

ASIATRUST DEVELOPMENT BANK, PETITIONER, VS. CONCEPTS TRADING CORPORATION, RESPONDENT.

G.R. No. 130759. June 20, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals and its Resolution in CA-G.R. CV No. 44211 affirming on appeal with modification the Decision[2] of the Regional Trial Court of Makati, Branch 68, in Civil Case No. 89-3789.

As culled from the records, the facts of the case are as follows:

In March 1996, respondent Concepts Trading Corporation obtained from petitioner Asiatrust Development Corporation a credit accommodation in the amount of P2,000,000 covered by a loan agreement[3] and secured by real and chattel mortgages.[4] The amount was drawn from an Industrial Guarantee Loan Fund (IGLF) account opened by the petitioner in favor of the respondent. On March 4, 1986, the respondent executed Promissory Note (PN) No. 3574[5] in favor of the petitioner. Under the promissory note, the principal amount of P2,000,000 would be charged an interest of 23% per annum, inclusive of 1% service fee. Attached to and made part of the promissory note was the schedule of amortization agreed upon by the parties.[6] As set forth in the schedule, the payment of the loan was to be amortized quarterly over a period of ten years with a two-year grace period on the principal payment. The first payment fell due on May 15, 1986 and the subsequent installments were to be paid every three months thereafter.

In the event that the respondent defaulted in the payment of any installment or interest thereof, paragraph 4 of the promissory note provided that:

... the entire amount outstanding under this Note shall immediately, without need for any notice, demand, presentment, protest, or of any other act or deed, the right to all of which is hereby waived by the undersigned: (i) become due, payable and defaulted; (ii) be subject to a penalty equivalent to thirty-six percent (36%) per annum thereof; (iii) together with said penalty, commence to earn interest as [sic] the rate of twenty-three percent (23%) per annum counted from the date of default until full payment thereof.

The respondent failed to pay the amortizations due on August 15 and November 15, 1987, prompting the petitioner to enforce the aforementioned acceleration clause. On January 25, 1988, the petitioner sent a letter[7] to the respondent demanding payment of its outstanding loan obligation, amounting to P3,203,049 under PN No. 3574 and PN No. 4132.[8]

In its Letter to the petitioner dated February 3, 1988, the respondent expressed its willingness to settle its obligation and, due to its tight financial situation, negotiated for a modified payment scheme.[9] Thereafter, on March 30, 1988, the parties entered into a Memorandum of Agreement (MOA), the pertinent provisions of which read:

WHEREAS, CONCEPTS hereby acknowledges and affirms that it has applied and was granted by the Bank a credit accommodation consisting of an Industrial Guarantee Loan Fund ("IGLF") Account in the amount of P2.0 Million dated 4 March 1986 (hereinafter, the "LOAN OBLIGATION") which, to date, is already overdue and demandable in its entirety including all interests, penalties, service and other miscellaneous charges.

...

1. CONCEPTS hereby promises and undertakes to pay the BANK the LOAN OBLIGATION in the following manner, to wit:

a) On 5 May 1988, the amount of P159,259.14, to be covered by a post-dated check for the same amount to be issued by CONCEPTS; and

b) On 5 June 1988 and every 5th of every succeeding month, P150,000.00 until the LOAN OBLIGATION shall have been fully paid. CONCEPTS hereby undertakes to cover the above-mentioned payments by post-dated checks, by first delivering to the BANK five (5) checks covering the first five (5) month period, without prejudice to the BANK's right to demand the delivery of another set of five (5) checks covering the subsequent five (5) month period, 15 days prior to the due date of the last check in the BANK's possession, and so on and so forth, until the LOAN OBLIGATION shall have been fully paid.

It is likewise understood that upon payment of ten (10) monthly amortizations as above-indicated or upon updating of payments of the LOAN OBLIGATION, CONCEPTS shall have the right to re-negotiate with the Bank the reinstatement of the original terms of payment under Promissory Note No. 3574.

...

3. The BANK and CONCEPTS hereby further agree that all other provisions and stipulations in the existing Promissory Notes and other documents evidencing the LOAN OBLIGATION shall remain in force and effect, except those which are inconsistent with the above-mentioned Mode of Payment.

4. CONCEPTS hereby waives notice of dishonor and/or default of its LOAN OBLIGATION: provided, however, that the BANK reserves the right to grant a grace period of (15) days for settlement of the obligation; provided, further, that such grant of a grace period shall not constitute waiver of any right of the BANK. It shall also be understood that CONCEPTS' default in this mode of payment shall likewise automatically accelerate the entire LOAN OBLIGATION.

5. It shall likewise be understood that this mode of payment arises out of the BANK's liberality and is without prejudice and without waiver of the BANK's accrued rights under the existing chattel and real estate mortgages as well as the Continuing Suretyship Agreement pertinent to the LOAN OBLIGATION, all of which mortgages and Agreement are hereby expressly continued to be in force and effect.[10]

In compliance with its undertaking under the MOA, the respondent delivered the first check dated May 5, 1988 in the amount of P159,259.14 and four other checks in the sum of P150,000 each or for the total amount of P759,259.14. This was followed by another batch of five checks covering the months of October 1988 to February 1989, also in the amount of P150,000 each or for a total amount of P750,000.

On March 30, 1989, the petitioner wrote to the respondent requesting for the delivery of the "last checks to completely rehabilitate" its account in accordance with the MOA. When the respondent failed to make the said payments, the petitioner on April 25, 1989 sent a final demand on the respondent to pay its entire obligation under the IGLF in the amount of P2,361,970.10 within five days from receipt thereof.[11]

The respondent thereafter filed with the Regional Trial Court of Makati City, Branch 149, a petition for declaratory relief. The respondent alleged that it is up to date in the payment of its loan obligation and, according to its record, the remaining balance amounted to only P316,550.48. The respondent prayed for the trial court to

determine the rights and duties of the parties under the MOA to avoid the miscomputation of the loan obligation and any breach thereof.

In its answer, the petitioner averred that as of February 15, 1988, the outstanding obligation of the respondent amounted to P2,833,867.04. According to the petitioner, the monthly amortizations paid by the respondent covered only the penalties accruing on the loan. Further, declaratory relief as a remedy sought by the respondent was allegedly improper as it already committed a breach of its obligations. The respondent filed the action a quo merely to defer or avoid payment of its legally contracted loan obligation with the petitioner. By way of compulsory counterclaim, the petitioner prayed for damages and attorney's fees.

The respondent then filed an amended complaint alleging that as of August 1989, it had already paid the petitioner the total amount of P2,259,259 and that there was an overpayment of P100,000. The respondent prayed that the petitioner be ordered to refund the amount overpaid, as well as to release the mortgages and to pay damages and attorney's fees.

After due trial, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

- a) ordering the subject complaint DISMISSED for lack of merit;
- b) ordering the plaintiff to pay to the defendant the amount of P395,210.30 to earn interest at 22% per annum from the date of this decision;
- c) declaring the Real Estate Mortgage and the Chattel Mortgage as valid and subsisting which may be foreclosed by the defendant in case of non-payment of the aforestated obligation after demand;
- d) ordering the plaintiff to pay to the defendant the amount of P10,000.00 as attorney's fees and litigation expenses.

So ordered.[12]

On appeal by the petitioner, the Court of Appeals (CA) affirmed with modification the decision of the trial court. The CA found that the respondent's outstanding obligation to the petitioner amounted only to P309,298.58. The CA likewise reduced the penalty accruing thereon from 36% to 3% per annum. The dispositive portion of the assailed decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the Decision of the lower court dated December 14, 1992 is AFFIRMED with the modification that the outstanding balance of plaintiff-appellee as of September 5, 1989 is P309,298.58 subject to a penalty of 3% per annum, and together with said penalty, the whole amount is subject to an interest of 23% per annum inclusive of service charges, until the entire amount has been fully paid. No pronouncement as to costs.

SO ORDERED.[13]

Aggrieved, the petitioner now comes to this Court alleging that:

A.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND SUPREME COURT DECISIONS IN RULING THAT ASIATRUST WAIVED COLLECTION OF ACCRUED PENALTIES AND CHARGES DUE FROM CONCEPTS UNDER PN 3574 BY EXECUTING THE MOA, BECAUSE THE MOA DID NOT EXPRESSLY PROVIDE FOR SUCH WAIVER, AND STIPULATED THAT, UNLESS INCONSISTENT WITH THE MOA MODE OF PAYMENT, "ALL OTHER EXISTING PROVISIONS AND STIPULATIONS IN THE EXISTING

PROMISSORY NOTES X X X SHALL REMAIN IN FORCE AND EFFECT."

B.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH §20 OF RULE 132 OF THE RULES OF COURT IN FINDING WITNESS REBECCA DE LA CRUZ' UNREBUTTED IDENTIFICATION OF ASIATRUST'S EXHIBIT "7" AS A STATEMENT OF ACCOUNT, AND HER UNREBUTTED IDENTIFICATION OF THE SIGNATURE OF THE EXHIBIT, AS INSUFFICIENT AUTHENTICATION OF THAT EXHIBIT, AND IN RELYING ON TESTIMONY READ FROM A LEDGER NEITHER IDENTIFIED NOR OFFERED IN EVIDENCE.[14]

The petition is bereft of merit.

The petitioner maintains that the CA erred in holding that the petitioner waived collection of accrued penalties and miscellaneous charges under PN 3574 by entering into the MOA. No such waiver was expressed in the MOA and, in fact, paragraph 3 thereof expressly provides that "all other provisions and stipulations in the existing promissory notes and other documents evidencing the LOAN OBLIGATION shall remain in force and effect, except those which are inconsistent with the above-mentioned mode of payment." Further, the petitioner's consistent application of the payments respondent made to the penalties, charges and interests is a plain manifestation of its contractual intent, and is properly cognizable as evidence of that intent under Article 1371 of the Civil Code which provides:

Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.

The petitioner likewise avers that the CA erred in not according probative value to the statement of account which the petitioner offered in evidence. The petitioner contends that, contrary to the holding of the CA, the statement of account was properly identified by its witness, Rebecca de la Cruz.

The Court does not agree with the petitioner.

It is a time-honored rule of evidence that when the terms of an agreement are reduced to writing, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents of the agreement itself.[15] This rule allows exceptions, in that a party may present parole evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleadings:

- a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- c) The validity of the written agreement; or
- d) The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.[16]

A careful perusal of the MOA reveals that it fixed the respondent's loan obligation to the petitioner at P2,000,000 which was already due and demandable in its entirety, including "all interests, penalties, service and other miscellaneous charges." Further, Paragraph 1 thereof set forth the manner by which the loan obligation was to be paid, to wit:

1. CONCEPTS hereby promises and undertakes to pay the BANK the LOAN OBLIGATION in the following manner, to wit:
 - a) On 5 May 1988, the amount of P159,259.14, to be covered by a post-dated check for the same amount to be issued by CONCEPTS; and

b) On 5 June 1988 and every 5th of every succeeding month, P150,000.00 until the LOAN OBLIGATION shall have been fully paid. CONCEPTS hereby undertakes to cover the above-mentioned payments by post-dated checks, by first delivering to the BANK five (5) checks covering the first five (5) month period, without prejudice to the BANK's right to demand the delivery of another set of five (5) checks covering the subsequent five (5) month period, 15 days prior to the due date of the last check in the BANK's possession, and so on and so forth, until the LOAN OBLIGATION shall have been fully paid.

It is likewise understood that upon payment of ten (10) monthly amortizations as above-indicated or upon updating of payments of the LOAN OBLIGATION, CONCEPTS shall have the right to re-negotiate with the Bank the reinstatement of the original terms of payment under Promissory Note No. 3574.[17]

However, the MOA failed to state the exact amounts of interests, service charges and penalties accruing on the loan obligation. To determine the same, the CA relied on the testimony of the petitioner's comptroller, Rebecca de la Cruz, who testified thereon as follows:

Atty. Ortiz:

Q:

Now, as of the date January 25, 1988 what was the total obligation of the plaintiff to the defendant?

COURT: (to the witness)

According to your ledger it could be any date closer to January 25, 1988?

WITNESS:

A: The date which is closer to January 25, 1988 is April 28, 1988. It says here if you still have a 2 MILLION PESO principal balance. We have here an interest of P24,000.00 and still we have service charges.

COURT:

Service charges of how much?

WITNESS:

A: P123,000.00 and still we have unpaid penalties of P76,000.00, Your Honor.[18]

Based on the foregoing, the CA correctly fixed the respondent's outstanding balance to the petitioner as of the execution of the MOA at P2,223,000 consisting of the principal obligation of P2,000,000, penalties of P76,000, service charges of P123,000 and interests of P24,000:

After a thorough review of the MOA, We are convinced that plaintiff-appellee's obligation consists of its original P2 million loan under PN No. 3574 including interests and service fees but excluding penalty and other miscellaneous charges.

Thus, the MOA itself provides:

"1. CONCEPTS hereby promises and undertakes to pay the BANK the LOAN OBLIGATION in the following manner, to wit:"

(p. 2, MOA; Exhs. "B" and "10," pp. 5 and 45, Folder of Exhibits)

In the MOA's first whereas clause, the term "loan obligation" was referred to as "the amount of P2 Million, which to date, is already overdue and demandable in its entirety including all interests, penalties, service and other miscellaneous charges." (p. 1, MOA; pp. 4 and 44, *ibid.*). The MOA, therefore, acknowledged that plaintiff-appellee, having failed to pay several amortizations under the PN, was liable for the entire amount of P2 million plus interest in arrears, penalties and other charges in accordance with the acceleration clause of the PN.

However, due to the bank's liberality, it waived the demandability of the entire loan by entering into the MOA, allowing plaintiff-appellee to continue paying its amortization, this time on a monthly basis. By such waiver, plaintiff-appellee has effectively not been rendered in default thereby waiving likewise the penalty imposable on the loan in the event of default.

Accordingly, under the MOA, plaintiff-appellee continues to be liable for its obligation under the note, i.e., principal amount of P2 million plus interests and service fees, as if it was not yet in default. The first installment under the MOA in the amount of P159,259.14 including several of the monthly installments of P150,000 were applicable to interest and service fees in arrears while the remaining monthly amortizations covered the principal and interest falling due thereon.[19]

The petitioner nonetheless assails the above figures, insisting that the CA erred in holding that:

However, due to the bank's liberality, it waived the demandability of the entire loan by entering into the MOA, allowing plaintiff-appellee to continue paying its amortization, this time on a monthly basis. By such waiver, plaintiff-appellee has effectively not been rendered in default thereby waiving likewise the penalty imposable on the loan in event of default.[20]

The petitioner asserts that the respondent continued to be liable for penalty charges as provided under the promissory note notwithstanding the execution of the MOA. This contention is untenable. Under the schedule of amortization contained in the promissory note, the respondent obliged to pay the principal obligation in quarterly amortizations over a period of ten years and that in case of default, the entire amount shall be due and demandable in its entirety. On the other hand, under the MOA, a new mode of payment was agreed upon, i.e., the payment by the respondent of the initial amount of P159,259.14 and subsequent payments of P150,000 every month until full payment of the loan obligation. The MOA, in effect, rendered the loan no longer due and demandable in its entirety at the time of its execution, precisely because it allowed the respondent under the new schedule of payments to pay the same by monthly installments. It bears stressing that the MOA provided that the mode of payment arose "out of the BANK's liberality." To allow the petitioner to collect penalty charges as if the respondent were in default, notwithstanding the existence of a new payment schedule, would be inconsistent with the aforesaid agreement.

It must be stressed, however, that the foregoing should not be construed as to mean that the respondent could no longer be held in default and that the petitioner completely waived collection of penalty charges in case of default. Non-payment by the respondent of any of the monthly installments as provided under the MOA would render it in default and the petitioner could collect the penalty charges therefor. As will be shown later, the CA did in fact determine the exact time when the respondent defaulted on its obligation under the MOA and accordingly reckoned therefrom the penalty charges due the petitioner.

The records show that the respondent, in accordance with the MOA, made the initial payment of P159,259.16 on May 5, 1988. Thereafter, the respondent made payments in the amount of P150,000 every month up to September 1989. The CA then tabulated these payments[21] as follows:

4/28/88

Principal P2,000,000.00

Interest P24,000.00

Service Charge P123,000.00

Penalty P76,000.00

Subtotal P2,063,740.86

Payment P159,259.14

Total P2,063,740.86

1.	2,063,740.90	37,835.25	1,719.78	2,103,295.90	150,000.00	1,953,295.90
2.	1,953,295.90	35,810.42	1,627.75	1,990,734.00	150,000.00	1,840,734.00
3.	1,840,734.00	33,746.79	1,533.94	1,876,014.70	150,000.00	1,726,014.70
4.	1,726,014.70	31,643.60	1,438.34	1,759,096.60	150,000.00	1,609,096.60
5.	1,609,096.60	29,500.10	1,340.91	1,639,937.60	150,000.00	1,489,937.60
6.	1,489,937.60	27,315.52	1,241.61	1,518,494.70	150,000.00	1,368,494.70
7.	1,368,494.70	25,089.07	1,140.41	1,394,724.10	150,000.00	1,244,724.10
8.	1,244,724.10	22,819.94	1,037.27	1,268,581.30	150,000.00	1,118,581.30
9.	1,118,581.30	20,507.32	932.15	1,140,020.70	150,000.00	990,020.70
10.	990,020.70	18,150.38	825.02	1,008,996.00	150,000.00	858,996.00
11.	858,996.00	15,748.28	715.83	875,460.11	150,000.00	725,460.11
12.	725,460.11	13,300.10	604.55	739,364.76	150,000.00	589,364.76
13.	589,364.76	10,805.02	491.14	600,660.91	150,000.00	450,660.91
14.	450,660.91	8,262.12	375.55	459,298.58	150,000.00	309,298.58

As noted by the CA, after the last payment of P150,000 on September 1989, the respondent still owed the petitioner the sum of P309,298.58. The respondent's non-payment of the amortizations due after the said date rendered the balance due and demandable in its entirety, in accordance with the acceleration clause under the MOA. Further, since the respondent defaulted in its monthly payments after September 1989, it was only then that it could be rightfully imposed the penalty charges in accordance with the promissory note. Thus, contrary to the petitioner's contention, the CA did not rule that the MOA operated as a waiver by the petitioner of its right to collect penalty charges.

The petitioner faults the CA for reducing the penalty charges from 36% to 3% per annum on its finding that the former rate was too excessive, considering that the petitioner had already charged an interest rate of 23% per annum and that the principal obligation had been partly complied with.

This Court does not agree with the petitioner. Article 1229 of the Civil Code states:

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

Indeed, this Court had equitably reduced the penalty in not a few cases. In the recent case of *Ligutan v. Court of Appeals*,^[22] the Court affirmed the reduction of the penalty charges by the CA upon its finding that the debtors therein had partially complied with their obligation. In *Rizal Commercial Banking Corp. v. Court of Appeals*,^[23] the Court tempered the penalty charges after taking into account the debtor's pitiful situation and its offer to settle the entire obligation with the creditor bank. In *Insular Bank of Asia and America v. Spouses Salazar*,^[24] the Court reduced the penalty charge on a loan of P42,050, considering that the debtor spouses paid a total of P68,676.75 which the creditor bank applied to satisfy the penalty and interest charges.

Given the peculiar circumstances in this case, particularly that the principal obligation had been partially complied with by the respondent, the Court sees no justifiable reason to modify the reduction by the CA of the penalty charges made by the CA.

Anent the second issue, the petitioner insists that the CA should have relied on the petitioner's statement of account^[25] to determine the amount owed by the respondent. According to the said statement, the respondent still owed the petitioner P5,665,906 as of June 29, 1990, since previous payments made were applied only to the penalties and service charges. The Court does not agree. The MOA clearly provides that the loan obligation of P2,000,000 shall be paid by the respondent by issuing the post-dated checks in the amount of P150,000 every month beginning June 5, 1998 until the same shall have been fully paid. Thus, the monthly payments made by the respondent were for the satisfaction of the principal loan obligation, not merely as payments of the penalties and service charges.

Further, as correctly pointed out by the CA, the petitioner's statement of account could not be given any probative value because it was belied for the most part by its key witness, comptroller Rebecca de la Cruz. Even the trial court gave scant consideration to this statement of account, upon its finding that certain entries therein were inconsistent with the terms of the promissory note. The Court thus finds no cogent reason to deviate from the trial court's and the CA's assessment of the probative value of the same. After all, it is not this Court's function under Rule 45 of the Rules of Court, as amended, to review, examine, and evaluate or weigh the probative value of the evidence presented.^[26]

WHEREFORE, the petition is hereby DENIED for lack of merit. The assailed Decision dated July 18, 1997 and Resolution dated September 12, 1997 of the Court of Appeals in CA-G.R. CV No. 44211 are AFFIRMED in toto.

SO ORDERED.

Bellosillo, (Chairman), and Quisumbing, JJ., concur.

Austria-Martinez, J., on official leave.

[1] Penned by Associate Justice Fermin N. Martin, Jr., with Associate Justices Ruben T. Reyes and Omar U. Amin concurring.

[2] Penned by Eriberto Rosario, Jr. who was later promoted as Associate Justice of the Court of Appeals.

[3] Exhibit "2," Folder of Exhibits, p. 27.

[4] Exhibits "8" & "9," *id.* at 36-39.

- [5] Exhibit "A," id. at 1.
- [6] Exhibit "A-1," id. at 2-3.
- [7] Exhibit "4," id. at 31.
- [8] The latter promissory note in the amount of P400,000 is not subject of the present litigation.
- [9] Exhibit "14," id. at 62.
- [10] Exhibit "B," id. at 4-7.
- [11] Exhibit "12," id. at 52-53.
- [12] Records, pp. 247-248.
- [13] Rollo, p. 48.
- [14] Id. at 10 & 14.
- [15] Section 9, Rule 130 of the Rules of Court.
- [16] Ibid.
- [17] Id.
- [18] TSN, 4 February 1992, pp. 19-20.
- [19] Rollo, pp. 39-40.
- [20] Ibid.
- [21] Rollo, p. 45.
- [22] G.R. No. 138677, February 12, 2002.

[23] 289 SCRA 292 (1998).

[24] 159 SCRA 133 (1988).

- [25] Exhibit "7," Folder of Exhibits, p. 35.
- [26] *Bautista v. Puyat Vinyl Products, Inc.*, 363 SCRA 794 (2001).

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