

TERESITA DIO, PETITIONER, VS. SPOUSES VIRGILIO AND LUZ ROCES JAPOR AND MARTA JAPOR, RESPONDENTS.

G.R. No. 154129. July 08, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the Decision,[2] dated February 22, 2002, of the Court of Appeals, in the consolidated cases CA-G.R. CV No. 51521 and CA-G.R. SP No. 40457. The decretal portion read:

WHEREFORE, premises considered, in CA-G.R. CV No. 51521, the decision of the trial court is AFFIRMED with MODIFICATION. Judgment is rendered as follows:

- Declaring the Real Estate Mortgage to be valid;
- Fixing the interest at 12% per annum and an additional 1% penalty charge per month such that plaintiffs-appellants' contractual obligation under the deed of real estate mortgage would amount to P1,252,674.00;
- Directing defendant-appellee Dio to give the surplus of P2,247,326.00 to plaintiffs-appellants; and
- Affirming the dissolution of the writ of preliminary injunction previously issued by the trial court.

No pronouncement as to costs.

The Petition in CA-G.R. SP No. 40457 is DENIED for being moot and academic.

SO ORDERED.[3]

Equally assailed in this petition is the Resolution,[4] dated July 2, 2002, of the appellate court, denying Teresita Dio's Motion for Partial Reconsideration of March 19, 2002 and the Spouses Japor and Marta Japor's Motion for Reconsideration dated March 20, 2002.

The antecedent facts are as follows:

Herein respondents Spouses Virgilio Japor and Luz Roces Japor were the owners of an 845.5 square-meter residential lot including its improvements, situated in Barangay Ibabang Mayao, Lucena City, as shown by Transfer Certificate of Title (TCT) No. T-39514. Adjacent to the Japor's lot is another lot owned by respondent Marta Japor, which consisted of 325.5 square meters and titled under TCT No. T-15018.

On August 23, 1982, the respondents obtained a loan of P90,000 from the Quezon Development Bank (QDB), and as security therefor, they mortgaged the lots covered by TCT Nos. T-39514 and T-15018 to QDB, as evidenced by a Deed of Real Estate Mortgage duly executed by and between the respondents and QDB.

On December 6, 1983, respondents and QDB amended the Deed of Real Estate Mortgage increasing respondents' loan to P128,000.

The respondents failed to pay their aforesaid loans. However, before the bank could foreclose on the mortgage, respondents, thru their broker, one Lucia G. Orian, offered to mortgage their properties to petitioner Teresita Dio. Petitioner prepared a Deed of Real Estate Mortgage, whereby respondents mortgaged anew the two properties already mortgaged with QDB to secure the timely payment of a P350,000 loan that respondents had from petitioner Dio. The Deed of Real Estate Mortgage, though dated January 1989, was actually executed on February 13, 1989 and notarized on February 17, 1989.

Under the terms of the deed, respondents agreed to pay the petitioner interest at the rate of five percent (5%) a month, within a period of two months or until April 14, 1989. In the event of default, an additional interest equivalent to five percent (5%) of the amount then due, for every month of delay, would be charged on them.

The respondents failed to settle their obligation to petitioner on April 14, 1989, the agreed deadline for settlement.

On August 27, 1991, petitioner made written demands upon the respondents to pay their debt.

Despite repeated demands, respondents did not pay, hence petitioner applied for extrajudicial foreclosure of the mortgage. The auction of the unredeemed properties was set for February 26, 1992.

Meanwhile, on February 24, 1992, respondents filed an action for Fixing of Contractual Obligation with Prayer for Preliminary Mandatory Injunction/Restraining Order, docketed as Civil Case No. 92-26, with the Regional Trial Court (RTC) of Lucena City. Respondents prayed that "judgment be rendered fixing the contractual obligations of plaintiffs with the defendant Dio plus legal or allowable interests thereon." [5]

The trial court issued an Order enjoining the auction sale of the aforementioned mortgaged properties.

On June 15, 1992, the Japors filed a Motion to Admit Amended Complaint with an attached copy of their Amended Complaint praying that the Deed of Real Estate Mortgage dated February 13, 1989 be declared null and void, but reiterating the plea that the trial court fix the contractual obligations of the Japors with Dio. The trial court denied the motion.

On September 27, 1994, respondents filed with the appellate court, a petition for certiorari, docketed as CA-G.R. SP No. 35315, praying that the Court of Appeals direct the trial court to admit their Amended Complaint. The appellate court denied said petition. [6]

On December 11, 1995, the trial court handed down the following judgment:

WHEREFORE, in view of the foregoing considerations, judgment is rendered:

- Dismissing the complaint for failure of the plaintiffs to substantiate their affirmative allegations;
- Declaring the Real Estate Mortgage (Exhs. "A" to "A-13"/Exhs. "3" to "3-D") to be valid and binding as between the parties, more particularly the plaintiffs Virgilio Japor, Luz Japor and Marta Japor or the latter's substituted heir or heirs, as the case may be;
- Dissolving the writ of preliminary injunction previously issued by this Court; and
- To pay the cost of this suit.

SO ORDERED. [7]

On January 17, 1996, respondents filed their notice of appeal. On April 26, 1996, they also filed a Petition for Temporary Restraining Order And/Or Mandatory Injunction in Aid of Appellate Jurisdiction with the Court of Appeals.

On May 8, 1996, petitioner Dio as the sole bidder in an auction purchased the properties for P3,500,000.

On May 9, 1996, the Court of Appeals denied respondents' application for a temporary restraining order.[8]

On October 9, 1996, the appellate court consolidated CA-G.R. CV No. 51521 and CA-G.R. SP No. 40457.

As stated at the outset, the appellate court affirmed the decision of the trial court with respect to the validity of the Deed of Real Estate Mortgage, but modified the interest and penalty rates for being unconscionable and exorbitant.

Before us, petitioner assigns the following errors allegedly committed by the appellate court:

I

THE ALLEGED INIQUITY OF THE STIPULATED INTEREST AND PENALTY WAS NOT RAISED BEFORE THE TRIAL COURT NOR ASSIGNED AS AN ERROR IN RESPONDENTS' APPEAL.

II

THE STIPULATED INTEREST AND PENALTY ARE NOT "EXCESSIVE, INIQUITOUS, UNCONSCIONABLE, EXORBITANT AND CONTRARY TO MORAL[S]".

III

PAYMENT OF THE "SURPLUS" OF P2,247,326.00 TO RESPONDENTS WOULD RESULT IN THEIR UNJUST ENRICHMENT.

IV

RESPONDENTS' APPEAL SHOULD HAVE BEEN DISMISSED DUE TO FORUM SHOPPING.[9]

Simply stated, the issue is: Did the Court of Appeals err when it held that the stipulations on interest and penalty in the Deed of Real Estate Mortgage is contrary to morals, if not illegal? Corollarily, were respondents entitled to any "surplus" on the auction sale price?

On the main issue, petitioner contends that The Usury Law[10] has been rendered ineffective by Central Bank Circular No. 905, series of 1982 and accordingly, usury has become legally non-existent in this jurisdiction, thus, interest rates may accordingly be pegged at such levels or rates as the lender and the borrower may agree upon. Petitioner avers she has not violated any law considering she is not engaged in the business of money-lending. Moreover, she claims she has suffered inconveniences and incurred expenses for some 13 years now as a result of respondents' failure to pay her. Petitioner further points out that the 5% interest rate was proposed by the respondents and have only themselves to blame if the interests and penalties ballooned to its present amount due to their willful delay and default in payment. The appellate court thus erred, petitioner now insists, in applying *Sps. Almeda v. Court of Appeals*[11] and *Medel v. Court of Appeals*[12] to reduce the interest rate to 12% per annum and the penalty to 1% per month.

Respondents admit they owe petitioner P350,000 and do not question any lawful interest on their loan but they maintain that the Deed of Real Estate Mortgage is null and void since it did not state the true intent of the parties, which limited the 5% interest rate to only two (2) months from the date of the loan and which did not provide for penalties and other charges in the event of default or delay. Respondents vehemently contend that they never consented to the said stipulations and hence, should not be bound by them.

On the first issue, we are constrained to rule against the petitioner's contentions.

Central Bank Circular No. 905, which took effect on January 1, 1983, effectively removed the ceiling on interest

rates for both secured and unsecured loans, regardless of maturity. However, nothing in said Circular grants lenders carte blanche authority to impose interest rates which would result in the enslavement of their borrowers or to the hemorrhaging of their assets.[13] While a stipulated rate of interest may not technically and necessarily be usurious under Circular No. 905, usury now being legally non-existent in our jurisdiction,[14] nonetheless, said rate may be equitably reduced should the same be found to be iniquitous, unconscionable, and exorbitant, and hence, contrary to morals (contra bonos mores), if not against the law.[15] What is iniquitous, unconscionable, and exorbitant shall depend upon the factual circumstances of each case.

In the instant case, the Court of Appeals found that the 5% interest rate per month and 5% penalty rate per month for every month of default or delay is in reality interest rate at 120% per annum. This Court has held that a stipulated interest rate of 5.5% per month or 66% per annum is void for being iniquitous or unconscionable.[16] We have likewise ruled that an interest rate of 6% per month or 72% per annum is outrageous and inordinate.[17] Conformably to these precedent cases, a combined interest and penalty rate at 10% per month or 120% per annum, should be deemed iniquitous, unconscionable, and inordinate. Hence, we sustain the appellate court when it found the interest and penalty rates in the Deed of Real Estate Mortgage in the present case excessive, hence legally impermissible. Reduction is legally called for now in rates of interest and penalty stated in the mortgage contract.

What then should the interest and penalty rates be?

The evidence shows that it was indeed the respondents who proposed the 5% interest rate per month for two (2) months. Having agreed to said rate, the parties are now estopped from claiming otherwise. For the succeeding period after the two months, however, the Court of Appeals correctly reduced the interest rate to 12% per annum and the penalty rate to 1% per month, in accordance with Article 2227[18] of the Civil Code.

But were respondents entitled to the "surplus" of P2,247,326[19] as a result of the "overpricing" in the auction?

We note that the "surplus" was the result of the computation by the Court of Appeals of respondents' outstanding liability based on a reduced interest rate of 12% per annum and the reduced penalty rate of 1% per month. The court a quo then proceeded to apply our ruling in *Sulit v. Court of Appeals*,[20] to the effect that in case of surplus in the purchase price, the mortgagee is liable for such surplus as actually comes into his hands, but where he sells on credit instead of cash, he must still account for the proceeds as if the price were paid in cash, for such surplus stands in the place of the land itself with respect to liens thereon or vested rights therein particularly those of the mortgagor or his assigns.

In the instant case, however, there is no "surplus" to speak of. In adjusting the interest and penalty rates to equitable and conscionable levels, what the Court did was merely to reflect the true price of the land in the foreclosure sale. The amount of the petitioner's bid merely represented the true amount of the mortgage debt. No surplus in the purchase price was thus created to which the respondents as the mortgagors have a vested right.

WHEREFORE, the Decision dated February 22, 2002, of the Court of Appeals in the consolidated cases CA-G.R. CV No. 51521 and CA-G.R. SP No. 40457 is hereby AFFIRMED with MODIFICATION. The interest rate for the subject loan owing to QDB, or whoever is now the party mortgagee, is hereby fixed at five percent (5%) for the first two (2) months following the date of execution of the Deed of Real Estate Mortgage, and twelve percent (12%) for the succeeding period. The penalty rate thereafter shall be fixed at one percent (1%) per month. Petitioner Teresita Dio is declared free of any obligation to return to the respondents, the Spouses Virgilio Japor and Luz Roces Japor and Marta Japor, any surplus in the foreclosure sale price. There being no surplus, after the court below had applied our ruling in *Sulit*,[21] respondents could not legally claim any overprice from the petitioner, much less the amount of P2,247,326.00.

SO ORDERED.

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

[1] "Marita" elsewhere in the records.

[2] CA Rollo, CA-G.R. CV No. 51521, pp. 316-330. Penned by Associate Justice Eliezer R. De Los Santos, with Associate Justices Buenaventura J. Guerrero, and Rodrigo V. Cosico concurring.

[3] Id. at 329-330.

[4] Id. at 492-494.

[5] Records, p. 5.

[6] Id. at 918-927. Penned by Associate Justice Ma. Alicia Austria-Martinez (now a member of this Court), with Associate Justices Pedro A. Ramirez, and Bernardo Ll. Salas concurring.

[7] Id. at 963-964.

[8] CA Rollo, CA-G.R. SP No. 40457, p. 51.

[9] Rollo, pp. 22-23.

[10] Act No. 2655 (1916), as amended.

[11] G.R. No. 113412, 17 April 1996, 326 Phil. 309.

[12] G.R. No. 131622, 27 November 1998, 359 Phil. 820.

[13] Spouses Solangon v. Salazar, G.R. No. 125944, 29 June 2001, 412 Phil. 816, 822.

[14] People v. Dizon, G.R. No. 120957, 22 August 1996, 329 Phil. 685, 696 and cases cited therein.

[15] Supra, note 12 at 830.

[16] Ibid.

[17] Supra, note 13 at 823.

[18] Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

[19] Rollo, pp. 54-57.

[20] G.R. No. 119247, 17 February 1997, 335 Phil. 914, 928-929.

[21] Ibid.

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