

PURIFICACION BUÑING & ROMEO BUÑING, PETITIONERS, VS. CECILIO SANTOS, RESPONDENT.

G.R. NO. 152544. September 19, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Assailed in this Petition for Review is the Decision[1] dated January 31, 2002 of the Court of Appeals in CA-G.R. CV No. 58360, which modified the Decision[2] dated January 30, 1997, of the Regional Trial Court of Malolos, Bulacan, Branch 18 (RTC).

The undisputed facts are as follows:

Respondent Cecilio Santos filed before the RTC, a complaint for a sum of money with prayer for issuance of preliminary attachment,[3] docketed as Civil Case No. 23- M-96 against petitioners Purificacion and Romeo Buñing.

For failure to file a responsive pleading and upon the respondent's motion, the trial court declared the petitioners in default.[4] After an ex-parte hearing, the trial court rendered a decision in this wise:

WHEREFORE, based on the evidence on record, this Court finds the plaintiff's case to be meritorious. The defendants are hereby ordered to pay the sum of P557,000.00 representing the principal loan with an interest rate of 18% per annum pursuant to their Loan Agreement. The defendants are also directed to pay the plaintiff the sum of P30,000.00 plus 20% of the amount awarded by way of Attorney's fees.

SO ORDERED.[5]

The petitioners, raising as lone error the award of P30,000, plus 20% of the amount awarded by way of attorney's fees, appealed to the Court of Appeals. On January 31, 2002, the appellate court modified the trial court's decision, as follows:

WHEREFORE, the assailed decision is AFFIRMED with MODIFICATION as to the amount awarded, such that, appellants are hereby ordered to pay appellee the following:

1. the sum of P557,000.00 representing the principal loan with an interest rate of 18% per annum pursuant to their loan agreement;
2. interest in the concept of actual and compensatory damages at 6% per annum, computed from the time of filing of the complaint in the trial court until the finality of the judgment;
3. if the adjudged principal and the interest (or any part thereof) remain unpaid hereafter, the interest rate shall be twelve percent (12%) per annum computed from the time the judgment becomes final and executory until it is fully satisfied;
4. attorney's fees equivalent to 10% only of the total award less interest pursuant to Article 2208 (2) of the New Civil Code.

SO ORDERED.[6]

Hence, the present petition, anchored on a sole assigned error:

THE COURT A QUO ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING WITH MODIFICATION THE JANUARY 30, 1997 DECISION OF THE TRIAL COURT, RESOLVING AN ISSUE OR QUESTION NEITHER RAISED NOR DISPUTED IN THE APPEAL BEFORE IT AND NOT DELETING OR ELIMINATING THE AWARD OF ATTORNEY'S FEES, THERE BEING NO FACTUAL BASIS AND/OR LEGAL JUSTIFICATION THEREFOR STATED IN THE TEXT OF THE DECISION, THEREBY DECIDING THE CASE IN A WAY PROBABLY NOT IN ACCORD WITH APPLICABLE DECISIONS OF THIS HONORABLE COURT.[7]

The petition is partly meritorious.

At the outset, it must be noted that this petition suffers from a serious procedural defect which would have warranted its outright dismissal. Since the petition attributes grave abuse of discretion on the part of the Court of Appeals in resolving an issue that was not raised in the appeal before it, what should have been filed was one for certiorari under Rule 65.[8] Nonetheless, we shall treat the petition as filed under Rule 45 and address the alleged error assigned by the petitioners.

Herein petitioners contend that the Court of Appeals seriously erred in granting the following: (1) 6% interest per annum in the concept of actual and compensatory damages; and (2) 12% interest per annum should the adjudged principal and interest remain unpaid. They alleged that these errors were neither brought up nor discussed in their appeal and therefore, its resolution is barred by estoppel. To support their argument, petitioners rely upon the sound procedural precept that only errors specifically assigned may be considered on appeal.

However, in *Mendoza v. Bautista*,[9] this Court declared that:

Indeed, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Section 8 of Rule 51 of the Rules of Court provides:

SEC. 8 Questions that may be decided. - No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.[10]

Clearly, the appellate court is clothed with ample authority to review rulings even if they are not specifically assigned as errors in the appeal. Some of these instances are: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) matters not assigned as errors on appeal but considered necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned is dependent.[11]

We note that the instant case falls squarely under the cited exceptions. Since the petitioners appealed the matter of attorney's fees which was based on the amount awarded,[12] the amount awarded was open to further evaluation. The appellate court was therefore empowered to review the same. Thus, it cannot, and aptly did not, turn a blind eye to the fact that the amount awarded failed to include the legal interest rightly imposed by law, even though

this issue was not explicitly raised by the petitioners.

Now, on the propriety of the trial court's award of attorney's fees for respondent. While Article 2208 of the Civil Code^[13] allows attorney's fees to be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought, there must be a showing that the losing party acted willfully or in bad faith and practically compelled the claimant to litigate and incur litigation expenses. In view of the declared policy of the law that awards of attorney's fees are the exception rather than the rule, it is necessary for the trial court to make express findings of facts and law that would bring the case within the exception and justify the grant of such award.^[14] In *Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine (AMEC-BCCM)*,^[15] this Court held that:

It is an accepted doctrine that the award thereof as an item of damages is the exception rather than the rule, and counsel's fees are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. In all events, the court must explicitly state in the text of the decision, and not only in the decretal portion thereof, the legal reason for the award of attorney's fees.^[16]

Thus, the matter of attorney's fees cannot be touched upon only in the dispositive portion of the decision. The text itself must state the reasons why attorney's fees are being awarded. We have pored over the records and found no factual or legal justification for the award of attorney's fees. While the trial court made this award in the dispositive portion, it did not justify the same in the ratio decidendi of the decision, where the trial court stated:

It is very evident that defendants have no intention of fulfilling their obligation. Despite the efforts exerted [by] the herein plaintiff, the defendants in complete disregard [of] the plaintiff's rights still adamantly refused to restore the hard earned money of the said plaintiff to his damage and prejudice. Such unjust enrichment at the expense of another has always been abhorred in this jurisdiction.^[17]

In our view, this case does not sufficiently satisfy the test of "factual, legal and equitable justification" needed as basis for an award of attorney's fees.^[18] Thus, for lack of sufficient basis in fact, law or equity, the award of attorney's fees must be deleted.

WHEREFORE, the petition is PARTLY GRANTED. The Decision dated January 31, 2002 of the Court of Appeals in CA-G.R. CV No. 58360, is AFFIRMED but the award of ten percent (10%) attorney's fees is hereby DELETED for lack of sufficient factual and legal basis.

SO ORDERED.

Carpio, Carpio-Morales, Tinga and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 44-49. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Godardo A. Jacinto, and Josefina Guevara-Salonga concurring.

[2] Records, pp. 39-42.

[3] Id. at 1-6.

[4] Id. at 35.

[5] Id. at 42.

[6] Rollo, p. 49.

[7] Id. at 10.

[8] Siena Realty Corporation v. Gal-lang, G.R. No. 145169, May 13, 2004, 428 SCRA 422, 423.

[9] G.R. No. 143666, March 18, 2005, 453 SCRA 691.

[10] Id. at 702.

[11] Id. at 702-703.

[12] Rollo, p. 38.

[13] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x

[14] Valiant Machinery and Metal Corp. v. NLRC, G.R. No. 105877, January 25, 1996, 252 SCRA 369, 377-378.

[15] G.R. No. 141994, January 17, 2005, 448 SCRA 413.

[16] Id. at 438.

[17] Rollo, p. 31.

[18] Trans-Asia Shipping Lines, Inc. v. Court of Appeals, G.R. No. 118126, March 4, 1996, 254 SCRA 260, 277.

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