

BPI INVESTMENT CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND ALS MANAGEMENT & DEVELOPMENT CORPORATION, RESPONDENTS.*G.R. No. 133632. February 15, 2002*

Ponente: QUISUMBING, J.

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This petition for certiorari assails the decision dated February 28, 1997, of the Court of Appeals and its resolution dated April 21, 1998, in CA-G.R. CV No. 38887. The appellate court affirmed the judgment of the Regional Trial Court of Pasig City, Branch 151, in (a) Civil Case No. 11831, for foreclosure of mortgage by petitioner BPI Investment Corporation (BPIIC for brevity) against private respondents ALS Management and Development Corporation and Antonio K. Litonjua,[1] consolidated with (b) Civil Case No. 52093, for damages with prayer for the issuance of a writ of preliminary injunction by the private respondents against said petitioner.

The trial court had held that private respondents were not in default in the payment of their monthly amortization, hence, the extrajudicial foreclosure conducted by BPIIC was premature and made in bad faith. It awarded private respondents the amount of P300,000 for moral damages, P50,000 for exemplary damages, and P50,000 for attorney's fees and expenses for litigation. It likewise dismissed the foreclosure suit for being premature.

The facts are as follows:

Frank Roa obtained a loan at an interest rate of 16 1/4% per annum from Ayala Investment and Development Corporation (AIDC), the predecessor of petitioner BPIIC, for the construction of a house on his lot in New Alabang Village, Muntinlupa. Said house and lot were mortgaged to AIDC to secure the loan. Sometime in 1980, Roa sold the house and lot to private respondents ALS and Antonio Litonjua for P850,000. They paid P350,000 in cash and assumed the P500,000 balance of Roa's indebtedness with AIDC. The latter, however, was not willing to extend the old interest rate to private respondents and proposed to grant them a new loan of P500,000 to be applied to Roa's debt and secured by the same property, at an interest rate of 20% per annum and service fee of 1% per annum on the outstanding principal balance payable within ten years in equal monthly amortization of P9,996.58 and penalty interest at the rate of 21% per annum per day from the date the amortization became due and payable.

Consequently, in March 1981, private respondents executed a mortgage deed containing the above stipulations with the provision that payment of the monthly amortization shall commence on May 1, 1981.

On August 13, 1982, ALS and Litonjua updated Roa's arrearages by paying BPIIC the sum of P190,601.35. This reduced Roa's principal balance to P457,204.90 which, in turn, was liquidated when BPIIC applied thereto the proceeds of private respondents' loan of P500,000.

On September 13, 1982, BPIIC released to private respondents P7,146.87, purporting to be what was left of their loan after full payment of Roa's loan.

In June 1984, BPIIC instituted foreclosure proceedings against private respondents on the ground that they failed to pay the mortgage indebtedness which from May 1, 1981 to June 30, 1984, amounted to Four Hundred Seventy Five Thousand Five Hundred Eighty Five and 31/100 Pesos (P475,585.31). A notice of sheriff's sale was published on August 13, 1984.

On February 28, 1985, ALS and Litonjua filed Civil Case No. 52093 against BPIIC. They alleged, among others, that they were not in arrears in their payment, but in fact made an overpayment as of June 30, 1984. They maintained that they should not be made to pay amortization before the actual release of the P500,000 loan in August and September 1982. Further, out of the P500,000 loan, only the total amount of P464,351.77 was released to private respondents. Hence, applying the effects of legal compensation, the balance of P35,648.23 should be applied to the initial monthly amortization for the loan.

On August 31, 1988, the trial court rendered its judgment in Civil Case Nos. 11831 and 52093, thus:

WHEREFORE, judgment is hereby rendered in favor of ALS Management and Development Corporation and Antonio K. Litonjua and against BPI Investment Corporation, holding that the amount of loan granted by BPI to ALS and Litonjua was only in the principal sum of P464,351.77, with interest at 20% plus service charge of 1% per annum, payable on equal monthly and successive amortizations at P9,283.83 for ten (10) years or one hundred twenty (120) months. The amortization schedule attached as Annex "A" to the "Deed of Mortgage" is correspondingly reformed as aforesated.

The Court further finds that ALS and Litonjua suffered compensable damages when BPI caused their publication in a newspaper of general circulation as defaulting debtors, and therefore orders BPI to pay ALS and Litonjua the following sums:

- a) P300,000.00 for and as moral damages;
- b) P50,000.00 as and for exemplary damages;
- c) P50,000.00 as and for attorney's fees and expenses of litigation.

The foreclosure suit (Civil Case No. 11831) is hereby DISMISSED for being premature.

Costs against BPI.

SO ORDERED.[2]

Both parties appealed to the Court of Appeals. However, private respondents' appeal was dismissed for non-payment of docket fees.

On February 28, 1997, the Court of Appeals promulgated its decision, the dispositive portion reads:

WHEREFORE, finding no error in the appealed decision the same is hereby AFFIRMED in toto.

SO ORDERED.[3]

In its decision, the Court of Appeals reasoned that a simple loan is perfected only upon the delivery of the object of the contract. The contract of loan between BPIIC and ALS & Litonjua was perfected only on September 13, 1982, the date when BPIIC released the purported balance of the P500,000 loan after deducting therefrom the value of Roa's indebtedness. Thus, payment of the monthly amortization should commence only a month after the said date, as can be inferred from the stipulations in the contract. This, despite the express agreement of the parties that payment shall commence on May 1, 1981. From October 1982 to June 1984, the total amortization due was only P194,960.43. Evidence showed that private respondents had an overpayment, because as of June 1984, they already paid a total amount of P201,791.96. Therefore, there was no basis for BPIIC to extrajudicially foreclose the mortgage and cause the publication in newspapers concerning private respondents' delinquency in

the payment of their loan. This fact constituted sufficient ground for moral damages in favor of private respondents.

The motion for reconsideration filed by petitioner BPIIC was likewise denied, hence this petition, where BPIIC submits for resolution the following issues:

- WHETHER OR NOT A CONTRACT OF LOAN IS A CONSENSUAL CONTRACT IN THE LIGHT OF THE RULE LAID DOWN IN *BONNEVIE VS. COURT OF APPEALS*, 125 SCRA 122.
- II. WHETHER OR NOT BPI SHOULD BE HELD LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN THE FACE OF IRREGULAR PAYMENTS MADE BY ALS AND OPPOSED TO THE RULE LAID DOWN IN *SOCIAL SECURITY SYSTEM VS. COURT OF APPEALS*, 120 SCRA 707.

On the first issue, petitioner contends that the Court of Appeals erred in ruling that because a simple loan is perfected upon the delivery of the object of the contract, the loan contract in this case was perfected only on September 13, 1982. Petitioner claims that a contract of loan is a consensual contract, and a loan contract is perfected at the time the contract of mortgage is executed conformably with our ruling in *Bonnevie v. Court of Appeals*, 125 SCRA 122. In the present case, the loan contract was perfected on March 31, 1981, the date when the mortgage deed was executed, hence, the amortization and interests on the loan should be computed from said date.

Petitioner also argues that while the documents showed that the loan was released only on August 1982, the loan was actually released on March 31, 1981, when BPIIC issued a cancellation of mortgage of Frank Roa's loan. This finds support in the registration on March 31, 1981 of the Deed of Absolute Sale executed by Roa in favor of ALS, transferring the title of the property to ALS, and ALS executing the Mortgage Deed in favor of BPIIC. Moreover, petitioner claims, the delay in the release of the loan should be attributed to private respondents. As BPIIC only agreed to extend a P500,000 loan, private respondents were required to reduce Frank Roa's loan below said amount. According to petitioner, private respondents were only able to do so in August 1982.

In their comment, private respondents assert that based on Article 1934 of the Civil Code,[4] a simple loan is perfected upon the delivery of the object of the contract, hence a real contract. In this case, even though the loan contract was signed on March 31, 1981, it was perfected only on September 13, 1982, when the full loan was released to private respondents. They submit that petitioner misread *Bonnevie*. To give meaning to Article 1934, according to private respondents, *Bonnevie* must be construed to mean that the contract to extend the loan was perfected on March 31, 1981 but the contract of loan itself was only perfected upon the delivery of the full loan to private respondents on September 13, 1982.

Private respondents further maintain that even granting, *arguendo*, that the loan contract was perfected on March 31, 1981, and their payment did not start a month thereafter, still no default took place. According to private respondents, a perfected loan agreement imposes reciprocal obligations, where the obligation or promise of each party is the consideration of the other party. In this case, the consideration for BPIIC in entering into the loan contract is the promise of private respondents to pay the monthly amortization. For the latter, it is the promise of BPIIC to deliver the money. In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. Therefore, private respondents conclude, they did not incur in delay when they did not commence paying the monthly amortization on May 1, 1981, as it was only on September 13, 1982 when petitioner fully complied with its obligation under the loan contract.

We agree with private respondents. A loan contract is not a consensual contract but a real contract. It is perfected

only upon the delivery of the object of the contract.[5] Petitioner misapplied *Bonnevie*. The contract in *Bonnevie* declared by this Court as a perfected consensual contract falls under the first clause of Article 1934, Civil Code. It is an accepted promise to deliver something by way of simple loan.

In *Saura Import and Export Co. Inc. vs. Development Bank of the Philippines*, 44 SCRA 445, petitioner applied for a loan of P500,000 with respondent bank. The latter approved the application through a board resolution. Thereafter, the corresponding mortgage was executed and registered. However, because of acts attributable to petitioner, the loan was not released. Later, petitioner instituted an action for damages. We recognized in this case, a perfected consensual contract which under normal circumstances could have made the bank liable for not releasing the loan. However, since the fault was attributable to petitioner therein, the court did not award it damages.

A perfected consensual contract, as shown above, can give rise to an action for damages. However, said contract does not constitute the real contract of loan which requires the delivery of the object of the contract for its perfection and which gives rise to obligations only on the part of the borrower.[6]

In the present case, the loan contract between BPI, on the one hand, and ALS and Litonjua, on the other, was perfected only on September 13, 1982, the date of the second release of the loan. Following the intentions of the parties on the commencement of the monthly amortization, as found by the Court of Appeals, private respondents' obligation to pay commenced only on October 13, 1982, a month after the perfection of the contract.[7]

We also agree with private respondents that a contract of loan involves a reciprocal obligation, wherein the obligation or promise of each party is the consideration for that of the other.[8] As averred by private respondents, the promise of BPIIC to extend and deliver the loan is upon the consideration that ALS and Litonjua shall pay the monthly amortization commencing on May 1, 1981, one month after the supposed release of the loan. It is a basic principle in reciprocal obligations that neither party incurs in delay, if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him.[9] Only when a party has performed his part of the contract can he demand that the other party also fulfill his own obligation and if the latter fails, default sets in. Consequently, petitioner could only demand for the payment of the monthly amortization after September 13, 1982 for it was only then when it complied with its obligation under the loan contract. Therefore, in computing the amount due as of the date when BPIIC extrajudicially caused the foreclosure of the mortgage, the starting date is October 13, 1982 and not May 1, 1981.

Other points raised by petitioner in connection with the first issue, such as the date of actual release of the loan and whether private respondents were the cause of the delay in the release of the loan, are factual. Since petitioner has not shown that the instant case is one of the exceptions to the basic rule that only questions of law can be raised in a petition for review under Rule 45 of the Rules of Court,[10] factual matters need not tarry us now. On these points we are bound by the findings of the appellate and trial courts.

On the second issue, petitioner claims that it should not be held liable for moral and exemplary damages for it did not act maliciously when it initiated the foreclosure proceedings. It merely exercised its right under the mortgage contract because private respondents were irregular in their monthly amortization. It invoked our ruling in *Social Security System vs. Court of Appeals*, 120 SCRA 707, where we said:

Nor can the SSS be held liable for moral and temperate damages. As concluded by the Court of Appeals "the negligence of the appellant is not so gross as to warrant moral and temperate damages," except that, said Court reduced those damages by only P5,000.00 instead of eliminating them. Neither can we agree with the findings of both the Trial Court and respondent Court that the SSS had acted maliciously or in bad faith. The SSS was

of the belief that it was acting in the legitimate exercise of its right under the mortgage contract in the face of irregular payments made by private respondents and placed reliance on the automatic acceleration clause in the contract. The filing alone of the foreclosure application should not be a ground for an award of moral damages in the same way that a clearly unfounded civil action is not among the grounds for moral damages.

Private respondents counter that BPIIC was guilty of bad faith and should be liable for said damages because it insisted on the payment of amortization on the loan even before it was released. Further, it did not make the corresponding deduction in the monthly amortization to conform to the actual amount of loan released, and it immediately initiated foreclosure proceedings when private respondents failed to make timely payment.

But as admitted by private respondents themselves, they were irregular in their payment of monthly amortization. Conformably with our ruling in SSS, we can not properly declare BPIIC in bad faith. Consequently, we should rule out the award of moral and exemplary damages.[11]

However, in our view, BPIIC was negligent in relying merely on the entries found in the deed of mortgage, without checking and correspondingly adjusting its records on the amount actually released to private respondents and the date when it was released. Such negligence resulted in damage to private respondents, for which an award of nominal damages should be given in recognition of their rights which were violated by BPIIC.[12] For this purpose, the amount of P25,000 is sufficient.

Lastly, as in SSS where we awarded attorney's fees because private respondents were compelled to litigate, we sustain the award of P50,000 in favor of private respondents as attorney's fees.

WHEREFORE, the decision dated February 28, 1997, of the Court of Appeals and its resolution dated April 21, 1998, are **AFFIRMED WITH MODIFICATION** as to the award of damages. The award of moral and exemplary damages in favor of private respondents is **DELETED**, but the award to them of attorney's fees in the amount of P50,000 is **UPHELD**. Additionally, petitioner is **ORDERED** to pay private respondents P25,000 as nominal damages. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] While Antonio K. Litonjua was not included in the caption of the petition before this court, apparently, the intention of petitioner was to include Litonjua as private respondent for he was a party in all stages of the case both before the Regional Trial Court and the Court of Appeals and it was clearly indicated in the petition that "ALS" collectively referred to as ALS Management and Development Corporation and Antonio K. Litonjua.

[2] RTC Records, p. 278.

[3] Rollo, p. 32.

[4] Art. 1934. An accepted promise to deliver something by way of commodatum or simple loan is binding upon the parties, but the commodatum or simple loan itself shall not be perfected until the delivery of the object of the contract.

[5] Art. 1934, Civil Code of the Philippines; Monte de Piedad vs. Javier, et al., 36 OG 2176; A. Padilla, Civil Code of the Philippines Annotated, Vol. VI, pp. 474-475 (1987); E. Paras, Civil Code of the Philippines Annotated, Vol. V, p. 885 (1995).

[6] A. Tolentino, Civil Code of the Philippines, V. 5, p. 443 (1992).

[7] Supra, note 3 at 30.

[8] *Rose Packing Co. Inc. vs. Court of Appeals*, No. L-33084, 167 SCRA 309, 318-319 (1988).

[9] Art. 1169, Civil Code:

x x x

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[10] *American President Lines, Ltd. vs. Court of Appeals*, G.R. No. 110853, 336 SCRA 582, 586 (2000).

[11] Art. 2234, Civil Code: While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[12] Art. 2221, Civil Code: Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

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