PRODUCERS BANK OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND SPOUSES SALVADOR Y. CHUA AND EMILIA U. CHUA, RESPONDENTS.

G.R. No. 111584. September 17, 2001

Ponente: MELO, J.

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MELO, J.:

The instant petition assails the decision of the Court of Appeals in its CA-G.R.CV No. 20220, dated October 31, 1991, affirming with modification the decision of Branch 48 of the Regional Trial Court of the 6[th] Judicial Region stationed in Bacolod City, as well as the resolution dated August 12, 1993 denying petitioner's motion for partial consideration. Undersigned ponente was given this case in pursuance of A. M. No. 00-9-03-SC dated February 27, 2001 distributing the so-called back-log cases.

The generative facts of the case may be chronicled as follows:

Sometime in April, 1982, respondent Salvador Chua was offered by Mr. Jimmy Rojas, manager of petitioner bank, to transfer his account from Pacific Banking Corporation to herein petitioner Producers Bank of the Philippines. In view of Rojas' assurances of longer loan terms and lower rates of interest, respondent spouses opened and maintained substantial savings and current deposits with the Bacolod branch of petitioner bank. Likewise, private respondents obtained various loans from petitioner bank, one of which was a loan for P2,000,000.00 which was secured by a real estate mortgage and payable within a period of three (3) years or from 1982 to 1985. On January 20, 1984, private respondents deposited with petitioner bank the total sum of P960,000.00, which was duly entered in private respondents' savings account passbook. However, petitioner bank failed to credit this deposit in private respondents' savings account due to the fact that its Branch Manager, Sixto Castillo, absconded with the money of the bank's depositors. Also, petitioner bank dishonored the checks drawn out by private respondents in favor of their various creditors on the ground of insufficient funds, despite the fact that at that time, the balance of private respondents' deposit was in the amount of P1,051,051.19. These events prompted private respondents to request for copies of their ledgers covering their savings and current accounts, but petitioner bank refused. Due to petitioner bank's refusal to furnish private respondents copies of their ledgers, private respondents instituted on January 30, 1984 an action for damages against petitioner bank which was docketed as Civil Case No. 2718. On the other hand, petitioner bank filed with the City Sheriff of Bacolod a petition for extrajudicial foreclosure of the real estate mortgage during the pendency of Civil Case No.2718. As a result, private respondents filed a complaint for injunction and damages docketed as Civil Case No. 3276, alleging that the petition for extajudicial foreclosure was without basis and was instituted maliciously in order to harass private respondents. On April 26, 1988, the trial court rendered its decision on the latter case, the dispositive portion of which reads:

> WHEREFORE, from the evidence adduced, judgment is hereby rendered in favor of plaintiff ordering the defendant as follows:

1) To pay plaintiff the sum of P2,000,000.00 as moral damages, with legal rate of interest; the sum of P90,000.00 per month and P18,000.00 per month representing plaintiff's unrealized profits from his cement and gasoline station business, respectively, to commence from October 16, 1984, with legal rate of interest until fully paid; the sum of P250,000.00 as exemplary damages;

2) To off-set the sum of P960,000.00 deposited by plaintiff on January 20, 1984 and entered in his Passbook No. 38240, together with its incremental interests computed at banking rate and to commence from January 20, 1984 with his agricultural loan account in the sum of P1,300,000.00 with interest thereon computed at fourteen (14%) percent per annum, to commence from January 4, 1984, covered by a real estate mortgage, both of which shall have a cut-off time frame on the date of this decision;

3) That should the said savings deposit and its interest be sufficient to cover the off-setting, compensation shall take place and to be taken from the amounts awarded to plaintiff in the form of moral, actual and compensatory damages;

4) That the time loan in the sum of P175,000.00 and the clean loan of P400,000.00, both without interest, shall be off-settled by the moral, actual and compensatory damages herein awarded to plaintiff;

5) That after compensation or set-off had taken place, to pay plaintiff the balance of the adjudged moral, actual and compensatory damages, with legal rate of interest until fully paid;

6) To render an accounting to plaintiff with respect to his Account Nos. 0142-0014-0 and 042-0014-1 for the period covering January to December, 1982;

7) That in order to make the bank's record complete, to reform the deed of real estate mortgage conformably with the agreement by stipulating in the said document that the maturity date of the agricultural loan is April 1 5, 1987 at the same rate of interest of fourteen (14%) percent per annum, deducting from the original amount of the loan the payments made on the principal and interests; this reformation shall take place simultaneously with the off-setting of accounts;

8) To pay plaintiff the sum equivalent to fifteen (15%) percent of the amount representing the balance of the sums awarded as moral, actual and compensatory damages as attorney's fees;

9) To pay plaintiff the cots of suit;

10) The writ of preliminary injunction issued by this Court is rendered permanent; and

11) The counterclaim is hereby dismissed.

SO ORDERED.

(Rollo, pp. 261-263.)

On October 31, 1991, upon appeal by petitioner bank, the Court of Appeals modified the decision of the trial court as follows:

WHEREFORE, from the evidence adduced, judgment is hereby rendered as follows:

1. Ordering the defendant -

a. To pay plaintiff the sum of P500,000.00 as moral and exemplary damages;

b. To pay the sum of P18,000.00 per month representing plaintiffs' unrealized profits from his gasoline station business to commence from October 16, 1984, with legal rate of interest, until fully paid;

c. To allow the plaintiffs to offset their financial obligation with the defendant bank by the moral, exemplary, actual and compensatory damages herein awarded in favor of the aforesaid plaintiffs;

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d. If, after the off-setting, a balance remains in favor of the plaintiffs, to pay the said plaintiffs such balance of the adjudged moral, exemplary, actual and compensatory damages, with legal rate of interest until fully paid, as of the time of off-setting;

e. To render an accounting to plaintiffs with respect to their Account Nos. 0142-0014-0 and 042-0014-1 for the period covering January to December, 1982;

f. To pay plaintiffs the sum of P100,000.00 as attorney's fees.

g. To pay the costs of suit.

2. Ordering the plaintiffs-

a. To settle their loan obligation with the defendant bank within 90 days from the finality of this decision, subject to the resolution of this Court to the effect that they shall be relieved from the payment of penalties and surcharges on heir outstanding balance starting January 20, 1984;

3. The plaintiffs' prayer for reformation of their mortgage contract or annulment thereof is hereby denied;

4. The counterclaim of defendant-appellant are hereby dismissed.

SO ORDERED.

(Rollo, pp. 86-87.)

Petitioner moved for a partial reconsideration of the above decision but the same was denied on August 12, 1993. Hence, the instant petition with the following submissions which allegedly warrant our review of the assailed decision, viz.:

- The Court of Appeals erred in not ruling that the application for extrajudicial foreclosure of real estate mortgage is legal and valid;

- The Court of Appeals erred in not granting petitioner bank its right to foreclose extrajudicially the real estate mortgage and to proceed with its application for extrajudicial foreclosure of real estate mortgage;

- The Court of Appeals erred in ruling that private respondents be relieved from the payment of penalties and surcharges on their outstanding balance starting January 20, 1984;

- The Court of Appeals erred in awarding moral and exemplary damages of P500,000.00, unrealized profit of P18,000.00 per month, and attorney's fees of P100,000.00 against petitioner bank;

- The Court of Appeals erred in ordering an accounting to private respondents with respect to their Account Nos. 0142-0014-0 and 042-0014-1 for the period covering January to December, 1982.

It should at once be apparent that except for the first and second imputed errors which involve petitioner bank's right to foreclose extrajudicially the real estate mortgage, the resolution of the assigned errors entails a review of the factual conclusions of the appellate court and the evidentiary bases thereof. Such an assessment is not, as a rule, proper in appeals from the Court of Appeals which should be confined to a consideration and determination only of issues of law as its findings of fact are deemed conclusive (Villanueva vs. Court of Appeals, 294 SCRA 90 [1998]) especially so in this case because the findings of fact of the appellate court concur with those of the trial court. To reiterate, this Court's jurisdiction is only limited to reviewing errors of law in the absence of any showing that the findings complained of are totally devoid of support in the record or they are glaringly erroneous as to constitute serious abuse of discretion. Nonetheless, considering the amount involved, as well as for the satisfaction of the parties who have vigorously pursued this case since 1984, the Court, in the exercise of its discretion, examined the factual bases, particularly with respect to the propriety of the damages awarded to private

respondents.

The first and second assignments of error, being interrelated, shall be jointly discussed.

Petitioner contends that it has the right to foreclose the real estate mortgage executed by private respondents in its favor as the loan under the real estate mortgage contract had become due and demandable. This argument is not well-taken. Foreclosure is but a necessary consequence of non-payment of a mortgage indebtedness. As a rule, the mortgage can be foreclosed only when the debt remains unpaid at the time it is due (Gov't. of the P.I. vs. Espejo, 57 Phil. 496 [1932]). As found by the trial court and the Court of Appeals, and as borne by the evidence on record, private respondents were constantly paying their loan obligations with petitioner bank. In fact the amount of P960,000.00 was properly deposited with petitioner bank as evidenced by the corresponding deposit slip and the entry made in private respondents' savings account passbook. It is, therefore, not the fault of private respondents that their payment amounting to P960,000.00 was not credited to their account. Thus, it is certain that the loan which was secured by a real estate mortgage cannot be considered as unpaid so as to warrant foreclosure on the mortgage.

Clearly, private respondents have not yet defaulted on the payment of their loans. Moreover, the term of the loan, as agreed upon by the parties, is three years, or from 1982 to 1985. But petitioner filed its application for extrajudicial foreclosure on October 15, 1984. Indisputably, the application for foreclosure of the mortgage on October 15, 1984 was premature because by then, private respondents' loan was not yet due and demandable.

Likewise, both the Court of Appeals and the trial court found that private respondents are entitled to moral and exemplary damages. We agree. Moral and exemplary damages may be awarded without proof of pecuniary loss. In awarding such damages, the court shall take into account the circumstances obtaining in the case and assess damages according to its discretion. As borne out by the record of this case, private respondents are engaged in several businesses, such as rice and corn trading, cement dealership, and gasoline proprietorship. The dishonor of private respondents' checks and the foreclosure initiated by petitioner adversely affected the credit standing as well as the business dealings of private respondents as their suppliers discontinued credit lines resulting in the collapse of their businesses. In the case of Leopoldo Araneta vs. Bank of America (40 SCRA 144 [1971]), we held that:

> "The financial credit of a businessman is a prized and valuable asset, it being a significant part of the foundation of his business. Any adverse reflection thereon constitutes some financial loss to him."

The damage to private respondents' reputation and social standing entitles them to moral damages. Article 2217, in relation to Article 2220, of the Civil Code explicitly provides that "moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury." Obviously, petitioner bank's wrongful act caused serious anxiety, embarrassment, and humiliation to private respondents for which they are entitled to recover moral damages in the amount of P300,000.00 which we deem to be reasonable.

The award of exemplary damages is in order in view of the malicious and unwarranted application for extrajudicial foreclosure by petitioner which was obviously done to harass, embarrass, annoy, or ridicule private respondents. Likewise, petitioner, in its application for extrajudicial foreclosure, included the other loans of private respondents which were not covered by the real estate mortgage agreement, such as the loan of P175,000.00 which was a time loan, and the amount of P400,000.00 which was a clean loan. Moreover, petitioner unjustifiably refused to give private respondents copies of their account ledgers which would show the deposits made by them. Also, petitioner bank's failure to credit the deposit in the account of private respondents constituted gross negligence in the performance of its contractual obligation which amounts to evident bad faith. Verily, all

these acts of petitioner were accompanied by bad faith and done in wanton, fraudulent and malevolent manner warranting the award of exemplary damages in favor of private respondents, in accordance with Article 2232 of the Civil Code which provides:

> ART. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

Of course, a plaintiff need not prove the actual extent of exemplary damages, for its determination is addressed to the sound discretion of the court upon proof of the plaintiff's entitlement to moral, temperate, or compensatory damages (Article 2234, Civil Code). In the instant case, exemplary damages in the amount of P150,000.00 are proper.

Anent the award of actual damages, the Court of Appeals granted private respondents the amount of P18,000.00 per month representing private respondents' unrealized profits from his gasoline station business, to commence from October 16, 1984. Under Articles 2199 and 2200 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done. There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses, and the other is the failure to receive as a benefit that which would have pertained to him (Tolentino, Civil Code of the Phil., Vol. V, 1992 ed., pp. 633-636). In the latter instance, the familiar rule is that damages consisting of unrealized profits, frequently referred as "ganacias frustradas" or "lucrum cessans," are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard such as market value, established experienced, or direct inference from known circumstances (Talisay-Silay Milling Co., Inc. vs. Asociacion de Agricultores de Talisay-Silay, Inc., 247 SCRA 361 [1995]).

In the case at bar, actual damages in the form of unrealized profits were awarded on the basis of the sole testimony of private respondent Salvador Chua, to wit:

> Atty. Chua:
>
> Q:
>
> You mentioned earlier during your direct testimony that you are engaged in gasoline business. Do you have a gasoline station.
>
> A:
>
> Yes, sir.
>
> Q:
>
> Where is that located?
>
> A:
>
> It is located at Corner Araneta-San Sebastian Sts.
>
> Q:
>
> Before the filing of the Extra Judicial Foreclosure, how much more or less, you earned from that gasoline station by way of conservative estimate?
>
> A:
>
> In my gasoline business, based on my record, I have an average of 114,000 liters.

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Q:

Do you mean to say you can dispose 114,000 liters a month?

A:

Yes, sir.

Q:

How much is the mark up per liter?

A:

Before the publication of the Extra Judicial Foreclosure the markup is P0.27 per liter. So, it comes out that the profit is P30,78.00 (sic).

Q:

How much is your overhead for disposing that much liters of gasoline every month?

A:

The overhead is about 12,280.00.

Q:

That will give you an average of P18,000.00 a month?

A:

Yes; sir.

Q:

After the filing of the Extra Judicial Foreclosure, what happened to your gasoline business?

A:

Because of the publication of the Extra Judicial Foreclosure I did not have credit line anymore. Since I have no capital I was forced to sell my right to operate to my relatives.

(tsn, March 25, 1986, pp. 9-12)

However, other than the testimony of Salvador Chua, private respondents failed to present documentary evidence which is necessary to substantiate their claim for actual or compensatory damages. In order to recover this kind of damages, the injured party must prove his case, thus:

> When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. (Cerreno vs. Tan Chuco, 28 Phil. 312 [1914] quoted in Central Bank of the Philippines vs. Court of Appeals, 63 SCRA 431 [1975])

Applying the foregoing test to the instant case, the Court finds the evidence of private respondents insufficient to be considered within the purview of "best evidence." The bare assertion of private respondent Salvador Chua that

he lost an average of P18,000.00 per month is inadequate if not speculative and should be admitted with extreme caution especially because it is not supported by independent evidence. Private respondents could have presented such evidence as reports on the average actual profits earned by their gasoline business, their financial statements, and other evidence of profitability which could aid the court in arriving with reasonable certainty at the amount of profits which private respondents failed to earn. Private respondents did not even present any instrument or deed evidencing their claim that they have transferred their right to operate their gasoline station to their relatives. We cannot, therefore, sustain the award of P18,000.00 a month as unrealized profits commencing from October 16, 1984 because this amount is not amply justified by the evidence on record.

Further, well-settled is the rule that even if the petition for extrajudicial foreclosure filed by petitioner against private respondents is clearly unfounded, this does not necessarily mean, in the absence of specific facts proving damages, that actual damage has been sustained. The Court cannot rely on speculations as to the fact and amount of damages. It must depend on actual proof of the damages alleged to have been suffered (Perfecto vs. Gonzales, 128 SCRA 635 [1984]).

Finally, the award of attorney's fees as part of damages is deemed just and equitable under the circumstances. Attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party (Ching Sen Ben vs. Court of Appeals, 314 SCRA 762 [1999]). In this case, petitioner bank's act of not crediting private respondents' deposit of P960,000.00, as well as the premature filing of the extrajudicial foreclosure, have compelled private respondents to institute an action for injunction and damages primarily in order to protect their rights and interests. The award of attorney's fees is also justified under Article 2208 of the Civil Code which provides:

> 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;

WHEREFORE, the decision of the Court of Appeals in its CA-G.R. CV No. 20220 is affirmed with MODIFICATION only as to the award of damages in that petitioner bank is ordered to pay private respondents the following:

- Three Hundred Thousand Pesos (P300,000.00) as moral damages;

- One Hundred Fifty Thousand Pesos (P150,000.00) as exemplary damages; and

- One Hundred Thousand Pesos (P100,000.00) as attorney's fees and litigation expenses.

In all other respects, the said judgment is affirmed.

SO ORDERED.

Vitug, Panganiban, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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