

SPOUSES ANTONIO E.A. CONCEPCION AND MANUELA S. CONCEPCION, PETITIONERS, VS. HON. COURT OF APPEALS, HOME SAVINGS BANK AND TRUST COMPANY, AND AS NOMINAL PARTY-DEFENDANTS, THE SHER...

G.R. No. 122079. June 27, 1997

Ponente: VITUG, J.

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VITUG, J.:

The spouses Antonio E.A. Concepcion and Manuela S. Concepcion assail, via the instant petition for review on certiorari, the decision,[1] dated 15 September 1995, of the Court of Appeals, affirming with modification the judgment of the Regional Trial Court ("RTC"),[2] Branch 157, of Pasig City,[3] that dismissed the complaint of herein petitioners against private respondents.

The facts, hereunder narrated, are culled from the findings of the appellate court.

On 17 January 1979, the Home Savings Bank and Trust Company (now Insular Life Savings and Trust Company) granted to the Concepcions a loan amounting to P1,400,000.00. The Concepcions, in turn, executed in favor of the bank a promissory note and a real estate mortgage over their property located at 11 Albany St., Greenhills, San Juan, Metro Manila. The loan was payable in equal quarterly amortizations for a period of fifteen (15) years and carried an interest rate of sixteen percent (16%) per annum. The promissory note provided that the Concepcions had authorized -

"x x x the Bank to correspondingly increase the interest rate presently stipulated in this transaction without advance notice to me/us in the event the Central Bank of the Philippines raises its rediscount rate to member banks, and/or the interest rate on savings and time deposit, and/or the interest rate on such loans and/or advances."[4]

In accordance with the above provision, the bank unilaterally increased the interest rate from 16% to 21% effective 17 February 1980; from 21% to 30% effective 17 October 1984; and from 30% to 38% effective 17 November 1984, increasing the quarterly amortizations from P67,830.00 to, respectively, P77,619.72, P104,661.10, and P123,797.05 for the periods aforesated. The Concepcions paid, under protest, the increased amortizations of P77,619.72 and P104,661.10 until January 1985 but thereafter failed to pay the quarterly amortization of P123,797.05 (starting due date of 17 April 1985).

In a letter, dated 15 July 1985, the bank's President made a demand on the Concepcions for the payment of the arrearages. The Concepcions failed to pay, constraining the bank's counsel to send a final demand letter, dated 26 August 1985, for the payment of P393,878.81, covering the spouses' due account for three quarterly payments plus interest, penalty, and service charges. Still, no payment was received.

On 14 April 1986, the bank finally filed with the Office of the Provincial Sheriff of Pasig City a petition for extrajudicial foreclosure of the real estate mortgage executed by the Concepcions. A notice of sale was issued on

15 May 1986, setting the public auction sale on 11 June 1986. The notice was published in the newspaper "Mabuhay." A copy of the notice was sent to the Concepcions at 59 Whitefield St., White Plains Subdivision, Quezon City and/or at 11 Albany St., Greenhills Subdivision, San Juan, Metro Manila. The public auction sale went on as scheduled with the bank emerging as the highest bidder. A Certificate of Sale was issued in favor of the bank.

The Concepcions were unable to exercise their right of redemption within the one-year period provided under Act No. 3135. The bank thus consolidated its title over the property and, after the cancellation of the title in the name of the Concepcions, a new transfer certificate of title (No. 090-R) was issued in the name of Home Savings Bank and Trust Company.

On 31 July 1987, the bank executed a Deed of Absolute Sale in favor of Asaje Realty Corporation and a new certificate of title was issued in the latter's name.

Meanwhile, on 29 July 1987, the Concepcions filed an action against Home Savings Bank and Trust Company, the Sheriff of San Juan, Metro Manila, and the Register of Deeds of San Juan, Metro Manila, for the cancellation of the foreclosure sale, the declaration of nullity of the consolidation of title in favor of the bank, and the declaration of nullity of the unilateral increases of the interest rates on their loan. The spouses likewise claimed damages against the defendants. The Concepcions, having learned of the sale of the property to Asaje Realty Corporation, filed an amended complaint impleading the realty corporation and so praying as well for the cancellation of the sale executed between said corporation and the bank and the cancellation of the certificate of title issued in the name of Asaje.

On 31 August 1992, the trial court found for the defendants and ruled:

"In view of all the foregoing premises, this Court finally concludes that the plaintiffs have no cause of action either against defendant Home Savings Bank & Trust Company or defendant Asaje Realty Corporation; and under the circumstances of this case, it deems it just and equitable that attorney's fees and expenses of litigation should be recovered by said defendants.

"WHEREFORE, judgment is hereby rendered dismissing the amended complaint of plaintiffs Spouses Antonio E.A. Concepcion and Manuela S. Concepcion against the defendants for lack of merit, and ordering the said plaintiffs to pay attorney's fees and expenses of litigation in the sum of P30,000.00 to defendant Home Savings Bank & Trust Company and in the amount of P25,000.00 to defendant Asaje Realty Corporation, in addition to their respective costs of suit.

"SO ORDERED."[5]

The Concepcions went to the Court of Appeals.

On 15 September 1995, the appellate court affirmed the trial court's decision, with modification, as follows:

"Under the facts and circumstances of the case at bench, the award of attorney's fees, expenses of litigation and costs of suit in favor of defendant-appellee should be deleted. It is not a sound policy to place a penalty on the right to litigate, nor should counsel's fees be awarded everytime a party wins a suit (Arenas vs. Court of Appeals, 169 SCRA 558).

"WHEREFORE, the appealed judgment is AFFIRMED with the modification that the award of attorneys fees, litigation expenses and costs of suit in favor of defendant-appellees are deleted from the dispositive portion.

"SO ORDERED."[6]

The Concepcions forthwith filed with this Court a petition for review on certiorari, contending that they have been

denied their contractually stipulated right to be personally notified of the foreclosure proceedings on the mortgaged property.

There is some merit in the petition.

The three common types of forced sales arising from a failure to pay a mortgage debt include (a) an extrajudicial foreclosure sale, governed by Act No. 3135; (b) a judicial foreclosure sale, regulated by Rule 68 of the Rules of Court; and (c) an ordinary execution sale, covered by Rule 39 of the Rules of Court.[7] Each mode, peculiarly, has its own requirements.

In an extrajudicial foreclosure, such as here, Section 3 of Act No. 3135[8] is the law applicable;[9] the provision reads:

"Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city."

The Act only requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation.[10] Personal notice to the mortgagor is not necessary.[11] Nevertheless, the parties to the mortgage contract are not precluded from exacting additional requirements.

In the case at bar, the mortgage contract stipulated that -

"All correspondence relative to this Mortgage, including demand letters, summons, subpoenas, or notifications of any judicial or extrajudicial actions shall be sent to the Mortgagor at the address given above or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee, and the mere act of sending any correspondence by mail or by personal delivery to the said address shall be valid and effective notice to the Mortgagor for all legal purposes, and fact that any communication is not actually received by the Mortgagor, or that it has been returned unclaimed to the Mortgagee, or that no person was found at the address given, or that the address is fictitious or cannot be located, shall not excuse or relieve Mortgagor from the effects of such notice."[12]

The stipulation, not being contrary to law, morals, good customs, public order or public policy, is the law between the contracting parties and should be faithfully complied with.[13]

Private respondent bank maintains that the stipulation that "all correspondence relative to (the) Mortgage x x x shall be sent to the Mortgagor at the address given above or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee"[14] gives the mortgagee an alternative to send its correspondence either at the old or the new address given.[15] This stand is illogical. It could not have been the intendment of the parties to defeat the very purpose of the provision referred to which is obviously to apprise the mortgagors of the bank's action that might affect the property and to accord to them an opportunity to safeguard their rights. The Court finds the bank's failure to comply with its agreement with petitioners an inexcusable breach of the mortgagee's covenant. Neither petitioners' subsequent opportunity to redeem the property nor their failed negotiations with the bank for a new schedule of payments,[16] can be a valid justification for the breach.

The foregoing notwithstanding, petitioners may no longer seek the reconveyance of the property from private respondent Asaje Realty Corporation, the latter having been, evidently, an innocent purchaser in good faith.[17] The realty corporation purchased the property when the title was already in the name of the bank. It was under no obligation to investigate the title of the bank or to look beyond what clearly appeared to be on the face of the certificate.[18]

Private respondent bank, however, can still be held to account for the bid price of Asaje Realty Corporation over and above, if any, the amount due the bank on the basis of the original interest rate, the unilateral increases made by the bank having been correctly invalidated by the Court of Appeals.

The validity of "escalation" or "escalator" clauses in contracts, in general, was upheld by the Supreme Court in *Banco Filipino Savings and Mortgage Bank vs. Hon. Navarro and Del Valle*.^[19] Hence:

"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 raise 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. Indeed, the Federal government has recognized the efficacy of escalator clauses in tying Social Security benefits to the cost of living index, 42 U.S.C.s 415(i). Pension benefits and labor contracts negotiated by most of the major labor unions are other examples. That inflation, expected or otherwise, will cause a particular bargain to be more costly in terms of total dollars than originally contemplated can be of little solace to the plaintiffs."^[20]

In *Philippine National Bank vs. Court of Appeals*,^[21] the Court further elucidated, as follows:

"It is basic that there can be no contract in the true sense in the absence of the element of agreement, or of mutual assent of the parties. If this assent is wanting on the part of one who contracts, his act has no more efficacy than if it had been done under duress or by a person of unsound mind.

"Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, it cannot be gainsaid that the rate of interest is always a vital component, for it can make or break a capital venture. Thus, any change must be mutually agreed upon, otherwise, it is bereft of any binding effect.

"We cannot countenance petitioner bank's posturing that the escalation clause at bench gives it unbridled right to unilaterally upwardly adjust the interest on private respondents' loan. That would completely take away from private respondents the right to assent to an important modification in their agreement, and would negate the element of mutuality in contracts. In *Philippine National Bank v. Court of Appeals, et al.*, 196 SCRA 536, 544-545 (1991) we held -

"x x x (T)he 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 x x x 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. (Citations omitted.)"[22]

Even if we were to consider that petitioners were bound by their agreement allowing an increase in the interest rate despite the lack of advance notice to them, the escalation should still be subject, as so contractually stipulated, to a corresponding increase by the Central Bank of its rediscount rate to member banks, or of the interest rate on savings and time deposit, or of the interest rate on such loans and advances. The notices sent to petitioners merely read:

Letter of 19 July 1984:

"Please be informed that the Bank has increased the interest rate of your existing loan from 21 to 30% per annum beginning October 17, 1984. This increase of interest rate is in accordance with the provision of Section 2 of Presidential Decree No. 1684[23] amending Act No. 2655. This provision of the decree is reiterated under paragraph 1 of your Promissory Note. Your quarterly amortization has been increased to P104,661.10.

"We trust that you will be guided accordingly."[24]

Letter of 14 November 1984:

"On account of the prevailing business and economic condition, we are compelled to increase the interest rate of your existing loan from 30% to 38% per annum effective November 17, 1984. This increase is in accordance with your agreement (escalation clause) in your promissory note/s.

"In view of this increase in the interest rate of your loan, your Quarterly amortization correspondingly increased to P123,797.05 commencing on April 17, 1985.

"We trust that you will understand our position and please be guided accordingly."[25]

Given the circumstances, the Court sees no cogent reasons to fault the appellate court in its finding that there are no sufficient valid justifications aptly shown for the unilateral increases by private respondent bank of the interest rates on the loan.

WHEREFORE, the decision of the appellate court is AFFIRMED subject to the MODIFICATION that private respondent Home Savings Bank and Trust Company shall pay to petitioners the excess, if any, of the bid price it received from Asaje Realty Corporation for the foreclosed property in question over and above the unpaid balance of the loan computed at the original interest rate. This case is REMANDED to the trial court for the above determination. No costs.

SO ORDERED.

Padilla, (Chairman), and Hermosisima, Jr., JJ., concur.

Bellosillo, and Kapunan, JJ., on leave.

[1] Penned by Associate Justice Ma. Alicia Austria-Martinez and concurred in by Associate Justices Antonio M. Martinez and Bernardo Ll. Salas.

[2] Through Judge Domingo R. Garcia.

[3] Then Pasig, Metro Manila

[4] Rollo, p. 61.

[5] Rollo, p. 57.

[6] Rollo, p. 39.

[7] The Abaca Corporation of the Philippines vs. Garcia and Court of Appeals, G.R. No. 118408, 14 May 1997.

[8] An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages.

[9] See Philippine National Bank vs. International Corporate Bank, 199 SCRA 508.

[10] Gravina vs. Court of Appeals, 220 SCRA 178.

[11] Olizon vs. Court of Appeals, 236 SCRA 148.

[12] Rollo, p. 59.

[13] See Article 1306, Civil Code; see also Community Savings and Loan Association, Inc., et al. vs. Court of Appeals, et al., 153 SCRA 564; Grand Farms, Inc., vs. Court of Appeals, 193 SCRA 748.

[14] Rollo, p. 59.

[15] The new mailing address (at P.O. Box 2432 Bonhannon Drive Post Office Menlo Park, CA 94025, U.S.A. or at c/o Consanto Corp., 1152 Burlingame Ave., Burlingame, CA 9410, U.S.A.) was given by petitioners to respondent bank in a letter sent on 11 October 1993.

[16] Rollo, pp. 187-188.

[17] See Tenio-Obsequio vs. Court of Appeals, 230 SCRA 550.

[18] See Dino vs. Court of Appeals, 213 SCRA 422.

[19] 152 SCRA 346.

[20] At pp. 353-354, citing Bennett vs. Behring Corp., 466 F. Supp. 689 at 699 (1979).

[21] 238 SCRA 20.

[22] At pp. 25-26.

[23] AMENDING FURTHER ACT NUMBERED TWO THOUSAND SIX HUNDRED FIFTY-FIVE, AS AMENDED, OTHERWISE KNOWN AS "THE USURY LAW."

The Decree provides:

"SECTION 1. Section 1-a of Act No. 2655, as amended, is hereby amended to read as follows:

"`SEC. 1-a. The Monetary Board is hereby authorized to prescribe the maximum rate or rates of interest for the loan or renewal thereof or the forbearance of any money, goods or credits, and to change such rate or rates whenever warranted by prevailing economic and social conditions: Provided, That changes in such rate or rates may be effected gradually on scheduled dates announced in advance.

"`In the exercise of the authority herein granted, the Monetary Board may prescribe higher maximum rates for loans of low priority, such as consumer loans or renewals thereof as well as such loans made by pawnshops,

finance companies and other similar credit institutions although the rates prescribed for these institutions need not necessarily be uniform. The Monetary Board is also authorized to prescribe different maximum rate or rates for different types of borrowings, including deposits and deposit substitutes, or loans of financial intermediaries.'

"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.'

"SEC. 3. All acts and part of Acts inconsistent with the provisions of this Decree are hereby repealed or modified accordingly."

[24] Rollo, p. 65.

[25] Rollo, p. 66.

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