BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER, VS. ANTONIO G. DIAZ AND ELSIE B. DIAZ, RESPONDENTS.

G.R. NO. 153134. June 27, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is the Petition for Review on Certiorari filed by Banco Filipino Savings and Mortgage Bank of the Decision[1] dated November 12, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 64475 allowing respondents spouses Antonio and Elsie Diaz to withdraw their deposit on consignation in the amount of P1,034,600.00[2] held by the Regional Trial Court (RTC) of Makati City, Branch 61. The assailed decision reversed and set aside the orders of the said lower court which had denied the respondents' motion to withdraw deposit. Likewise assailed is the Resolution of April 12, 2002 of the appellate court denying the reconsideration of the assailed decision.

The present case is an offshoot of the CA Decision[3] of October 31, 1990 in CA-G.R. SP No. 21089 and Decision[4] of November 14, 1997 in CA-G.R. CV No. 42899, both of which had already become final and executory. As culled therefrom and from the pleadings filed by the parties in the present case, the factual and procedural antecedents are as follows:

On March 8, 1979, spouses Antonio and Elsie Diaz (the respondents) secured a loan from Banco Filipino Savings and Mortgage Bank (petitioner bank) in the amount of P400,000.00 bearing an interest rate of 16% per annum. In November 1982, the said loan was restructured or consolidated in the increased amount of P3,163,000.00 payable within a period of 20 years at an interest rate of 21% per annum. The obligation was to be paid in equal monthly amortization of P56,227.00, and secured by a real estate mortgage over two commercial lots situated at Bolton and Bonifacio Streets in Davao City. As additional collateral, the respondents assigned the rentals on the mortgaged properties in favor of petitioner bank.

Despite repeated demands made on them, the respondents defaulted in the payment of their obligation beginning October 1986. Before petitioner bank could institute the proceedings to foreclose on the mortgaged properties, the respondents filed with the RTC of Davao City a complaint for "Declaration of Interest Rates and Penalty Charges as Unconscionable and Its Reduction, Reformation of Contract, Annulment of Assignment of Rentals, Damages and Attorney's Fees with Injunction," docketed as Civil Case No. 17840. The RTC of Davao City (Branch 12) denied the application for the issuance of a writ of preliminary injunction. It held that, by respondent Antonio Diaz' own admission, the respondents had been remiss in paying the amortization as agreed upon in the contract; hence, the conditions in the real estate mortgage contract had been violated. As such, petitioner bank could rightfully foreclose the mortgaged properties. On appeal by the respondent spouses, the CA, in its Decision of October 31, 1990 in CA-G.R. SP No. 21089, affirmed the said Order of the RTC of Davao City.

Thereafter, the respondents filed another complaint with the RTC of Makati City for "Consignation and Declaration of Cancellation of Obligation, with Prayer for Issuance of a Preliminary Injunction and Temporary

Restraining Order." The case was docketed as Civil Case No. 91-3090, and raffled to Branch 61 of the said RTC. For failure to file its answer, petitioner bank was declared in default. In addition to the facts established in the previous case, the RTC of Makati City, based on the ex parte evidence of the respondents, made the finding that during the period of January 3, 1983 and January 25, 1985, when petitioner bank was ordered closed by the Central Bank, the respondents paid a total amount of P1,311,308.48. Further, as of January 25, 1985, the respondents' total obligation amounted to P3,391,501.99. The respondents made additional payments from February 11, 1985 until September 1991 amounting to P2,356,910.00. If these additional payments were to be applied to the principal, the remaining balance would only be P1,034,600.00 as of September 16, 1991. The respondents tried to settle their account by tendering the sum of P1,034,600.00 as full payment of their loan obligation. However, petitioner bank, through its then Liquidator Ricardo P. Lirio, refused to accept the said amount. According to petitioner bank, the respondents' obligation at that time amounted to P10,160,649.13.

The respondents then deposited by way of consignation with the RTC of Makati City, a manager's check dated December 5, 1991, in the amount of P1,034,600.00 as full payment of their loan obligation. Petitioner bank was duly informed of such consignation.

In its Decision dated March 6, 1992, the RTC of Makati City ruled that the respondents' total obligation to petitioner bank amounted only to P1,034,600.00 exclusive of interests, and the latter could not charge and/or collect any interest during the time that it was closed by the Central Bank as, in fact, banks that were ordered closed by the Central Bank ceased to be liable for the payment of interests on deposits. It also considered the deposited check as consignation of the respondents' entire debt and that there was a valid consignation. Accordingly, the respondents' obligation to petitioner bank was declared as fully paid and/or cancelled.

On appeal by petitioner bank, the CA, in its Decision dated November 14, 1997 in CA-G.R. CV No. 42899, reversed and set aside the decision of the RTC of Makati City. On the procedural aspect, the CA found that the lower court erred in denying petitioner bank's motion to lift order of default. Regarding the substantive issue, the CA held that the lower court likewise erroneously declared that petitioner bank, during the time that it was ordered closed by the Central Bank, could not charge or collect interests on the respondents' loan obligation. Citing the principle of unjust enrichment, the CA posited that it was with more reason that distressed banks, like petitioner bank, should be allowed to collect interests on the loans that they had extended to their borrowers. According to the CA, the fact that distressed banks were freed from the obligation to pay any interest due on deposits when they were closed and ordered to stop operations did not mean that their borrowers were similarly freed from their contractual obligation to pay interests. It distinguished the contracts between the banks and their depositors from those between the banks and their borrowers.

The CA declared that the deposited amount of P1,034,600.00 failed to effect a valid consignation in law because it did not include all interests due. It ratiocinated that for a valid consignation to exist, the tender of the principal must be accompanied with the tender of interests which had accrued; otherwise, the said tender would not be effective. The CA then reversed and set aside the decision of the RTC of Makati City and entered a new one dismissing Civil Case No. 91-3090.

The subsequent facts pertain to the case now before the Court:

Upon finality of the decision of the CA in CA-G.R. CV No. 42899, declaring that there was no valid consignation and dismissing Civil Case No. 91-3090, the respondents filed with the RTC of Makati City a motion to withdraw deposit. They averred therein that with the finality of the CA decision dismissing their complaint, they are now withdrawing the amount of P1,034,600.00 which they had deposited by way of consignation with the said lower court. In addition, they alleged that their loan obligation was eventually settled with the payment of the amount of

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P25,000,000.00 through negotiations made with petitioner bank by the brothers James and Francisco Gaisano as attorneys-in-fact of the respondents. Upon such payment, Corazon L. Costan, petitioner bank's 2[nd] Assistant Vice-President and Davao Main Branch Manager, issued on February 10, 1999 the Cancellation of the Real Estate Mortgage over the respondents' commercial lots. According to the respondents, there was no longer any obstacle to the immediate release of their deposit. They prayed that they be allowed to withdraw the money which they deposited on consignation with the said court (RTC of Makati City).

Petitioner bank opposed the respondents' motion. It alleged that as of December 31, 1998, the respondents' loan obligation stood at P28,810,330.51. Petitioner bank asserted that the deposit in question should be released to it as part of the full payment of the respondents' obligation. It maintained that it accepted the said consignation; hence, the respondents could no longer withdraw the said amount.

Petitioner bank refuted the respondents' claim that there was already full payment of their obligation with the payment by the Gaisanos of P25,000,000.00. Petitioner bank stated that it negotiated with the Gaisanos on January 7, 1999 and the sum agreed thereon was allegedly for the payment of the respondents' obligation as of December 31, 1998 which amounted to P28,810,330.51. Petitioner bank added that during this negotiation, it took into account and deducted from the said total obligation the amounts of P1,462,901.00, representing the payments made by the respondents in 1990 and 1991, and P1,034,600.00, representing the deposit made by the respondents with the RTC of Makati City. The net obligation of the respondents after deducting these amounts stood at P26,312,828.52 and it was this amount that petitioner bank agreed to be settled with the payment by the Gaisanos of P25,100,000.00, not P25,000,000.00 as alleged by the respondents.

Petitioner bank accused the respondents of being in bad faith in that while its negotiation with the Gaisanos had not yet been finalized, the respondents sought to withdraw the deposit in question – which was part of the consideration that induced petitioner bank to agree to settle the respondents' obligation with the payment by the Gaisanos of P25,100,000.00 Petitioner bank prayed that the deposit in question be released to it in order that it could be applied to the respondents' total loan obligation.

After consideration of the parties' respective arguments, the RTC of Makati City issued the Order dated July 31, 2000 stating as follows:

> Acting on the Motion to Withdraw Deposit mailed by plaintiff[s], [the respondents herein] on 26 January 1999 in Davao City with Opposition thereto filed by defendant Banco Filipino Savings and Mortgage Bank on 08 February 1999.
>
> It appears on record that the Complaint for Consignation filed by the plaintiff[s] before this Court, dated 13 December 1991 and was dismissed by the Court of Appeals on 14 November 1997 which found that the deposited amount of P1,034,600.00 did not include the interest due and was not in full satisfaction of the defendant's claim and there was no valid tender of payment and consignation.
>
> The dismissal of the complaint for Consignation by the Appellate Court did not absolve the obligation of plaintiff to apply the consignation to the outstanding obligation to the defendant and thus, the deposited amount may still be applied for payment of the obligation after due hearing on the deficiency claim of the defendant against the plaintiff.
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> WHEREFORE, in view of the foregoing, the MOTION TO WITHDRAW DEPOSIT is hereby DENIED for lack of merit.
>
> SO ORDERED.[5]

The respondents sought the reconsideration thereof but the RTC of Makati City denied their motion in its Order

dated December 14, 2000. They then filed with the CA a Petition for Certiorari alleging grave abuse of discretion on the part of the presiding judge[6] of the said lower court in promulgating the orders denying their motion to withdraw deposit.

Acting on the said petition, the CA rendered the Decision dated November 12, 2001 in CA-G.R. SP No. 64475 reversing and setting aside the Orders dated July 31, 2000 and December 14, 2000 of the RTC of Makati City. It declared that the respondents had the statutory unilateral right to withdraw their deposit by way of consignation because there was no acceptance of the same by petitioner bank. On this point, the CA relied on Article 1260 of the Civil Code which provides, in part, that "[b]efore the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or sum deposited, allowing the obligation to remain in force."

The CA stressed that petitioner bank had not "performed any prior unmistakable and deliberate act denominating a preemptive acceptance of the deposit in partial settlement of the loan obligation."[7] The claim of "acceptance" was found to be an afterthought on the part of petitioner bank and proffered for the sole purpose of opposing the respondents' motion to withdraw deposit.

Even assuming that there was acceptance by petitioner bank, the CA opined that such acceptance must retroact to December 5, 1991 when the deposit was judicially made. In such a case, petitioner bank's computation of the respondents' outstanding loan obligation would have to be modified and reduced accordingly because the interest rate of 21% would then have to be applied to the reduced loan balance as of December 5, 1991.

The CA strongly condemned the fact that the respondents' original loan of P400,000.00 in 1972 ballooned to P28,810,330.51 as of December 31, 1998 based on petitioner bank's statement of account. The principal amount plus interests, surcharges, insurance premiums, sheriff's and attorney's fees, notarization fees, etc., all added up to the respondents' outstanding balance. According to the CA, the surcharges for missed monthly payments that petitioner bank charged the respondents amounted to twice as much as the 21% interest rate, resulting in an effective interest rate of more than 60% per annum. Citing Medel v. Court of Appeals,[8] this rate was characterized by the CA as "excessive, iniquitous, unconscionable and exorbitant" and likened petitioner bank to Shylock, the moneylender in William Shakespeare's The Merchant of Venice, who asked for a literal pound of flesh as payment for the money he lent.

The CA found as credible the respondents' claim that, on their behalf, the Gaisanos had secured a compromise agreement with petitioner bank with the payment of P25,100,000.00 and, consequently, the mortgage over the respondents' commercial lots was cancelled. Further, the auction sale of these properties which was scheduled on January 27, 1999 was cancelled by petitioner bank itself in its letter to the Sheriff.

The dispositive portion of the assailed decision of the CA reads:

> WHEREFORE, the foregoing premises considered, the petitioners' [the respondents herein] petition for certiorari is GRANTED. The Orders dated July 31, 2000 and December 14, 2000 of the public court in Civil Case No. 91-3090 are REVERSED and SET ASIDE, and another one entered allowing the withdrawal by the petitioners of their deposit of P1,034,600.00 held in custodia legis with said court. No costs.
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> SO ORDERED.[9]

Petitioner bank sought the reconsideration of the said decision but the CA, in its Resolution dated April 12, 2002, denied its motion. Hence, petitioner bank's recourse to the Court.

The basic contention of petitioner bank is that the CA erred in reversing the Orders dated July 31, 2000 and December 14, 2000 of the RTC of Makati City which had denied the respondents' motion to withdraw deposit.

Petitioner bank posits that the said lower court did not commit grave abuse of discretion in issuing the said orders because, as stated in the CA Decision of November 14, 1997 in CA-G.R. CV No. 42899, there was no valid consignation since the amount tendered (P1,034,600.00) by the respondents did not include the interests that accrued on the principal and, therefore, was not in full settlement of their outstanding obligation. Petitioner bank maintains that the dismissal of the respondents' complaint for consignation in Civil Case No. 91-3090 did not discharge their obligation to petitioner bank. Hence, the deposited amount may still be applied to the payment of such obligation.

Petitioner bank claims that it accepted the respondents' deposit on consignation as partial payment of their obligation after the CA had declared the same to have been improperly made and ineffective to discharge the respondents of their obligation to petitioner bank. The RTC of Makati City thus did not allegedly commit grave abuse of discretion in holding that the deposited amount of P1,034,600.00 may still be applied to the payment of their outstanding obligation of P28,810,330.51 as of December 31, 1998.

It is likewise petitioner bank's view that respondents erroneously resorted to the remedy of certiorari in assailing the orders of the RTC of Makati City. By filing their motion to withdraw deposit with the said lower court, the respondents allegedly recognized its jurisdiction and assuming arguendo that it committed an error in the exercise thereof, the appropriate remedy to correct the same was by ordinary appeal, not certiorari.

Petitioner bank emphasizes that it already accepted the deposit of P1,034,600.00 such that it could no longer be withdrawn by the respondents. It reiterated that as of December 31, 1998, the respondents' total obligation was P28,810,330.51 and when it negotiated with the Gaisanos in January 1999, it deducted therefrom the sums of P1,462,901.00, representing previous payments of the respondents, and P1,034,600.00, representing the deposit in question. After these deductions, the respondents' net obligation stood at P26,312,828.52, and it was this amount that petitioner bank agreed to be settled with the payment of P25,100,000.00 by the Gaisanos. This allegedly showed its acceptance of the deposit in question as it was part of the consideration for the settlement of the respondents' obligation of P28,810,330.51.

Petitioner bank strongly takes exception to the portion of the assailed CA decision comparing it to Shylock and characterizing the surcharges and interests as "excessive, iniquitous, unconscionable and exorbitant." It faults the respondents for being remiss in paying their amortization. Had they been religious in paying the same, then their obligation would not have reached the amount of over P28,000,000.00. Petitioner bank denies that it delayed the foreclosure of the respondents' mortgaged properties in order to allow the loan arrearages to accumulate. Rather, the delay was allegedly the respondents' doing as they filed with the RTC of Davao City a complaint to enjoin the said foreclosure. Moreover, petitioner bank points out that in several cases,[10] the Court recognized that interests and surcharges are two entirely different things that may be simultaneously collected in connection with loan agreements.

Petitioner bank, thus, prays for the reversal of the Decision dated November 12, 2001 and Resolution dated April 12, 2002 of the appellate court allowing the respondents to withdraw their deposit on consignation of P1,034,600.00 held by the RTC of Makati City.

The petition is denied.

The Court shall first address the procedural issue on the propriety of respondents' filing with the CA of a petition for certiorari in assailing the Orders of the RTC of Makati City denying their motion to withdraw deposit. Petitioner bank submits that such tack was erroneous, as they should have filed an appeal. Petitioner bank's submission is not correct.

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A special civil action for certiorari may be instituted when any tribunal, board or officer, exercising judicial or quasi-judicial functions, has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[11] To recall, in the present case, the RTC of Makati City had already rendered its original judgment in Civil Case No 91-3090 and the same was appealed to the CA. Acting on the appeal, the CA reversed the judgment of the RTC of Makati City and dismissed the respondents' complaint for consignation. The CA decision became final and executory. Subsequently, the respondents filed the motion to withdraw deposit with the RTC of Makati City and which the latter denied in the Orders of July 31, 2000 and December 14, 2000. These orders, issued after the original judgment had already been rendered, were interlocutory and, therefore, not appealable. Since no appeal was available against such orders, the respondents properly availed of the remedy of certiorari before the CA.

On the other hand, the only substantive issue for the Court's resolution is whether the appellate court erred in reversing the Orders dated July 31, 2000 and December 14, 2000 of the RTC of Makati City which denied the respondents' motion to withdraw deposit and, consequently, allowing them to withdraw their deposit of P1,034,600.00 held on consignation by the said lower court.

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment.[12] In order that consignation may be effective, the debtor must show that: (1) there was a debt due; (2) the consignation of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because he was absent or incapacitated, or because several persons claimed to be entitled to receive the amount due or because the title to the obligation has been lost; (3) previous notice of the consignation had been given to the person interested in the performance of the obligation; (4) the amount due was placed at the disposal of the court; and (5) after the consignation had been made, the person interested was notified thereof.[13] As earlier mentioned, the CA, in its Decision of November 14, 1997 in CA-G.R. CV No. 42899, ruled that there was no valid consignation because the amount tendered as payment was insufficient. In other words, the element of a valid tender of payment was not satisfied. This decision became final and executory.

The issue that now confronts the Court relates to the right of the respondents to withdraw the amount deposited with the RTC of Makati City. Article 1260 of the Civil Code of the Philippines pertinently provides:

> Art. 1260. Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation.
>
> Before the creditor has accepted the consignation, or before a judicial confirmation that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force.

This provision has been explained in this wise:

> x x x The right of the debtor to withdraw the thing or amount deposited in court, depends upon whether or not the consignation has already been accepted or judicially declared proper. Before that time, the debtor is still the owner, and he may withdraw it; in this case, the obligation will remain in full force as before the deposit. But once the consignation has been accepted by the creditor or judicially declared as properly made, the debtor loses his right over the thing or amount deposited, and he cannot withdraw the same without the consent of the creditor; if the creditor consents to the withdrawal in such case, the obligation is revived as against the debtor personally, but all rights of preference of the creditor over the thing and all his actions against co-debtors, guarantors and sureties are extinguished.

> x x x x
>
> x x x We believe, however, that the contrary view is more acceptable. Before the consignation has been accepted by the creditor or judicially declared as properly made, the debtor is still the owner of the thing or amount deposited, and, therefore, the other parties liable for the obligation have no right to oppose his withdrawal of such thing or amount. The debtor merely uses his right, and unless the law expressly limits that use of his right, it cannot be prevented by the objections of anyone. Our law grants to the debtor the right to withdraw, without any limitation, and we should not read a non-existing limitation into the law. Although the other parties liable for the obligation would have been benefited if the consignation had been allowed to become effective, before that moment they have not acquired such an interest as would give them a right to oppose the exercise of the right of the debtor to withdraw the consignation.
>
> Before the consignation has been judicially declared proper, the creditor may prevent the withdrawal by the debtor, by accepting the consignation, even with reservations. Thus, when the amount consigned does not cover the entire obligation, the creditor may accept it, reserving his right to the balance. x x x[14]

Thus, under Article 1260 of the Civil Code, the debtor may withdraw, as a matter of right, the thing or amount deposited on consignation in the following instances:

> (1) Before the creditor has accepted the consignation; or
> (2) Before a judicial declaration that the consignation has been properly made.

Obviously, in this case, there was no judicial declaration that the consignation had been properly made. On the contrary, the CA declared that there was no valid consignation. What remains to be determined then is whether petitioner bank had already accepted the deposit in question so as to prevent the respondents from exercising their right to withdraw the same.

Petitioner bank insists that it had already done so. In fact, petitioner bank avers, it took into account and deducted the deposit in question from the respondents' outstanding obligation of P28,810,330.51 as of December 31, 1998 when it negotiated with the Gaisanos. Deducting the deposit in question as well as the payments made by the respondents during the period of 1990 and 1991, their net obligation stood at P26,312,828.52. It was this amount that petitioner bank allegedly agreed to be settled with the payment of P25,100,000.00 by the Gaisanos on behalf of the respondents.

To prove this claim, petitioner bank relies on the statement of account[15] prepared by its employees purportedly showing that the deposit in question was deducted from the respondents' outstanding obligation as of December 31, 1998. This statement of account, however, is self-serving and has no probative value especially considering that the persons who prepared the same were not presented in court. Thus, other than its bare allegation, petitioner bank has failed to establish by convincing evidence that it had made such acceptance of the deposit in question prior to the respondents' filing of their motion to withdraw deposit as to effectively prevent them from withdrawing the sum of P1,034,600.00 held by the RTC of Makati City.

On the other hand, in the assailed decision, the CA categorically made the finding that petitioner bank made no acceptance of the deposit in question, even if only as partial payment of the respondents' outstanding obligation:

> Nor could it be successfully argued with any modicum of persuasion, x x x, that the bank had performed any prior unmistakable and deliberate act denominating a preemptive acceptance of the deposit in partial settlement of the loan obligation. Otherwise, it would not have waited until the petitioners [the respondents herein] filed their motion to withdraw more than a year after this Court's aforecited decision. The claimed "acceptance" was obviously an afterthought, and proffered for the sole purpose of opposing the deposit withdrawal.[16]

This finding of fact of the CA that petitioner bank had not accepted the deposit in question, even with reservation,

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is accorded respect by this Court following the salutary rule that findings of facts of the appellate court are generally conclusive on the Supreme Court.[17] It is significant to note that the RTC of Makati City never made any factual finding on whether or not there had been acceptance of the deposit in question by petitioner bank.[18] The said lower court did not even apply Article 1260 of the Civil Code when it denied the respondents' motion to withdraw deposit.

With the finding that petitioner bank had not made any prior acceptance of the deposit in question, the CA accordingly did not commit reversible error in setting aside the Orders of the RTC of Makati City which had denied the respondents' motion to withdraw deposit. Indeed, absent this prior acceptance by petitioner bank or a judicial declaration that the consignation had been properly made, the respondents remain the owners of the sum of P1,034,600.00 deposited with the RTC of Makati City. When they filed their motion to withdraw the deposit, they did so in the exercise of their right.

At this point, it bears mentioning that it is not disputed that the Gaisano brothers, as attorneys-in-fact of the respondents, eventually paid to petitioner bank some time in January 1999 the sum of P25,100,000.00 as settlement of the respondents' obligation. To the Court's mind, the payment of the said sum already constituted substantial compliance by the respondents of their obligation considering that their loan, as restructured or consolidated in November 1982, amounted to only P3,163,000.00.

As noted by the CA, the surcharges imposed by petitioner bank on the respondents as of November 15, 1998 reached P16,569,534.62.[19] Article 1229[20] of the Civil Code specifically empowers the judge to reduce the civil penalty equitably, when the principal obligation has been partly or irregularly complied with. Upon this premise, the Court holds that the said surcharges should be equitably reduced such that the payment of P25,100,000.00 constituted substantial compliance by the respondents of their obligation to petitioner bank.

The Court need not delve on the other issues raised, particularly relating to the interests imposed by petitioner bank in connection with the respondents' loan, as these were already passed upon in the other cases (CA-G.R. SP No. 21089 and CA-G.R. CV No. 42899) involving the same parties.

WHEREFORE, premises considered, the petition is DENIED. The Decision dated November 12, 2001 and Resolution of April 12, 2002 of the Court of Appeals in CA-G.R. SP No. 64475 are AFFIRMED.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.
Panganiban, C.J., (Chairperson), no part. Former counsel of a party.

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[1] Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Eubulo G. Verzola (deceased) and Rodrigo V. Cosico, concurring; rollo, pp. 37-48.

[2] P1,034,600.99 in some pleadings.

[3] Penned by Associate Justice Manuel C. Herrera, with Associate Justices Alfredo L. Benipayo and Fortunato A. Vailoces, concurring; rollo, pp. 118-123.

[4] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Consuelo Ynares-Santiago (now Associate Justice of the Supreme Court) and Roberto A. Barrios, concurring; id. at 151-165.

[5] Rollo, p. 7.

[6] Judge Fernando V. Gorospe, Jr.

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[7] Rollo, p. 43.

[8] 359 Phil. 820 (1998).

[9] Rollo, pp. 47-48.

[10] Citing, among others, Tan v. Court of Appeals, 419 Phil. 857 (2001).

[11] Argana v. Republic, G.R. No. 147227, November 19, 2004, 443 SCRA 184, 205-206.

[12] Pabugais v. Sahijwani, G.R. No. 156846, February 23, 2004, 423 SCRA 596, 601.

[13] Id. at 601-602.

[14] TOLENTINO, IV CIVIL CODE OF THE PHILIPPINES 331-332.

[15] Rollo, p. 180.

[16] Id. at 43.

[17] Sps. Hanopol v. Shoemart Incorporated., 439 Phil. 266, 277 (2002).

[18] Supra note 3.

[19] Rollo, p. 45.

[20] The provision reads:

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.

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