[10] Rollo, pp. 73-74.

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