

**BOBIE ROSE V. FRIAS, REPRESENTED BY HER ATTORNEY-IN-FACT,
MARIE F. FUJITA, PETITIONER, VS. FLORA SAN DIEGO-SISON,
RESPONDENT.**

G.R. NO. 155223. April 03, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari filed by Bobie Rose V. Frias represented by her Attorney-in-fact, Marie Regine F. Fujita (petitioner) seeking to annul the Decision[1] dated June 18, 2002 and the Resolution[2] dated September 11, 2002 of the Court of Appeals (CA) in CA-G.R. CV No. 52839.

Petitioner is the owner of a house and lot located at No. 589 Batangas East, Ayala Alabang, Muntinlupa, Metro Manila, which she acquired from Island Masters Realty and Development Corporation (IMRDC) by virtue of a Deed of Sale dated Nov. 16, 1990.[3] The property is covered by TCT No. 168173 of the Register of Deeds of Makati in the name of IMRDC.[4]

On December 7, 1990, petitioner, as the FIRST PARTY, and Dra. Flora San Diego-Sison (respondent), as the SECOND PARTY, entered into a Memorandum of Agreement[5] over the property with the following terms:

NOW, THEREFORE, for and in consideration of the sum of THREE MILLION PESOS (P3,000,000.00) receipt of which is hereby acknowledged by the FIRST PARTY from the SECOND PARTY, the parties have agreed as follows:

- That the SECOND PARTY has a period of Six (6) months from the date of the execution of this contract within which to notify the FIRST PARTY of her intention to purchase the aforementioned parcel of land together within (sic) the improvements thereon at the price of SIX MILLION FOUR HUNDRED THOUSAND PESOS (P6,400,000.00). Upon notice to the FIRST PARTY of the SECOND PARTY's intention to purchase the same, the latter has a period of another six months within which to pay the remaining balance of P3.4 million.

- That prior to the six months period given to the SECOND PARTY within which to decide whether or not to purchase the above-mentioned property, the FIRST PARTY may still offer the said property to other persons who may be interested to buy the same provided that the amount of P3,000,000.00 given to the FIRST PARTY BY THE SECOND PARTY shall be paid to the latter including interest based on prevailing compounded bank interest plus the amount of the sale in excess of P7,000,000.00 should the property be sold at a price more than P7 million.

- That in case the FIRST PARTY has no other buyer within the first six months from the execution of this contract, no interest shall be charged by the SECOND PARTY on the P3 million however, in the event that on the sixth month the SECOND PARTY would decide not to purchase the aforementioned property, the FIRST PARTY has a period of another six months within which to pay the sum of P3 million pesos provided that the said amount shall earn compounded bank interest for the last six months only. Under this circumstance, the amount of P3 million given by the SECOND PARTY shall be treated as [a] loan and the property shall be

considered as the security for the mortgage which can be enforced in accordance with law.

x x x x.[6]

Petitioner received from respondent two million pesos in cash and one million pesos in a post-dated check dated February 28, 1990, instead of 1991, which rendered said check stale.[7] Petitioner then gave respondent TCT No. 168173 in the name of IMRDC and the Deed of Absolute Sale over the property between petitioner and IMRDC.

Respondent decided not to purchase the property and notified petitioner through a letter[8] dated March 20, 1991, which petitioner received only on June 11, 1991,[9] reminding petitioner of their agreement that the amount of two million pesos which petitioner received from respondent should be considered as a loan payable within six months. Petitioner subsequently failed to pay respondent the amount of two million pesos.

On April 1, 1993, respondent filed with the Regional Trial Court (RTC) of Manila, a complaint[10] for sum of money with preliminary attachment against petitioner. The case was docketed as Civil Case No. 93-65367 and raffled to Branch 30. Respondent alleged the foregoing facts and in addition thereto averred that petitioner tried to deprive her of the security for the loan by making a false report[11] of the loss of her owner's copy of TCT No. 168173 to the Tagig Police Station on June 3, 1991, executing an affidavit of loss and by filing a petition[12] for the issuance of a new owner's duplicate copy of said title with the RTC of Makati, Branch 142; that the petition was granted in an Order[13] dated August 31, 1991; that said Order was subsequently set aside in an Order dated April 10, 1992[14] where the RTC Makati granted respondent's petition for relief from judgment due to the fact that respondent is in possession of the owner's duplicate copy of TCT No. 168173, and ordered the provincial public prosecutor to conduct an investigation of petitioner for perjury and false testimony. Respondent prayed for the ex-parte issuance of a writ of preliminary attachment and payment of two million pesos with interest at 36% per annum from December 7, 1991, P100,000.00 moral, corrective and exemplary damages and P200,000.00 for attorney's fees.

In an Order dated April 6, 1993, the Executive Judge of the RTC of Manila issued a writ of preliminary attachment upon the filing of a bond in the amount of two million pesos.[15]

Petitioner filed an Amended Answer[16] alleging that the Memorandum of Agreement was conceived and arranged by her lawyer, Atty. Carmelita Lozada, who is also respondent's lawyer; that she was asked to sign the agreement without being given the chance to read the same; that the title to the property and the Deed of Sale between her and the IMRDC were entrusted to Atty. Lozada for safekeeping and were never turned over to respondent as there was no consummated sale yet; that out of the two million pesos cash paid, Atty. Lozada took the one million pesos which has not been returned, thus petitioner had filed a civil case against her; that she was never informed of respondent's decision not to purchase the property within the six month period fixed in the agreement; that when she demanded the return of TCT No. 168173 and the Deed of Sale between her and the IMRDC from Atty. Lozada, the latter gave her these documents in a brown envelope on May 5, 1991 which her secretary placed in her attache case; that the envelope together with her other personal things were lost when her car was forcibly opened the following day; that she sought the help of Atty. Lozada who advised her to secure a police report, to execute an affidavit of loss and to get the services of another lawyer to file a petition for the issuance of an owner's duplicate copy; that the petition for the issuance of a new owner's duplicate copy was filed on her behalf without her knowledge and neither did she sign the petition nor testify in court as falsely claimed for she was abroad; that she was a victim of the manipulations of Atty. Lozada and respondent as shown by the filing of criminal charges for perjury and false testimony against her; that no interest could be due as there was no valid mortgage over the property as the principal obligation is vitiated with fraud and deception. She prayed for the dismissal of the complaint, counter-claim for damages and attorney's fees.

Trial on the merits ensued. On January 31, 1996, the RTC issued a decision,[17] the dispositive portion of which

reads:

WHEREFORE, judgment is hereby RENDERED:

- 1) Ordering defendant to pay plaintiff the sum of P2 Million plus interest thereon at the rate of thirty two (32%) per cent per annum beginning December 7, 1991 until fully paid.
- 2) Ordering defendant to pay plaintiff the sum of P70,000.00 representing premiums paid by plaintiff on the attachment bond with legal interest thereon counted from the date of this decision until fully paid.
- 3) Ordering defendant to pay plaintiff the sum of P100,000.00 by way of moral, corrective and exemplary damages.
- 4) Ordering defendant to pay plaintiff attorney's fees of P100,000.00 plus cost of litigation.[18]

The RTC found that petitioner was under obligation to pay respondent the amount of two million pesos with compounded interest pursuant to their Memorandum of Agreement; that the fraudulent scheme employed by petitioner to deprive respondent of her only security to her loaned money when petitioner executed an affidavit of loss and instituted a petition for the issuance of an owner's duplicate title knowing the same was in respondent's possession, entitled respondent to moral damages; and that petitioner's bare denial cannot be accorded credence because her testimony and that of her witness did not appear to be credible.

The RTC further found that petitioner admitted that she received from respondent the two million pesos in cash but the fact that petitioner gave the one million pesos to Atty. Lozada was without respondent's knowledge thus it is not binding on respondent; that respondent had also proven that in 1993, she initially paid the sum of P30,000.00 as premium for the issuance of the attachment bond, P20,000.00 for its renewal in 1994, and P20,000.00 for the renewal in 1995, thus plaintiff should be reimbursed considering that she was compelled to go to court and ask for a writ of preliminary attachment to protect her rights under the agreement.

Petitioner filed her appeal with the CA. In a Decision dated June 18, 2002, the CA affirmed the RTC decision with modification, the dispositive portion of which reads:

WHEREFORE, premises considered, the decision appealed from is MODIFIED in the sense that the rate of interest is reduced from 32% to 25% per annum, effective June 7, 1991 until fully paid.[19]

The CA found that: petitioner gave the one million pesos to Atty. Lozada partly as her commission and partly as a loan; respondent did not replace the mistakenly dated check of one million pesos because she had decided not to buy the property and petitioner knew of her decision as early as April 1991; the award of moral damages was warranted since even granting petitioner had no hand in the filing of the petition for the issuance of an owner's copy, she executed an affidavit of loss of TCT No. 168173 when she knew all along that said title was in respondent's possession; petitioner's claim that she thought the title was lost when the brown envelope given to her by Atty. Lozada was stolen from her car was hollow; that such deceitful conduct caused respondent serious anxiety and emotional distress.

The CA concluded that there was no basis for petitioner to say that the interest should be charged for six months only and no more; that a loan always bears interest otherwise it is not a loan; that interest should commence on June 7, 1991[20] with compounded bank interest prevailing at the time the two million was considered as a loan which was in June 1991; that the bank interest rate for loans secured by a real estate mortgage in 1991 ranged from 25% to 32% per annum as certified to by Prudential Bank,[21] that in fairness to petitioner, the rate to be charged should be 25% only.

Petitioner's motion for reconsideration was denied by the CA in a Resolution dated September 11, 2002.

Hence the instant Petition for Review on Certiorari filed by petitioner raising the following issues:

(A) WHETHER OR NOT THE COMPOUNDED BANK INTEREST SHOULD BE LIMITED TO SIX (6) MONTHS AS CONTAINED IN THE MEMORANDUM OF AGREEMENT.

(B) WHETHER OR NOT THE RESPONDENT IS ENTITLED TO MORAL DAMAGES.

(C) WHETHER OR NOT THE GRANT OF CORRECTIVE AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES IS PROPER EVEN IF NOT MENTIONED IN THE TEXT OF THE DECISION.[22]

Petitioner contends that the interest, whether at 32% per annum awarded by the trial court or at 25% per annum as modified by the CA which should run from June 7, 1991 until fully paid, is contrary to the parties' Memorandum of Agreement; that the agreement provides that if respondent would decide not to purchase the property, petitioner has the period of another six months to pay the loan with compounded bank interest for the last six months only; that the CA's ruling that a loan always bears interest otherwise it is not a loan is contrary to Art. 1956 of the New Civil Code which provides that no interest shall be due unless it has been expressly stipulated in writing.

We are not persuaded.

While the CA's conclusion, that a loan always bears interest otherwise it is not a loan, is flawed since a simple loan may be gratuitous or with a stipulation to pay interest,[23] we find no error committed by the CA in awarding a 25% interest per annum on the two-million peso loan even beyond the second six months stipulated period.

The Memorandum of Agreement executed between the petitioner and respondent on December 7, 1990 is the law between the parties. In resolving an issue based upon a contract, we must first examine the contract itself, especially the provisions thereof which are relevant to the controversy.[24] The general rule is that if the terms of an agreement are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations shall prevail.[25] It is further required that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.[26]

In this case, the phrase "for the last six months only" should be taken in the context of the entire agreement. We agree with and adopt the CA's interpretation of the phrase in this wise:

Their agreement speaks of two (2) periods of six months each. The first six-month period was given to plaintiff-appellee (respondent) to make up her mind whether or not to purchase defendant-appellant's (petitioner's) property. The second six-month period was given to defendant-appellant to pay the P2 million loan in the event that plaintiff-appellee decided not to buy the subject property in which case interest will be charged "for the last six months only", referring to the second six-month period. This means that no interest will be charged for the first six-month period while appellee was making up her mind whether to buy the property, but only for the second period of six months after appellee had decided not to buy the property. This is the meaning of the phrase "for the last six months only". Certainly, there is nothing in their agreement that suggests that interest will be charged for six months only even if it takes defendant-appellant an eternity to pay the loan.[27]

The agreement that the amount given shall bear compounded bank interest for the last six months only, i.e., referring to the second six-month period, does not mean that interest will no longer be charged after the second six-month period since such stipulation was made on the logical and reasonable expectation that such amount would be paid within the date stipulated. Considering that petitioner failed to pay the amount given which under the Memorandum of Agreement shall be considered as a loan, the monetary interest for the last six months continued to accrue until actual payment of the loaned amount.

The payment of regular interest constitutes the price or cost of the use of money and thus, until the principal sum due is returned to the creditor, regular interest continues to accrue since the debtor continues to use such principal amount.[28] It has been held that for a debtor to continue in possession of the principal of the loan and to continue to use the same after maturity of the loan without payment of the monetary interest, would constitute unjust enrichment on the part of the debtor at the expense of the creditor.[29]

Petitioner and respondent stipulated that the loaned amount shall earn compounded bank interests, and per the certification issued by Prudential Bank, the interest rate for loans in 1991 ranged from 25% to 32% per annum. The CA reduced the interest rate to 25% instead of the 32% awarded by the trial court which petitioner no longer assailed.

In *Bautista v. Pilar Development Corp.*,[30] we upheld the validity of a 21% per annum interest on a P142,326.43 loan. In *Garcia v. Court of Appeals*,[31] we sustained the agreement of the parties to a 24% per annum interest on an P8,649,250.00 loan. Thus, the interest rate of 25% per annum awarded by the CA to a P2 million loan is fair and reasonable.

Petitioner next claims that moral damages were awarded on the erroneous finding that she used a fraudulent scheme to deprive respondent of her security for the loan; that such finding is baseless since petitioner was acquitted in the case for perjury and false testimony filed by respondent against her.

We are not persuaded.

Article 31 of the Civil Code provides that when the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.[32]

While petitioner was acquitted in the false testimony and perjury cases filed by respondent against her, those actions are entirely distinct from the collection of sum of money with damages filed by respondent against petitioner.

We agree with the findings of the trial court and the CA that petitioner's act of trying to deprive respondent of the security of her loan by executing an affidavit of loss of the title and instituting a petition for the issuance of a new owner's duplicate copy of TCT No. 168173 entitles respondent to moral damages. Moral damages may be awarded in culpa contractual or breach of contract cases when the defendant acted fraudulently or in bad faith. Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong. It partakes of the nature of fraud.[33]

The Memorandum of Agreement provides that in the event that respondent opts not to buy the property, the money given by respondent to petitioner shall be treated as a loan and the property shall be considered as the security for the mortgage. It was testified to by respondent that after they executed the agreement on December 7, 1990, petitioner gave her the owner's copy of the title to the property, the Deed of Sale between petitioner and IMRDC, the certificate of occupancy, and the certificate of the Secretary of the IMRDC who signed the Deed of Sale.[34] However, notwithstanding that all those documents were in respondent's possession, petitioner executed an affidavit of loss that the owner's copy of the title and the Deed of Sale were lost.

Although petitioner testified that her execution of the affidavit of loss was due to the fact that she was of the belief that since she had demanded from Atty. Lozada the return of the title, she thought that the brown envelope with markings which Atty. Lozada gave her on May 5, 1991 already contained the title and the Deed of Sale as those documents were in the same brown envelope which she gave to Atty. Lozada prior to the transaction with respondent.[35] Such statement remained a bare statement. It was not proven at all since Atty. Lozada had not

taken the stand to corroborate her claim. In fact, even petitioner's own witness, Benilda Ynfante (Ynfante), was not able to establish petitioner's claim that the title was returned by Atty. Lozada in view of Ynfante's testimony that after the brown envelope was given to petitioner, the latter passed it on to her and she placed it in petitioner's attaché case[36] and did not bother to look at the envelope.[37]

It is clear therefrom that petitioner's execution of the affidavit of loss became the basis of the filing of the petition with the RTC for the issuance of new owner's duplicate copy of TCT No. 168173. Petitioner's actuation would have deprived respondent of the security for her loan were it not for respondent's timely filing of a petition for relief whereby the RTC set aside its previous order granting the issuance of new title. Thus, the award of moral damages is in order.

The entitlement to moral damages having been established, the award of exemplary damages is proper.[38] Exemplary damages may be imposed upon petitioner by way of example or correction for the public good.[39] The RTC awarded the amount of P100,000.00 as moral and exemplary damages. While the award of moral and exemplary damages in an aggregate amount may not be the usual way of awarding said damages,[40] no error has been committed by CA. There is no question that respondent is entitled to moral and exemplary damages.

Petitioner argues that the CA erred in awarding attorney's fees because the trial court's decision did not explain the findings of facts and law to justify the award of attorney's fees as the same was mentioned only in the dispositive portion of the RTC decision.

We agree.

Article 2208[41] of the New Civil Code enumerates the instances where such may be awarded and, in all cases, it must be reasonable, just and equitable if the same were to be granted.[42] Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate.[43] The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the trial court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision.[44] They must be clearly explained and justified by the trial court in the body of its decision. On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its Decision the reasons for awarding the same. Consequently, the award of attorney's fees should be deleted.

WHEREFORE, in view of all the foregoing, the Decision dated June 18, 2002 and the Resolution dated September 11, 2002 of the Court of Appeals in CA-G.R. CV No. 52839 are AFFIRMED with MODIFICATION that the award of attorney's fees is DELETED.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson,) Callejo, Sr., Chico-Nazario, and Nachura, JJ., concur.

[1] CA rollo, pp. 134-144; Penned by Justice Wenceslao I. Agnir, Jr. (retired), concurred in by Justices B.A. Adefuin-de la Cruz (retired) and Regalado E. Maambong.

[2] Id. at 164-165.

[3] Records, pp. 15-16. Exhibit "C".

- [4] Id. at 13-14; Exhibit "B".
- [5] Id. at 9-11; Exhibit "A".
- [6] Id. at 9-10.
- [7] Respondent did not correct or replace the post-dated check. Records also do not show that petitioner demanded its correction or replacement.
- [8] Id. at 17, Annex "D".
- [9] Exhibit "D-1", folder of exhibits.
- [10] Records, pp. 3-8.
- [11] Id. at 18, Annex "E".
- [12] Id. at 20-22; Docketed as LRC Case No. M-2282; Annex "G".
- [13] Id. at 23-24; Penned by Judge Salvador P. de Guzman, Jr.; Annex "H".
- [14] Id. at 25-27; Annex "I".
- [15] Id. at 28. Per Judge Rosalio G. dela Rosa.
- [16] Id. at 130-141.
- [17] Id. at 286-292; Branch 30, Penned by Judge Senecio O. Ortile.
- [18] Id. at 292.
- [19] CA rollo, p. 165.
- [20] The date when the second six-month period commences under the Memorandum of Agreement dated December 7, 1990.
- [21] Exhibit "L", folder of exhibits.
- [22] Rollo, p. 14.
- [23] Civil Code, Article 1933.
- [24] Milwaukee Industries Corporation v. Pampanga III Electric Cooperative, Inc., G.R. No. 152569, May 31, 2004, 430 SCRA 389, 396.
- [25] CIVIL CODE, Article 1370.
- [26] CIVIL CODE, Article 1374.
- [27] CA rollo, p. 164-165.
- [28] State Investment House, Inc. v. Court of Appeals, G.R. No. 90676, June 19, 1991, 198 SCRA 390, 398.
- [29] State Investment House, Inc. v. Court of Appeals, *supra* note 28, at 399.
- [30] 371 Phil. 533, 544 (1999).
- [31] G.R. Nos. L-82282-83, November 24, 1988, 167 SCRA 815, 830.
- [32] Gorospe v. Nolasco, 114 Phil. 614, 618 (1962).

[33] *Abando v. Lozada*, G.R. No. 82564, October 13, 1989, 178 SCRA 509, 516, citing *Board of Liquidators v. Kalaw*, G.R. No. L-18805, August 14, 1967, 20 SCRA 987, 1007.

[34] TSN, July 17, 1995, p. 5.

[35] TSN, August 21, 1995, pp. 7-10.

[36] TSN, October 2, 1995, p. 10.

[37] *Id.* at 16.

[38] *Bert Osmeña & Associates, Inc. v. Court of Appeals*, 205 Phil. 328, 334 (1983); *Kapoe v. Masa*, 219 Phil. 204, 208 (1985).

[39] CIVIL CODE, Article 2229.

[40] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. Nos. 50504-05, August 13, 1990, 188 SCRA 461, 474.

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

- (1) When exemplary damages are awarded;
- (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;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[42] *Citibank, N.A. v. Cabamongan*, G.R. No. 146918, May 2, 2006, 488 SCRA 517, 535-536.

[43] *Id.* citing *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc.* 425 Phil. 511, 525 (2002); *Ibaan Rural Bank, Inc. v. Court of Appeals*, 378 Phil. 707, 714 (1999).

[44] *Samatra v. Vda. de Pariñas*, 431 Phil. 255, 267 (2002); *Development Bank of the Philippines v. Court of Appeals*, 330 Phil. 801, 810 (1996).

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