

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, petitioner, vs.
JUANITA B. YBAÑEZ, CHARLES B. YBAÑEZ, JOSEPH B. YBAÑEZ and
JEROME B. YBAÑEZ, respondents.**

G.R. No. 148163. December 06, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In this petition for review, Banco Filipino Savings and Mortgage Bank seeks the reversal of the Decision[1] dated April 17, 2001 of the Court of Appeals in CA-G.R. CV No. 57927 affirming the Decision[2] dated July 16, 1997 of the Regional Trial Court, Branch 13 of Cebu City in Civil Case No. CEB-16548.

The facts of this case are as follows:

On March 7, 1978, respondents obtained a loan secured by a Deed of Real Estate Mortgage over Transfer Certificate of Title (TCT) No. 69836 from petitioner bank. The loan was used for the construction of a commercial building in Cebu City. On October 25, 1978, respondents obtained an additional loan from the petitioner thus increasing their obligation to one million pesos. A corresponding Amendment of Real Estate Mortgage was thereafter executed.

On December 24, 1982, the loan was again re-structured, increasing the loan obligation to P1,225,000 and the Real Estate Mortgage was again amended. Respondents executed a Promissory Note for the sum of P1,225,000 payable in fifteen years, with a stipulated interest of 21% per annum, and stipulating monthly payments of P22,426. The first payment was payable on January 24, 1983, and the succeeding payments were due every 24th of each month thereafter.[3] The note also stipulated that in case of default in the payment of any of the monthly amortization and interest, respondents shall pay a penalty equivalent to 3% of the amount due each month.[4]

Respondents' total payment from 1983 to 1988 amounted[5] to P1,455,385.07, broken down as follows:

1983 247,631.54

1984 81,797.24

1985 173,875.77

1986 284,364.82

1987 380,000.00

1988 287,715.70[6]

From 1989 onwards, respondents did not pay a single centavo. They aver that Banco Filipino had ceased operations and/or was not allowed to continue business, having been placed under liquidation by the Central Bank.

On January 15, 1990, respondents' lawyer wrote Special Acting Liquidator, Renan Santos, and requested that plaintiff return the mortgaged property of the respondents since it had sufficiently profited from the loan and that the interest and penalty charges were excessive. Petitioner bank denied the request.[7]

Banco Filipino was closed on January 1, 1985 and re-opened for business on July 1, 1994. From its closure to its re-opening, petitioner bank did not transact any business with its customers.[8]

On August 24, 1994, respondents were served a Notice of Extra Judicial Sale of their property covered by TCT No. 69836 to satisfy their indebtedness allegedly of P6,174,337.46 which includes the principal, interest, surcharges and 10% attorney's fees. The public auction was scheduled on September 22, 1994 at 2:00 in the afternoon.

On September 19, 1994, respondents filed a suit for Injunction, Accounting and Damages, alleging that there was no legal and factual basis for the foreclosure proceedings since the loan had already been fully paid. A restraining order was issued the following day by the lower court enjoining petitioner to cease and desist from selling the property at a public auction.[9]

On July 16, 1997, the lower court rendered a Decision, disposing as follows:

WHEREFORE, judgment is hereby rendered directing defendant Banco Filipino Savings and Mortgage Bank to render a correct accounting of the obligations of plaintiffs with it after eliminating interest from January 1, 1985 to July 1, 1994 when it was closed, and reducing interest from 21% to 17% per annum, at the time it was in operation, and totally eliminating [the] surcharge of 1% per month, within a period of fifteen (15) days from the time the judgment shall have become final and executory.

Plaintiffs are directed to pay the bank within a period of thirty (30) days from the time they will receive defendant bank's true and correct accounting, otherwise the order of injunction will be lifted/dissolved.

Defendants are enjoined from foreclosing the real estate mortgage on the property of plaintiffs, unless the latter fail to pay in accordance with the [preceding] paragraph.

Without special pronouncement as to costs.

SO ORDERED.[10]

Not satisfied with the decision, both parties appealed the case to the Court of Appeals. Petitioner filed its Notice of Appeal on August 19, 1997, while respondents filed theirs on August 22, 1997. On April 17, 2001, the Court of Appeals rendered a Decision affirming the decision of the trial court stating:

WHEREFORE, for lack of merit, both appeals are DISMISSED and the Decision appealed from is AFFIRMED.

SO ORDERED.[11]

Petitioner now alleges the following errors:

- THE COURT OF APPEALS ERRED IN CONCURRING WITH THE TRIAL COURT'S DECISION ORDERING THE DEFENDANT BANK (HEREIN PETITIONER) TO RENDER A CORRECT ACCOUNTING OF PLAINTIFFS' LOAN BECAUSE THE STATEMENT OF ACCOUNT (EXH. 5 and 6 – Defendant) SUBMITTED BY DEFENDANT BANK DOES NOT REFLECT THE TRUE AND CORRECT AMOUNT AS IT IMPOSES A 21% PER ANNUM INTEREST WHICH THE COURT OF APPEALS CONSIDERED AS EXCESSIVE AND THAT IT HAS NO PROBATIVE VALUE AS ITS SIGNATORIES WERE NOT PRESENTED AS WITNESSES.

- THE COURT OF APPEALS ERRED IN ORDERING THE DELETION OF THE 3% PER MONTH SURCHARGE SIMPLY BECAUSE THE PLAINTIFF-BORROWER HAD MADE SUBSTANTIAL PAYMENTS FROM 1983 TO 1988.

- THE COURT OF APPEALS COMMITTED AN ERROR IN RULING THAT THE PLAINTIFFS-BORROWERS (HEREIN RESPONDENTS) CANNOT BE CONSIDERED TO HAVE DEFAULTED IN THEIR PAYMENT SINCE DEFENDANT BANK CEASED OPERATION FROM 1985 TO 1991.[12]

To resolve the controversy we shall address the following pertinent questions: (1) What is the effect of the temporary closure of Banco Filipino from January 1, 1985 to July 1, 1994 on the loan? (2) Is the rate of interest set at 21% per annum legal? and (3) Is the 3% monthly surcharge valid?

In *Banco Filipino Savings and Mortgage Bank v. Monetary Board*,[13] the validity of the closure and receivership of Banco Filipino was put in issue. But the pendency of the case did not diminish the authority of the designated liquidator to administer and continue the bank's transactions. The Court allowed the bank's liquidator to continue receiving collectibles and receivables or paying off creditor's claims and other transactions pertaining to normal operations of a bank. Among these transactions were the prosecution of suits against debtors for collection and for foreclosure of mortgages. The bank was allowed to collect interests on its loans while under liquidation, provided that the interests were legal.

Petitioner contends that the 21% annual interest was freely and voluntarily agreed upon by the parties, and that it was neither excessive nor violative of the Usury Law.[14]

On the other hand, respondents state that the rate of 21% was usurious because the loan was incurred on December 24, 1982, before the de facto repeal of the Usury Law on January 1, 1983.[15] Respondents add that the normal rate by which petitioner charges its borrowers at that time was only 17%, or 4% lower than the rate it gave to respondents.

It is an elementary rule of contracts that the contracting parties are free to stipulate the terms of their contract for as long as the terms are not contrary to law, morals, good customs, public policy, public order, and national interests.[16] Laws in force at the time the contract was made generally govern its interpretation and application. The loan agreement between petitioner and respondents specifies the obligation of the debtor to pay interest. In principle said stipulation is binding between the parties.[17]

We note that at the time the parties entered into the said loan agreement, the pertinent law, Act No. 2655, already provided that the rate of interest for the forbearance of money when secured by a mortgage upon real estate should not be more than 12% per annum or the maximum rate prescribed by the Monetary Board and in force at the time the loan was granted. On December 1, 1979, the Monetary Board of the Central Bank of the Philippines[18] had issued CBP Circular No. 705-79.[19] On loan transactions with maturities of more than 730 days, it fixed the effective rate of interest at 21% per annum for both secured and unsecured loans. Since the loan in question has fixed 15 years for its maturity, it fell within the coverage of said CBP Circular. Thus, we agree that the 21% interest is not violative of the Usury Law as it stood at the time of the loan transaction.

As to the monthly surcharge, petitioner relies on CBP Circular No. 905-82.[20] The ceiling on interest rates prescribed by the Usury Law, according to petitioner, were expressly removed. Petitioner argues that the said circular had retroactive effect since it is merely procedural in nature. Hence according to petitioner, the imposition of 3% monthly surcharge by the bank against the borrower is legal.

On this matter, we disagree with petitioner. CBP Circular No. 905-82, which was effective January 1, 1983, did

not repeal nor in any way amend the Usury Law. The Circular simply suspended the effectivity of the Usury Law. A Central Bank Circular cannot repeal a law. Only a law can repeal another law. Thus, the retroactive application of a CBP Circular cannot, and should not, be presumed.[21] The loan was entered into on December 24, 1982, but CBP Circular No. 905-82 was given force and effect only on January 1, 1983. Thus, CBP Circular No. 905-82 could not be made applicable to the loan agreement in this case, and petitioner could not rely on this Circular for its imposition of 3% monthly surcharge.

Petitioner also argues that the 3% monthly surcharge partakes of the nature of a penalty clause.[22] A penal clause is an accessory undertaking to assume greater liability in case of breach and is attached to an obligation in order to secure its performance.[23] The penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance.[24] But if such stipulation is found contrary to law for being usurious, it can be nullified by the courts without affecting the principal obligation.[25]

In the loan agreement between the parties in this case, the total interest and other charges exceed the prescribed 21% ceiling. Hence, the imposition of the 3% monthly surcharge, as the penal clause to the obligation, violated the limit imposed by the Usury Law. Said surcharge of 3% monthly must be declared null and void.

To recapitulate: the respondents' principal obligation to pay the monthly amortization of P22,426, validly subsists. Only the 3% monthly surcharge is void. The monthly amortization of P22,426, for 15 years, would amount to P4,036,680. To date, respondents already paid the amount of P1,455,385.07. Thus, only the outstanding balance of P2,581,294.93 remains due.

Respondents were given by the RTC 30 days from receipt of decision, within which to pay their outstanding obligation. We now reiterate that period of 30 days, from receipt of this Decision, for respondents to pay the amount of P2,581,294.93 to the bank as full payment of the outstanding balance on their loan obligation. Otherwise, the order of injunction restraining petitioner from foreclosing the property shall be lifted.

WHEREFORE, the Decision of the Regional Trial Court, which was sustained by the Court of Appeals, is hereby MODIFIED as follows: (1) the interest rate at 21% per annum is hereby declared VALID; (2) the 3% monthly surcharge is NULLIFIED for being violative of the Usury Law at the time; and (3) respondents are ORDERED to pay petitioner the amount of P2,581,294.93 within 30 days from receipt of this Decision. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 30-39. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Fermin A. Martin, Jr., and Mercedes Gozo-Dadole concurring.

[2] *Id.* at 40-49.

[3] *Id.* at 14.

[4] *Ibid.*

[5] Erroneously stated as P1,456,385.70 in some parts of the records.

[6] *Id.* at 32.

[7] *Id.* at 33.

[8] Id. at 94.

[9] Id. at 33.

[10] Id. at 49.

[11] Id. at 38.

[12] Id. at 17.

[13] G.R. No. 70054, 11 December 1991, 204 SCRA 767, 789.

[14] Rollo, p. 18.

[15] Id. at 90.

[16] Pascual v. Ramos, G.R. No. 144712, 4 July 2002, 384 SCRA 105, 113-114; Article 1306, Civil Code.

[17] See U.S. v. Diaz, Conde and R. de Conde, No. 18208, 14 February 1922, 42 Phil. 766, 769.

[18] The Monetary Board of the Central Bank of the Philippines was authorized by P.D. No. 116 effective in 1973 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” (Sec. 1-a, Act No. 2655 as amended by P.D. No. 116).

[19] CBP Circular No. 705-79, SUPERSEDING CIRCULAR NO. 586, PRESCRIBING CEILINGS ON THE RATES OF INTEREST ON LOANS AND YIELDS ON PURCHASES OF INSTRUMENTS BY BANKS AND NON-BANK FINANCIAL INTERMEDIARIES. (Effective December 1, 1979.)

...

- The effective rate of interest, including commissions, premiums, fees and other charges, on loan transactions with maturities of more than seven hundred thirty (730) days, that may be charged or received by all banks or by non-bank financial intermediaries authorized to engage in quasi-banking functions shall not exceed twenty one per cent (21%) per annum, for both unsecured and secured loans as defined by the Usury Law, as amended.

- For purposes of this Circular, effective rate shall mean the price paid for the use of money expressed as a percentage, on annual basis, of the amount actually received. In case the principal is amortized, the rate shall be computed on the basis of the outstanding balance. The computation assumes that interest is paid at maturity, or at the end of one (1) year, if the maturity of the loan exceeds one (1) year.

...

[20] Section 1. The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of any money, goods or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by any person, whether natural or juridical, shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended. (Effective January 1, 1983.)

[21] First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc., G.R. No. 141811, 15 November 2001, 369 SCRA 99, 111.

[22] Rollo, p. 76.

[23] 8 Manresa 245.

[24] Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages

shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

[25] Article 1230. The nullity of the penal clause does not carry with it that of the principal obligation.

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