

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. BONITA O. PEREZ AND ALFREDO PEREZ, RESPONDENTS.

G.R. No. 148541. November 11, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for review on certiorari seeking to reverse and set aside the Decision[1] of the Court of Appeals (CA) dated February 28, 2001, and to reinstate the Decision of the Regional Trial Court (RTC), Makati City, Branch 145, in Civil Case No. 12057, as modified by trial court's Order dated June 11, 1993.

The Antecedents

On April 28, 1978, petitioner Development Bank of the Philippines (DBP) sent a letter to respondent Bonita Perez, informing the latter of the approval of an industrial loan amounting to P214,000.00 for the acquisition of machinery and equipment and for working capital, and an additional industrial loan amounting to P21,000.00 to cover unforeseen price escalation.[2]

On May 18, 1978, the respondents were made to sign four promissory notes covering the total amount of the loan, P235,000.00. Three promissory notes for P24,000.00, P48,000.00, and P142,000.00, respectively, were executed, totaling P214,000.00. These promissory notes were all due on August 31, 1988.[3] A fourth promissory note due on September 19, 1988 was, likewise, executed to cover the additional loan of P21,000.00.[4] The promissory notes were to be paid in equal quarterly amortizations and were secured by a mortgage contract covering real and personal properties.[5]

On September 6, 1978, the petitioner sent a letter[6] to the respondents informing them of the terms for the payment of the P214,000.00 industrial loan. On November 8, 1978, the petitioner sent another letter[7] to the respondents informing them about the terms and conditions of their additional P21,000.00 industrial loan.

Due to the respondents' failure to comply with their amortization payments, the petitioner decided to foreclose the mortgages that secured the obligation. However, in a Letter[8] dated October 7, 1981, Mrs. Perez requested for a restructuring of their account due to difficulties they were encountering in collecting receivables.

On April 1, 1982, the petitioner informed the respondents that it had approved the restructuring of their accounts.[9] The loan was restructured, and on May 6, 1982, the respondents signed another promissory note in the amount of P231,000.00 at eighteen percent (18%) interest per annum, payable quarterly at P12,553.27, over a period of ten years. The promissory note stated in part:

PROMISSORY NOTE

P231,000.00 Makati, Metro Manila, May 6, 1982

On or before May 7, 1992, for value received, I/we, jointly and severally, promise to pay the DEVELOPMENT BANK OF THE PHILIPPINES, or order at its office at Makati, Metro Manila, Philippines,

the sum of TWO HUNDRED THIRTY-ONE THOUSAND PESOS (P231,000.00), Philippine Currency, with interest at the rate of EIGHTEEN per centum (18%) per annum. Before the date of maturity, we hereby bind ourselves to make partial payments, the first payment to be made on August 7, 1982 and the subsequent payments on the 7[th] day of every three (3) months thereafter, and each of all such payments shall be TWELVE THOUSAND FIVE HUNDRED FIFTY-THREE and 27/100 PESOS (P12,553.27) which shall cover amortizations on the principal and interest at the above-mentioned rate.

This loan shall be subject to penalty charges and additional interest as follows:

On loan with amortizations or portions thereof in arrears irrespective of age.

Additional interest at the basic loan interest rate per annum computed on total amortizations past due irrespective of age.

P L U S

Penalty charge of 8% per annum computed on total amortizations in arrears irrespective of age.

The DBP further reserves the right to increase, with notice to the mortgagor, the rate of interest on the loan as well as all other fees and charges on loans and advances pursuant to such policy as it may adopt from time to time during the period of the loan; Provided that the rate of interest on the loan 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 shall take effect on or after the effectivity of the increase or decrease in the maximum rate of interest.

In case of non-payment of the amount of this note or any portion of it on demand, when due, or any other amount or amounts due on account of this note, the entire obligation shall become due and demandable, and if, for the enforcement of the payment thereof, the DEVELOPMENT BANK OF THE PHILIPPINES, is constrained to entrust the case to its attorneys, I/we, jointly and severally, bind myself/ourselves to pay for attorney's fees, as provided for in the mortgage contract, in addition to the legal fees and other incidental expenses. In the event of foreclosure of the mortgage securing this note, I/we further bind myself/ourselves, jointly and severally, to pay the deficiency, if any.

SIGNED IN THE PRESENCE OF:

illegible SGD. SGD.

illegible BONITA ANG ORDIALES ALFREDO PEREZ

(Bonita O. Perez)

This Promissory Note supersedes the Promissory Note dated May 18, 1978 and stands secured by a mortgage contract executed by the above parties on the same date, subject to the following terms and conditions.[10]

As stated in the promissory note, the first amortization was due on August 7, 1982, and the succeeding amortizations, every quarter thereafter. However, the respondents made their first payment amounting to P15,000.00[11] only on April 20, 1983 or after the lapse of three quarters.[12] Their second payment, which should have been paid on November 7, 1982, was made on December 2, 1983 and only in the amount of P5,000.00. The third payment was then made at the time when the ninth quarterly amortization should have been paid. After this, the respondents completely stopped paying.[13] The total payments they made after the restructure of the loan amounted to P35,000.00 only.[14]

This failure to meet the quarterly amortization of the loan prompted the petitioner to institute foreclosure

proceedings on the mortgages. The sale of the properties covered by the mortgage contract was scheduled on October 30, 1985.[15]

On October 24, 1985, the respondents filed a Complaint[16] for the nullification of the new promissory note with damages and preliminary prohibitory injunction. The complaint alleged that the petitioner restructured the respondents' obligation in bad faith by requiring them to sign another promissory note for P231,000.00 without considering the total payments made on the loan amounting to P224,383.43. The respondents claimed that the petitioner failed to explain to them how it had arrived at the amount of the restructured loan. The respondents also alleged that the petitioner failed to furnish them with a disclosure statement as required by Rep. Act No. 3765, also known as the Truth in Lending Act, prior to the consummation of the transaction. They averred that the interest imposed on the said transaction was usurious. They, likewise, alleged that the new promissory note constituted a novation of the previous obligations.

In its answer, the petitioner denied the allegations and averred that the claim for violation of the disclosure requirement under Rep. Act No. 3765 was not within the jurisdiction of the RTC and was barred by prescription. By way of compulsory counterclaim, the petitioner prayed that the respondents be ordered to pay their obligation, plus exemplary damages and costs.[17] During trial, the petitioner presented a Statement of Account dated September 14, 1990, showing that the total amount of the obligation as of September 15, 1990 was P1,384,465.71.[18]

On October 25, 1985, the trial court ordered the petitioner to desist from holding the public auction of the respondents' properties. The trial court issued an Order on April 25, 1986 to maintain the status quo.

In its Decision dated May 10, 1993, the court a quo upheld the validity of the new promissory note and ordered the respondents to pay their obligation. The dispositive portion reads:

WHEREFORE, judgment is rendered dismissing the complaint for failure of plaintiffs to prove their causes of action by clear preponderance of evidence, with costs against them.

The order issued on April 25, 1986, ordering the defendant Bank to maintain the status quo and suspending the auction sale, is hereby set aside.

Defendant Bank's counterclaim is hereby granted, and plaintiffs are hereby ordered to pay the former the sum of One Million Three Hundred Eighty-four Thousand Four Hundred Sixty-five Pesos and Seventy-one Centavos (P1,384,465.71), representing the latter's obligation as of September 15, 1990, with interest thereon at the legal rate of twelve (12%) percent per annum pursuant to Sec. 2 of CB Circular No. 905; (Sagrador vs. Valderrama, supra), from September 15, 1990 up to full payment of said sum. The other counterclaim for exemplary damages is hereby dismissed.

SO ORDERED.[19]

Upon the petitioner's motion for reconsideration, the trial court issued an order[20] amending the dispositive portion of its decision by changing the rate of interest to eighteen percent (18%) per annum.

Dissatisfied, the respondents appealed to the CA. On February 28, 2001, the CA rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Decision dated May 10, 1993, docketed as Civil Case No. 12057 by the Regional Trial Court of Makati, Branch 145, is hereby MODIFIED in the sense that the amount of P1,384,465.71 as of September 1990 is SET ASIDE and the formula mandated by Central Bank Circular No. 158 should be applied by the trial court in computing the total obligation and liability of appellants. All the other parts of the assailed decision are AFFIRMED in toto.

SO ORDERED.[21]

The CA found that the respondents did not voluntarily sign the restructured promissory note as they were only forced to sign it for fear of having their mortgaged property foreclosed by the bank. It ruled that the restructured promissory note which was prepared by the petitioner alone was a contract of adhesion which violates the rule on mutuality of contracts.

Nonetheless, the CA held that the trial court should have used the formula prescribed by paragraph 3,[22] Sec. 2(i), Central Bank (CB) Circular No. 158, Rules and Regulations Implementing Rep. Act No. 3765, in computing the total obligation of the respondents considering that Sec. 3(a) thereof provides that it applies to any loans, mortgages, deeds of trust, advances and discounts.[23] The CA also held that since the loan is secured by a mortgage contract, the eighteen percent (18%) interest rate was excessive and usurious under CB Circular No. 817. According to the appellate court, CB Circular No. 905, series of 1982, simply suspended the effectivity of the Usury Law; it did not authorize either party to unilaterally raise the interest without the other party's consent.[24] Finally, the CA concluded that there was neither basis nor explanation as to how the measly amount of P214,000.00 in 1972, restructured to P231,000.00 in 1982, ballooned to P1,384,465.71 as of September 15, 1990.[25]

Both parties moved to reconsider the said decision. The CA denied the said motions in a Resolution dated May 31, 2001.

The Present Petition

The petitioner raises the following grounds in the instant petition:

- Whether or not the Honorable Court of Appeals had decided this instant case in a way not in accord with the spirit and intent of Republic Act No. 3765, otherwise known as the Truth in Lending Act, when it declared that "the trial court should have applied the formula provided by Central Bank Circular No. 158, series of 1963, as provided above to arrive at the total obligations of appellants less the amounts paid by appellants as evidenced by the vouchers and receipts attached to the records;"
- Whether or not the conclusion of the Honorable Court of Appeals stating that the private respondents did not voluntarily sign the restructured promissory note is entirely grounded on speculations and/or surmises or conjectures;
- Whether or not the Honorable Court of Appeals failed to notice certain relevant facts which if it had been considered would change its finding that the restructured promissory note was prepared by the appellee Bank alone;
- Whether or not the Honorable Court of Appeals failed to notice certain relevant facts which if it had been considered would change its finding that the amount of P1,384,465.71 as of September 15, 1990 has neither basis at all nor any explanation how this amount came to existence;
- Whether or not the conclusion of the Honorable Court of Appeals stating that petitioner DBP failed to follow Central Bank Circular No. 158 is grounded entirely on speculation and surmises or conjecture. And whether or not this finding is contradicted by another finding of the same court; and
- Whether or not this Honorable Court of Appeals committed grave abuse of discretion when it ruled that pursuant to Central Bank Circular No. 817 the 18% interest per annum agreed upon by the parties in the restructured promissory note is usurious, and that the same should be reduced to 12% being the legal rate of interest.[26]

In a nutshell, the issues in this case are as follows: (1) whether the new promissory note is voidable for not having

been voluntarily signed by the respondents and for being a contract of adhesion; (2) whether the interest rate agreed upon by the parties in the new promissory note is usurious; (3) whether Central Bank Circular No. 158 should be applied in computing the total obligations of the respondents; and (4) the amount of the total obligation of the respondents.

The petition is partly meritorious.

Anent the first issue, the petitioner points out that the respondents admitted to having signed the new promissory note. It avers that there was no evidence on record showing that the signing of the new promissory note was attended by mistake, violence, intimidation, undue influence, or fraud. The petitioner posits that the respondents' claim of having been forced to sign the restructured note for fear of having their mortgaged property foreclosed cannot serve as legal basis to conclude that the respondents did not voluntarily sign the new promissory note.[27] The petitioner maintains that a perusal of the evidence would reveal that the new promissory note was the result of the mutual agreement of the parties and, as such, is not a contract of adhesion.[28]

On the other hand, the respondents argue that this is a question of fact which is not subject to review by this Court. According to the respondents, the fact that the restructured loan proved disadvantageous to them belies the petitioner's claim that they voluntarily signed the new promissory note.

We agree with the petitioner.

In petitions for review on certiorari as a mode of appeal under Rule 45 of the Rules of Court, the petitioner can raise only questions of law – the Supreme Court is not the proper venue to consider a factual issue as it is not a trier of facts.[29] A departure from the general rule may be warranted where the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court, or when the same is unsupported by the evidence on record.[30]

In the instant case, there was no evidence showing that the respondents signed the new promissory note through mistake, violence, intimidation, undue influence, or fraud. The respondents merely alleged that they were forced to restructure their loan for fear of having their mortgaged properties foreclosed. However, it is axiomatic that this would not amount to vitiated consent. The last paragraph of Article 1335 of the New Civil Code specifically states that a threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. Foreclosure of mortgaged properties in case of default in payment of a debtor is a legal remedy afforded by law to a creditor. Hence, a threat to foreclose the mortgage would not, per se, vitiate consent.

The CA noted that the petitioner prepared the new promissory note on its own and that the only participation of the respondents was to sign the same. The CA concluded, therefore, that the new promissory note was a contract of adhesion.

A contract of adhesion is so-called because its terms are prepared by only one party while the other party merely affixes his signature signifying his adhesion thereto.[31] While we accede to the appellate court's conclusion that the new promissory note was in the nature of a contract of adhesion, we cannot fathom how this can further the respondents' case. In discussing the consequences of a contract of adhesion, we held in *Rizal Commercial Banking Corporation v. Court of Appeals*: [32]

It bears stressing that a contract of adhesion is just as binding as ordinary contracts. It is true that we have, on occasion, struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Nevertheless, contracts of adhesion are not invalid per se; they are not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.[33]

On the second issue, the CA held that under CB Circular No. 817, if the loan is secured by a registered real estate, the interest of eighteen percent (18%) is usurious. The petitioner, however, argues that usury has become legally inexistent with the promulgation of CB Circular No. 905.[34] It contends that the interest rate should be eighteen percent (18%), the interest rate they agreed upon.[35] For their part, the respondents argue that the Central Bank engaged in self-legislation in enacting CB Circular No. 905.

We agree with the ruling of the CA. It is elementary that the laws in force at the time the contract was made generally govern the effectivity of its provision.[36] We note that the new promissory note was executed on May 6, 1982, prior to the effectivity of CB Circular No. 905 on January 1, 1983. At that time, The Usury Law, Act No. 2655, as amended by Presidential Decree No. 116, was still in force and effect.

Under the Usury Law, no person shall receive a rate of interest, including commissions, premiums, fines and penalties, higher than twelve percent (12%) per annum or the maximum rate prescribed by the Monetary Board for a loan secured by a mortgage upon real estate the title to which is duly registered.[37]

In this case, by specific provision in the new promissory note, the restructured loan continued to be secured by the same mortgage contract executed on May 18, 1978 which covered real and personal properties of the respondents. We, therefore, find the eighteen percent (18%) interest rate plus the additional interest and penalty charges of eighteen percent (18%) and eight percent (8%), respectively, to be highly usurious.

In usurious loans, the entire obligation does not become void because of an agreement for usurious interest; the unpaid principal debt still stands and remains valid, but the stipulation as to the usurious interest is void. Consequently, the debt is to be considered without stipulation as to the interest.[38] In the absence of an express stipulation as to the rate of interest, the legal rate at twelve percent (12%) per annum shall be imposed.[39]

Neither is the contention of the respondents that the Central Bank engaged in self-legislation correct. As we held in *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc.*: [40]

... Central Bank Circular No. 905 did not repeal nor in any way amend the Usury Law but simply suspended the latter's effectivity. The illegality of usury is wholly the creature of legislation. A Central Bank Circular cannot repeal a law. Only a law can repeal another law. Thus, retroactive application of a Central Bank Circular cannot, and should not, be presumed.[41]

On the third issue, the petitioner argues that CB Circular No. 158 does not prescribe a formula in computing a debtor's monetary obligation, but merely provides for the formula in computing the simple annual rate. It contends that the amount of the debtor's obligation must be computed in accordance with the interest rate, charges, and manner of computation agreed upon by the parties.[42]

We agree. The total obligation of the respondents must be computed according to the terms and conditions agreed upon. The formula provided under paragraph 3, Sec. 2(i), CB Circular No. 158 cannot be used in computing the total obligation of the respondents because it merely applies to the computation of the simple annual rate. Simple annual rate is the uniform percentage which represents the ratio, on an annual basis, between the finance charges and the amount to be financed.[43] It is one of the items required to be disclosed under the Truth in Lending Act pursuant to the State's policy to protect its citizens from lack of awareness of the true cost of credit.[44]

Finally, we find that the records are insufficient to enable us to determine the total amount of the respondents' obligation. It is not even clear how much the respondents have already paid on the restructured loans and when such payments were made. The receipts presented in evidence by the respondents only showed that they paid P15,000.00 on April 20, 1983 and P5,000.00 on December 2, 1983.[45] On the other hand, Mr. Roberto Balaraao, who is assigned to the Traffic and Processing Department of the petitioner, testified that a third payment was

made, but failed to state the amount.[46] Another witness, Carmen Chamen, an account officer of the petitioner, testified that after the restructuring of the account, the total payment made was P35,000.00.[47]

Moreover, considering our previous conclusion that the interest rates prescribed under the new promissory note are usurious, the statement of account presented by the petitioner is no longer pertinent. It must be stressed that such statement of account was arrived at based on the usurious interest rates. Hence, the total amount of the obligation must necessarily be recomputed.

IN LIGHT OF ALL THE FOREGOING, the assailed Decision dated February 28, 2001 of the Court of Appeals and Order dated June 11, 1993 of the Regional Trial Court, Makati City, Branch 145, are **AFFIRMED WITH MODIFICATION**. The case is hereby **REMANDED** to the trial court for determination of the total amount of the respondents' obligation according to the reduced interest rate of twelve percent (12%) per annum.

SO ORDERED.

Austria-Martinez, and Chico-Nazario, JJ., concur.

Puno, (Chairman), J., on official leave.

Tinga, J., on leave.

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

[2] Records, pp. 369-370.

[3] Rollo, pp. 78-80.

[4] Records, p. 368.

[5] Id. at 250.

[6] Id. at 375-376.

[7] Id. at 377-378.

[8] Id. at 390.

[9] Id. at 384.

[10] Id. at 254.

[11] Id. at 268.

[12] Id. at 708-709.

[13] Id. at 435.

[14] Id. at 714.

[15] Id. at 244-245.

[16] Rollo, pp. 68-77.

[17] Id. at 95.

[18] Records, p. 395.

[19] Rollo, pp. 104-105.

[20] Id. at 106.

[21] Id. at 130.

[22] Paragraph 3, Sec. 2(i), CB Circular No. 158-63 provides:

In the case of the normal installment type of credit of at least one year in duration, where installment payments of equal amount are made in regular time periods spaced not more than one year apart, the simple annual rate (R), in percent, is computed by the following method:

$$R = \frac{2 \times (\text{finance charge}) \times (12) \times 100\%}{(\text{amount to be financed}) (\text{total number of payments plus one})}$$

[23] Rollo, p. 124.

[24] Id. at 128.

[25] Id. at 127.

[26] Id. at 46-47.

[27] Memorandum for the Petitioner, pp. 17-18.

[28] Id. at 22.

[29] *Montecillo v. Reynes*, 385 SCRA 244 (2002).

[30] *Changco v. Court of Appeals*, 379 SCRA 590 (2002).

[31] *Ermitaño v. Court of Appeals*, 306 SCRA 218 (1999).

[32] 305 SCRA 449 (2002).

[33] Id. at 454.

[34] Rollo, p. 140.

[35] Id. at 141-142.

[36] *Puerto v. Court of Appeals*, 383 SCRA 185 (2002).

[37] Sec. 2, Act No. 2655, as amended by P.D. No. 116.

[38] *First Metro Investment Corporation v. Este Del Sol Mountain Reserve, Inc.*, 369 SCRA 99 (2001).

[39] CB Circular No. 416 dated July 29, 1974, raised the legal interest to 12% per annum.

[40] *Supra*, note 37.

[41] Id. at 111.

[42] Rollo, p. 48.

[43] Sec. 2(i), CB Circular No. 158-63.

[44] Sec. 2, Rep. Act No. 3765.

[45] Records, p. 268.

[46] Id. at 435.

[47] Id. at 714.

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