

IRINEO F. LLORIN, JR., PETITIONER, VS. COURT OF APPEALS AND APEX MORTGAGE AND LOANS CORPORATION, RESPONDENTS.

G.R. No. 103592. February 04, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

In this petition for review on certiorari, petitioner impugns the decision rendered by respondent Court of Appeals on January 17, 1992[1] which affirmed in toto the judgment of the Regional Trial Court of Manila, Branch 50, dated April 12, 1991, in Civil Case No. 88-45055[2] which is an action for collection of a sum of money.

The uncontested antecedent facts, as found by the trial court and adopted by respondent court, are as follows:

"It is undisputed that on April 11, 1978, defendant Llorin obtained a loan from plaintiff corporation in the amount of Eighty Four Thousand Four Hundred Ten Pesos (P84,410.00). The loan, secured by a real estate mortgage, is payable in two hundred forty (240) installments at P1,142.08 monthly commencing May 11, 1978, with interest of 12% per annum, service charge of three percent (3%) p.a. and 1 1/2% monthly penalty for unpaid or delayed amortizations, as evidenced by a Promissory Note With Authority to Assign Credit.

"The promissory note provides for an escalation clause which reads:

‘I/We hereby authorized (sic) APEX MORTGAGE AND LOAN CORPORATION to accordingly increase the rate of interest and/or service charges stipulated in this contract without notice to me/us in the event of a law or any applicable Presidential Decree and/or Central Bank regulation (which) should be enacted increasing the lawful rate of interest and/or service charges that may be charged on this particular kind of loan.’

"Pursuant to the said clause and on the basis of Central Bank Circular No. 721 (February 25, 1980) and No. 905 (Series of 1982), plaintiff increased the interest rate on the loan from 12% annually as follows:

Effective Date

From

To

Monthly Amortization

February 25, 1980 (4 years & 5 months or more)

12%

21%

P1, 511.91 (Exhs.'8' & 'G')

August 1, 1984 (4 months)

21%

25%

P1, 722.68 (Exh. '5')

December 1, 1984 (1 year & 2 months)

25%

36%

P2, 482 (Exh. '4')

"Despite the absence of a de-escalation clause, the interest rates were, however, later reduced corresponding to the reduction in the interest rates prescribed by the Central Bank as follows:

Effective Date

From

To

Monthly Amortization

February 1, 1986 (10 months)

36%

28%

P1, 957.00 (Exh. '6')

December 1, 1986 (2 months)

28%

24%

P1, 732.04 (Exh. '7')

February 1, 1987 (3 year-Feb. 1990)

24%

21%

P1, 580.14 (Exh. '1')

"On May 11, 1982 plaintiff demanded from defendant the payment of P123,720.32. On July 7, 1987 another written demand was sent to defendant for payment of P208,964.88 covering the period from September 1981 to June 1987. As of July 27, 1987, defendant was able to pay the plaintiff the total sum of P79,462.27 which was applied to satisfy the penalty, interest charges and part of (the) principal loan.

"On March 28, 1988, plaintiff wrote defendant for payment of P323,523.42 representing principal and interest as of March 21, 1988 computed (in) consonant (sic) with the foregoing CB Circulars. Defendant, in his reply, requested for recomputation of his account invoking the decisions of the Supreme Court in *Banco Filipino Savings and Mortgage Bank vs. Hon. Miguel Navarro, and Florante Valle and Insular Bank of Asia and America vs. Spouses Salazar*. x x x." [3]

On June 17, 1988, respondent Apex Mortgage and Loans Corporation (APEX) filed a complaint with the Regional Trial Court of Manila for the collection of the amount of P323,523.42, with interest at 21% per

annum and 10% of the total claim as attorney's fees. Three pre-trial conferences were had before the court a quo. On February 12, 1990, the trial court issued a second pre-trial order stating, inter alia, that:

x x x

"Both parties agreed that the material facts of the case are not disputed and that the main issue pertains to whether or not the escalation clause contained in the promissory note validly applies to this case in light of the Supreme Court decision in the case of Banco Filipino.

"Final pre-trial for submission of additional stipulation of facts on last payment, principal balance, computations according to each other's theory, etc., is set on March 12, 1990 at 8:30 a.m."[4]

In compliance with said order, the parties submitted their respective computations to the trial court which issued an order on March 12, 1990 directing the parties to submit their respective memoranda, after which the case would be considered submitted for decision on the basis of the pleadings, stipulations, affidavits and the three pre-trial orders, the issue being principally a question of law.

On April 12, 1991, the lower court rendered a decision ordering herein petitioner "to pay plaintiff Apex Mortgage and Loan Corporation the sum of P80,561.13 with interest of 21% and service charge of 3% per annum from September 12, 1981 until fully paid, plus P10,000.00 (as) attorney's fees and the costs of suit."[5]

Petitioner initially went to this Court on a petition for review on certiorari, which was referred to the Court of Appeals for determination and disposition pursuant to our resolution dated September 18, 1991. As earlier stated, respondent court rendered judgment upholding the decision of the court below.

The same issue raised by petitioner before respondent Court of Appeals is now being presented before us for resolution, that is, whether the decision of this Court in the case of Banco Filipino Savings and Mortgage Bank vs. Hon. Miguel Navarro, et al.,[6] is applicable to the case at bar and, if so, whether the computation should be patterned after the formula used in Insular Bank of Asia and America vs. Sps. Salazar.[7]

Petitioner asseverates that in the Banco Filipino case, we disallowed the imposition of the increased rates of interest and declared that the escalation clause should not be given effect because of (1) its one-sidedness in favor of the lender, and (2) the absence of a de-escalation clause. In the case at bar, petitioner claims that the escalation clause contained in the promissory note executed in favor of private respondent APEX is identical with the escalation clause subject of the Banco Filipino case. Hence, he argues, the same should likewise be declared null and void.

We find the petition to be barren of meritorious submissions or arguments.

The legality of the escalation clause, as in the case at bar, has been recognized in this jurisdiction. In the aforecited case of Banco Filipino Savings and Mortgage Bank vs. Hon. Miguel Navarro, et al., supra, we declared such clause to be valid and held that:

"Some contracts contain what is known as an 'escalator clause', which is defined as one in which the contract fixes a base price but contains a provision that in the event of specified cost increases, the seller or contractor may increase the price up to a fixed percentage of the base. Attacks on such a clause have usually been based on the claim that, because of the open price provision, the contract was too indefinite to be enforceable and did not evidence an actual meeting of the minds of the parties, or that the arrangement left the price to be determined arbitrarily by one party so that the contract lacked mutuality. In most instances, however, these attacks have been unsuccessful.

"The Court further finds as a matter of law that the cost of living index adjustment, or escalator clause, is not substantively unconscionable.

"Cost of living index adjustment clauses are widely used in commercial contracts in an effort to maintain fiscal stability and to retain 'real dollar' value to the price terms of long term contracts. The provision is a common one, and has been universally upheld and enforced. x x x."

However, it is pointed out that Section 2 of Presidential Decree No. 1684, which further amended the Usury Law, provides:

"Sec. 2. The same Act is hereby amended by adding a new section after Section 7, to read as follows:

'Sec. 7-a. Parties to an agreement pertaining to a loan or forbearance of money, goods or credits may stipulate that the rate of interest agreed upon may be increased in the event that the applicable maximum rate of interest is increased by law or by the Monetary Board: Provided, That such stipulation shall be valid only if there is also a stipulation in the agreement that the rate of interest agreed upon shall be reduced in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board: Provided further, That the adjustment in the rate of interest agreed upon shall take effect on or after the effectivity of the increase or decrease in the maximum rate of interest."

Accordingly, for a stipulation on an escalation clause to be valid, it should specifically provide (1) that there can be an increase in interest if increased by law or by the Monetary Board, and (2) it must include a provision for reduction of the stipulated interest in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board.

The purpose of the law in mandating the inclusion of a de-escalation clause is to prevent one-sidedness in favor of the lender which is considered repugnant to the principle of mutuality of contracts. As we held in *Philippine National Bank vs. Court of Appeals et al.*:^[8]

"x x x the unilateral action of the PNB in increasing the interest rate on the private respondent's loan, violated the mutuality of contracts ordained in Article 1308 of the Civil Code:

'ART. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.'

"In order that obligations arising from contracts may have the force of law between the parties, there must be mutuality between the parties based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void x x x. Hence, even assuming that the P1.8 million loan agreement between the PNB and the private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts. It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative 'to take it or leave it' x x x. Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.

The inescapable conclusion is that a de-escalation clause is an indispensable requisite to the validity and enforceability of an escalation clause in the contract. In other words, in the absence of a corresponding de-escalation clause, the escalation clause shall be considered null and void.

We are fully persuaded, however, to take particular exception from said ruling insofar as the case at bar is concerned, considering the peculiar circumstances obtaining herein. There is no dispute that the escalation clause in the promissory note involved in this case does not contain a correlative de-escalation clause or a provision providing for the reduction of the stipulated interest in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board. Notwithstanding the absence of such stipulation, however, it is

similarly not controverted but, as a matter of fact, specifically admitted by petitioner that respondent APEX unilaterally and actually decreased the interest charges it imposed on herein petitioner on three occasions.

Consequently, we hold that with this actuality, the escalation clause involved in this case remains valid and enforceable. The evil sought to be thwarted with the enactment and by the application of Presidential Decree No. 1684 is inexistent in the present case by reason of the actual grant of a concomitant decrease in the interest rates on petitioner's loan. We do not find here a situation where it can be said that the parties do not stand on equal footing, which is the evil proscribed by said decree. Ergo, cessante ratione legis cessat ipsa lex.

The insistence of petitioner that the ruling enunciated in the Banco Filipino case should be made to apply in this case has no leg to stand on. As correctly found by respondent court, the escalation clause subject of the aforementioned case is different from that stipulated between herein petitioner and private respondent. Thus:

"The escalation clause found in the promissory note executed by petitioner Llorin in favor of private respondent Apex on April 11, 1978 reads:

'I/We hereby authorized (sic) APEX MORTGAGE AND LOAN CORPORATION to correspondingly increase the rate of interest and/or service charges stipulated in this contract without notice to me/us in the event of a law or any applicable Presidential Decree and/or Central Bank regulation (which) should be enacted increasing the lawful rate of interest and/or service charges that may be charged on this particular kind of loan.'

while the escalation clause subject of the Banco Filipino vs. Navarro case (152 SCRA 346) reads:

'I/We hereby authorize Banco Filipino to correspondingly increase the interest rate stipulated in this contract without advance notice to me/us in the event a law should be enacted increasing the lawful rates of interest that may be charged on this particular kind of loan.'

"There is a significant difference between the two escalation clauses; specifically that the escalation clause found in the Banco Filipino case refers only to a 'law' increasing the lawful rates of interest that may be charged, whereas the escalation clause found in this case refers not only to a law but also 'to any Presidential Decree or Central Bank Regulation' which increases such rate of interest and/or service charges. Thus, the Supreme Court stated in the Banco Filipino case that while Central Bank Circular 494 had the force and effect of a law, it was not the law contemplated in the said escalation clause contained in the promissory note executed by the respondent del Valle in favor of petitioner Banco Filipino; the Escalation Clause was dependent on an increase of rate made by 'law' alone.

"Upon the other hand, the escalation clause in question by speaking of 'a law or any applicable Presidential Decree and/or Central Bank Regulation' which would increase the lawful rate of interest and fees chargeable on loans of this nature necessarily included Central Bank Circular(s) Nos. 721 (February 25, 1980) and 905 (s. 1982) the legality of which, as correctly pointed out by the court a quo is not assailed by the defendant, and which are applicable to both secured and unsecured loans. There existed legal basis for the increases in the interest rate chargeable against petitioner's account made by the respondent Apex on February 25, 1980 (from 12% to 21% per annum), August 1, 1984 (from 21% to 25% per annum) and December 1, 1984 (from 25% to 36% per annum). Notably the Usury Law ceased to be in existence as of December 22, 1982 (see Central Bank Circular No. 905; *Liam Law vs. Olympic Sawmill Co.*, 129 SCRA 439)." [9]

Another justification for the inapplicability of the Banco Filipino case, as correctly advanced by private respondent in its memorandum,[10] is that in said case this Court ruled that Central Bank Circular No. 494 does not make a distinction as to the type of loan to which it is applicable, hence Banco Filipino erroneously relied thereon in imposing the increased rates in interest. On the other hand and with regard to the present case, both Circulars Nos. 721 and 905 expressly provide that the interest rates prescribed therein shall be applicable to both

"secured and unsecured loans" such that both circulars can very well be made to apply to petitioner's loan.

On the foregoing premises and in light of the foregoing disquisitions, the matter of the controverted computation of petitioner's total liability has been rendered moot and academic.

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** in toto and the petition at bar is **DENIED** for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Nocon, and Campos, Jr., JJ., concur.

[1] Annex A, Petition; Rollo, 35-42.

[2] Rollo, CA-G.R. SP No. 26190, 31-43.

[3] Ibid., 31-33.

[4] Rollo, 10-11.

[5] Ibid., 37.

[6] 152 SCRA 346 (1987).

[7] 159 SCRA 133 (1988).

[8] 196 SCRA 536 (1991).

[9] Rollo, 39-40.

[10] Ibid, 116, 142-143.

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