SPOUSES VIRGILIO AND DIGNA ANASTACIO-CALINA, PETITIONERS, VS. DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 159748. July 31, 2007

Ponente: PUNO, C.J.

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PUNO, C.J.:

Before the Court is a petition for review on certiorari filed under Rule 45 of the Revised Rules of Court. Petitioner spouses VIRGILIO AND DIGNA ANASTACIO-CALINA (Spouses Calina) seek to reverse the decision[1] of the Court of Appeals in CA-G.R. CV No. 570655, which set aside the decision of the trial court dated October 14, 1996.

On July 16, 1975, the Spouses Calina and respondent DEVELOPMENT BANK OF THE PHILIPPINES (DBP) entered into an agricultural (deep-sea fishing) loan agreement, whereby respondent lent to petitioners the amount of P1,356,000.00.

On July 24, 1975, as security for payment of the loan, petitioners executed a promissory note[2] in favor of respondent, promising to pay the aforementioned sum, together with 12% interest per annum, in the following manner:

> - At the end of the third month after date of full release or completion of boat (if full release is not availed of), only interest and advances due shall be paid;
>
> - Thereafter, the loan shall be repayable within five (5) years, the first payment to be made on _____ and the subsequent payments on the _____day of every three (3) months thereafter, and each of all such payments shall be NINETY ONE THOUSAND ONE HUNDRED FORTY FOUR AND 50/100 PESOS (P91,144.50), which shall cover amortizations on the principal and interest at the above mentioned rate.[3]

On the same date, petitioners also executed a Deed of Undertaking,[4] which provided the following pertinent conditions for the loan:

> - That the loan shall be utilized specifically to finance 80% of the total fixed cost portion of the loan as follows:
>
> P1,345,258.00 - Acquisition of one (1) unit "Purse Seine" Type fishing vessel complete with engine and accessories; and
>
> 350,000.00 - Purchase of "Purse Seine" nets and accessories
>
> P1,695,258.00 - Total Fixed Cost
>
> P 339,258.00 - Borrower's Equity
>
> P1,356,000.00 - DBP/IBRD Fund
>
> - Borrower shall put up out of his own funds the amount of P614,658.00 (P339,258.00 for fixed cost and

P275,400.00 for operating cost) representing his counterpart of total project costs to be financed. Borrower shall show proof of the availability of the amount of P275,400.00 required for operating cost before initial release of the loan.

- Borrower shall avail of the proceeds of the loan within a period of six (6) months from date of perfection of documents for the loan.

x x x

- This loan shall be secured by chattel mortgage on one (1) unit "Purse Seine" type fishing boat, complete with engine and accessories, including purse seine nets.

x x x

- That should the borrower fail to avail of the loan or any balance thereof within the said period and should he request for the extension thereof, he shall thereby be obligated to pay thereafter a commitment fee of ¼ of 1% per month on the unreleased proceeds of the loan until the same are fully released or cancelled upon written request of the borrower. This provision is, however, without prejudice to the right of the Bank to cancel the loan, recover such amounts as may have been already released therefrom and/or avail of the remedies provided for in the promissory note and mortgage contract or alternatively, the ordinary remedies in law should the delays in the borrower's availing of the proceeds of the loan constitute a violation of the promissory note and mortgage contract in accordance with the provisions thereof, and/or impair the security position of the Bank.

- That the Bank reserves the right to reduce or stop releases/advances if after inspection and verification the accomplishment in the financed project does not justify giving full amount, or if the conditions of the project do not show improvements commensurate with the amounts already advanced/released. In such an event or in the event of abandonment of the project, all advances/releases made shall automatically become due and demandable and the Bank shall take such legal steps as are necessary to protect its interest.

x x x

- That the fishing vessel to be mortgaged in favor of DBP shall be covered by an "all risk" insurance policy. In the event that any of the fishing vessel(s) become uninsurable the borrower shall reduce the outstanding balance of the loan to the loan value of the remaining acceptable securities.

x x x

- That the borrower shall secure and submit the following:

x x x

c. A performance bond equivalent to 80% of hull cost to guarantee that the fishing vessel shall be constructed in accordance with the plan approved by the said Commission, within one (1) year from date of first release of loan, said performance bond to be cancelled only upon completion of the vessel and presentation to the DBP of a Certificate of Admeasurement and Safety issued by said Commission for the vessel.

x x x.

Pursuant to the conditions set by the Deed of Undertaking, on July 31, 1975, Towers Assurance Corporation, acting as surety for petitioners, executed a Performance Bond for the amount of P319,085.60.

In August 1975, using the first release of the loan from DBP and their own funds to pay for materials and labor costs, the Spouses Calina commenced the construction of a fishing boat on a beach in Panakan, Palawan.[5] In September 1975, the second release of the loan was given to petitioners by DBP. Petitioners used 95% of this amount to purchase one unit of a Cummins Marine Diesel Engine. Prior to installation in the fishing boat, the

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engine was placed in storage. On September 25, 1975, the third release of the loan was given to purchase other equipment. At this point, DBP had already released P451,589.80 to petitioners.

In December 1975, petitioners requested DBP to conduct its inspection of the partially completed keel of the fishing boat. However, the inspectors of DBP were unavailable and failed to visit the construction site.

In the last week of January 1976, typhoon Asyang hit Palawan, and totally destroyed the fishing boat under construction. All materials were washed out to sea.

On January 26, 1978, petitioner Virgilio Calina informed the DBP of his decision to abandon the project.[6] He requested the DBP to grant him 60 days within which to sell the Cummins Marine Diesel Engine and out of the proceeds thereof, pay all his obligations to DBP.

On October 3, 1978, the DBP wrote a letter to the petitioners, demanding immediate payment of P666,195.55, representing the amount of their obligation plus interest from August 18, 1978, excluding daily additional interest.[7]

On December 11, 1980, DBP filed a complaint for sum of money, with a prayer for the issuance of a writ of preliminary attachment for the Cummins Marine Diesel Engine, against the Spouses Calina and Towers Assurance Corporation. Defendant Towers Assurance Corporation raised the defenses of laches and of the fact that the surety bond was never exposed to any risk, as the amount of the debt was used for the purchase of the Cummins Marine Diesel Engine, and not for the purpose of constructing the fishing vessel.[8] The Spouses Calina filed their Answer with Counterclaim[9] for payment of damages on August 14, 1981. On October 20, 1981, the court issued the writ of attachment against the Cummins Marine Diesel Engine.

In a bid to settle their financial obligations to DBP, petitioners sought buyers for the Cummins Marine Diesel Engine by advertising in several newspapers. On September 17, 1984, Pacific Power and Process Corporation offered to buy the Cummins Marine Diesel Engine for P600,000.00.[10] On October 29, 1984, petitioners requested[11] the DBP to signify its conformity to the sale. The DBP refused, and decided to sell the engine at public auction. The auction was held on March 8, 1985, but no bids were made for the engine. On August 26, 1985, DBP wrote petitioners a letter,[12] finally agreeing to the sale of the engine for P600,000.00, and the payment of the proceeds thereof as settlement for their agricultural (deep-sea fishing) loan. DBP also agreed to condone any penalty charges and interest on past due interest computed up to the date of payment of the said amount.

Unfortunately, the petitioners' buyer had already lost interest.[13] They tried to find other buyers but to no avail. Thus, the Cummins Marine Diesel Engine remained unsold.

In the course of the trial, the parties finally came to an agreement for the disposition of the engine. On August 28, 1989, they filed a Joint Motion to Lift the Writ of Attachment so that they could sell the engine pending litigation and apply the proceeds of the sale to the payment of the Spouses Calina's outstanding account with DBP, "without prejudice to whatever negotiation and agreements that the parties may enter into to settle the case amicably in the event the sales proceeds of the Cummins Marine Diesel Engine is not sufficient to pay off the total obligation."[14] The trial court granted the motion.

On February 3, 1992, the engine was sold for the sum of P550,000.00, and the amount was applied to the loan. The parties, however, could not agree whether the total amount of the loan had been fully settled, hence the trial continued.

Finally, the trial court rendered its decision, the dispositive portion of which stated:

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> FINDINGS AND CONCLUSIONS:
>
> The Court finds that the CALINA (sic) received from DBP only the amount of P451,589.80 of the agreed P1,356,000.00 loan, and this amount was used to purchase the subject Cummins Engine. The non-completion of the vessel was caused by fortuitous event which affected both parties that the DBP novated the contract when it agreed to condone the interest and penalties but was revoked by the failure of CALINA to pay the amount of P600,000.00. However, the Court finds that the subsequent agreement of both parties to sell the subject Engine for P550,000.00 is considered by the Court as substantial compliance of the novated contract for the DBP to condone the interests and penalties, and is in fact more than sufficient to offset the loan of P451,589.80 after condonation of the interest and penalties.
>
> On the above findings, the Court concludes that, based on the subsequent novation of the contract after the project was discontinued due to fortuitous event, and with the proceeds of the mutually agreed sale of the subject Cummins Engine absorbed by the DBP, the loan obligation is considered as settled and/or fully paid.
>
> WHEREFORE, premises above considered, this case is hereby DISMISSED.[15]

On July 29, 1998, DBP filed a petition for review[16] with the Court of Appeals, assigning the following errors to the decision of the trial court:

> - The court a quo gravely erred in concluding that "DBP novated the contract when it agreed to condone the interest and penalties but was revoked by the failure of Calina to pay the amount of P600,000.00";
>
> - The court a quo gravely erred in concluding "that the subsequent agreement of both parties to sell the subject engine for P550,000.00 is considered by the [c]ourt as substantial compliance of the novated contract for the DBP to condone the interests and penalties";
>
> - The court a quo gravely erred in concluding that the receipt of DBP of the amount of P550,000.00 realized from the sale of the marine diesel engine "is more than sufficient to offset the loan of P451,589.80 after condonation of interest and penalties." Hence, "the loan obligation x x x is considered as settled and/or fully paid"; and
>
> - The court a quo gravely erred is (sic) not ordering the defendants-appellees Spouses Virgilio G. Calina and Digna Anastacio to pay DBP the remaining balance of their loan obligation, plus interest until fully paid, and the pre-agreed attorney's fees.

It was also averred that even if "the DBP through its Board of Governors expressly approved and agreed not only to condone the penalty charges and interest, but also the dismissal of the complaint upon payment of P600,000.00,"[17] this issue of novation is already moot as it had been revoked by the petitioners' failure to pay the said amount.

On August 27, 2003, the appellate court rendered its Decision,[18] reversing the trial court, viz:

> WHEREFORE, in view of the foregoing, the October 14, 1996 Decision of Branch 61, Regional Trial Court, Makati City in Civil Case No. 1622 is REVERSED and SET ASIDE and a new one entered ordering defendants-appellees, Spouses Virgilio Calina and Digna Anastacio, to pay plaintiff-appellant, Development Bank of the Philippines, the amount of P666,195.55 plus 12% interest from August 18, 1878 (sic) until fully paid to be computed based on diminishing balance method less the P550,000.00 proceeds from the sale of the aforesaid Cummins Engine and 10% attorney's fees.[19]

In their Petition for Review on Certiorari,[20] petitioners assigned the following errors to the appellate court's decision:

> - The Court of Appeals gravely erred when it required petitioners to pay interest on the advance of

P451,589.80 made by DBP, in violation of the Agreement between the parties and without any valid document in support thereof.

- The Court of Appeals gravely erred when it ruled that there was partial condonation of the interest due, but the said condonation was revoked when petitioners still did not pay the loan despite the reduction in interest.

- The Court of Appeals seriously erred when it failed to consider and appreciate that what transpired between the parties, after the filing of the complaint in the trial court, was a compromise settlement and not a condonation of interest.

- The Court of Appeals erred in not holding that the P550,000.00 proceeds in the sale of the Cummins Diesel engine was more than sufficient to off-set the principal loan of P451,589.80.

- The Court of Appeals gravely erred in awarding 10% attorney's fees despite the absence of bad faith on the part of petitioners, and neither does this case fall under any of the circumstances provided for in Art. 2208 of our Civil Code.

- In the remote possibility, this Honorable Court is not persuaded by petitioners' argument, it is respectfully submitted that the interest to be awarded should be reckoned from the date of the compromise settlement between the parties, and only on the remaining balance of P50,000.00.

In its Comment, [21] respondent DBP contended:

- The petition raises only questions of fact, and should not be given due course.

- The Court of Appeals did not err when it ordered petitioners to pay interest on the amount actually received as proceeds of their loan, as the promissory note they executed provides for this. Moreover, as petitioners were in default in the payment of their debt, they are liable to pay additional interest equal to 12% of the entire unpaid obligation as indemnity for damages sustained by the respondent.

- The petitioners did not challenge the finding of the court a quo that although the DBP novated the contract by agreeing to condone interest and penalties, this condonation was revoked by the petitioners' failure to pay the agreed amount. Therefore, the petitioners could not state as erroneous the decision of the Court of Appeals when it affirmed the aforestated finding of the trial court and not as a compromise settlement. The July 14, 1989 Motion (Exhibit 16) was not connected to DBP's letter dated August 26, 1985 (Exhibit 13).

Since the petitioners raised the defense of novation before the trial court and the Court of Appeals, it is now barred from abandoning this theory and adopting a new one. They can no longer claim that there had been no novation, but that the parties had entered into a compromise agreement.

Respondent never entered into any compromise agreement with petitioners. What it only sought was the trial court's approval to sell the Cummins engine and to partially apply the proceeds thereof to the outstanding obligations of petitioners.

- The CA did not err in finding that the proceeds from the sale of the Cummins engine was not sufficient to fully offset the petitioners' outstanding obligation to respondent. As of August 18, 1978, petitioners already owed respondent P666,195.55. Petitioners are liable to pay 12% regular interest per annum to the principal obligation (P451,589.80), plus attorney's fees of 10%.

- In the promissory note and the deed of undertaking, petitioners agreed to pay attorney's fees in case the respondent is forced to engage a lawyer to enforce its right against the petitioners.

- Because the compromise agreement based on DBP's letter (exhibit 13) did not come to fruition, the amount of petitioners' debt to the respondent cannot be pegged at P600,000.00 only.

We affirm the ruling of the appellate court with modifications.

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First, it is a fact that petitioners owe respondent a debt of money. Both parties agree that of the amount stipulated in the promissory note, P451,589.80 had already been given to petitioners by the respondent. When petitioners informed respondent of their intention to desist from continuing the project due to the impossibility of complying with the conditions in the promissory note and deed of undertaking, that immediately rendered due and demandable any amount advanced to them by the respondent. From this time onward, petitioners had the obligation to pay respondent the amount of P451,589.80. On October 3, 1978, pursuant to paragraph 11 of the Deed of Undertaking, the respondent formalized its demand and wrote the petitioners, seeking immediate payment of P666,195.55, representing the amount of petitioners' obligation plus interest from August 18, 1978, excluding daily additional interest.

Second, it is improper for this Court to determine whether there was a compromise agreement entered into by the parties. This Court is not a trier of facts, nor will it disturb the trial court's findings of fact, such findings being, as a rule, binding and conclusive.[22] This doctrine admits of only a few exceptions, such as when the findings are grounded entirely on speculation, surmises or conjectures; when an interference made by the appellate court from its factual findings is manifestly mistaken, absurd or impossible; when there is grave abuse of discretion in the appreciation of facts; when the findings of the appellate court go beyond the issues of the case, run contrary to the admissions of the parties to the case or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; when there is a misappreciation of facts; when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence or are contradicted by evidence on record.[23] None of these exceptions are present in the case at bar.

From the onset of the trial, the Spouses Calina had advocated the theory that there had been a novation of the contract they had entered into with DBP. Based on this stance and the evidence presented by both parties, the trial court declared that it is an admitted fact that the "DBP considered to condone interest and penalties, but this was subsequently revoked when CALINA failed to comply with the condition to pay the amount of P600,000.00" and that "the DBP novated the contract when it agreed to condone the interest and penalties but was revoked by the failure of CALINA to pay the amount of P600,000.00." Petitioners did not challenge this ruling of the trial court in the appellate court. They cannot now raise this issue in their petition before this Court. To countenance such action would be unfair to the respondent and offensive to the basic rules of fair play, justice and due process.[24]

There is no question that petitioners failed to comply with the original terms of the agreement. It is erroneous for the petitioners to blame the respondent for their failure to comply with their contract. The respondent was well within right when it sought to sell the engine at public auction. Indeed, if the auction succeeded, it would have benefited all the parties concerned, as the engine could have been sold at a much higher price.

We note that throughout the proceedings before the trial court, the appellate court and before this Court, petitioners have not assailed the computation of their debt. Thus, it is settled that as of August 18, 1978, petitioners owed P666,195.55 to the respondent. As of February 3, 1992, petitioners had paid P550,000.00 to the respondent.

Plainly, the petitioners have not fully paid their obligation to the respondent. Persons who receive loans of money are bound by law to pay to the creditor an equal amount of the same quality.[25]

In addition, respondent had the right to demand interest on its loan based on their contract. In their promissory note,[26] petitioners agreed to pay 12% interest per annum on their loan. Article 1253 of the New Civil Code provides that, if the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. The respondent is a bank. To hold that bank debtors should not pay interest on their loans would be anathema to the nature of any bank's business. The charging of interest for loans forms a very

essential and fundamental element of the banking business. In fact, it may be considered to be the very core of the banking's existence or being.[27]

We now determine the obligation owed by petitioners to respondent. It is clear that petitioners have to pay P666,195.55, plus 12% interest based on the principal amount of the debt, computed from August 18, 1978 to February 2, 1992. From this sum, the P550,000.00 paid by petitioners must be deducted. The remaining balance, plus 12% interest thereto until the date of full payment, constitute the liability of the petitioners to the respondent.

Finally, we disallow the payment of attorney's fees awarded by the appellate court. Attorney's fees partake of the nature of liquidated damages. It is true that the promissory note and the deed of undertaking executed by the petitioners provided for the payment of attorney's fees should respondent be forced to litigate. However, a fortuitous event, typhoon Asyang, caused the destruction of the fishing boat subject of the project. This supervening event, independent of the will of the obligor, cannot render the latter liable[28] beyond the restitution of what they may have received in advance from the creditor. Consequently, petitioners cannot be made to pay attorney's fees on damages.[29]

IN VIEW WHEREOF, the decision of the Court of Appeals is affirmed, with the modification that the petitioners are ordered to pay to respondent the amount of P666,195.55, plus 12% interest computed from August 18, 1978 until February 2, 1992. From this sum, P550,000.00, representing the previous payment of the petitioners, must be deducted. On the remaining balance shall be added the payment of 12% interest, to be computed from February 3, 1992 until full payment.

The award of attorney's fees is deleted.

No pronouncement as to costs.
SO ORDERED.
Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

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[1] Dated August 27, 2003.

[2] Original Records, p. 6.

[3] Id.

[4] Id., pp. 7-11.

[5] Id., pp. 276-277.

[6] Exhibit "E," id., p. 144.

[7] Exhibit "I," id., p. 148.

[8] Id., pp. 34-37.

[9] Id., pp. 49-53.

[10] Exhibit "7," Original Records, Vol. II, pp. 535-536.

[11] Exhibit "10," id., p. 541.

[12] Exhibit "13," id., p. 543.

[13] Id., Vol. I, p. 381.

[14] Id., p. 435.

[15] The trial court's decision was penned by Judge Fernando V. Gorospe, Jr., rollo, p. 59.

[16] CA rollo, pp. 30-36.

[17] Id., p. 11.

[18] Rollo, pp. 25-32.

[19] The decision was written by Associate Justice Sergio L. Pestaño of the 15[th] Division., id., p. 31.

[20] Id., pp. 10-23.

[21] Id., pp. 72-92.

[22] Singson v. Court of Appeals and Cathay Pacific Airways, Inc., 346 Phil. 831 (1997); Alitalia Airways v. Court of Appeals, G.R. No. 77011, July 24, 1990, 187 SCRA 763, 769-770.

[23] Halili v. Court of Appeals, et al., 350 Phil. 906 (1998).

[24] Drilon v. Court of Appeals, et al., 336 Phil. 949 (1994), citing Cruz v. Court of Appeals, G.R. No. 107019, March 20, 1997, 233 SCRA 301; BA Finance Corporation v. Court of Appeals, G.R. No. 82040, August 27, 1991, 201 SCRA 157; Galicia v. Palo, G.R. No. 99668, November 14, 1989, 179 SCRA 375; Ramos v. Intermediate Appellate Court, G.R. No. 782821, July 5, 1989, 175 SCRA 70; Ganzon v. Court of Appeals, No. L-48757, May 30, 1988, 161 SCRA 641; Dulos Realty and Development Corporation v. Court of Appeals, No. L-76668, January 28, 1988, 157 SCRA 425; Dihiansan, et al. v. Court of Appeals, No. L-49539, September 14, 1987, 153 SCRA 712; Dela Santa v. Court of Appeals, No. L-30560, November 18, 1985, 140 SCRA 44; Soriano v. Philippine National Railways, No. L-43224, August 23, 1978, 84 SCRA 722; Mejorada v. Municipal Council of Dipolog, G.R. No. 107019, March 20, 1997, 52 SCRA 451.

[25] New Civil Code, Article 1953.

[26] Exhibit "A," rollo, p. 34.

[27] Rizal Commercial Banking Corporation, et al. v. Court of Appeals and Goyu & Sons, Inc., G.R. Nos. 128833-34, April 20, 1998, 289 SCRA 292.

[28] New Civil Code, Article 1266; House v. De la Costa, 68 Phil. 742 (1939).

[29] 8 Manresa 355-356; Labayen v. Talisay Silay, 52 Phil. 449 (1928); Castro v. Longa, 89 Phil. 581 (1951); Asia Bed Factory v. National Bed Worker's Union, et al., 100 Phil. 837 (1957); Philippine National Construction Co. v. NLRC, G.R. No. 78603, January 23, 1991, 193 SCRA 401.

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