UNITED COCONUT PLANTERS BANK, PETITIONER, VS. SPOUSES SAMUEL AND ODETTE BELUSO, RESPONDENTS.

G.R. No. 159912. August 17, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, which seeks to annul the Court of Appeals Decision[1] dated 21 January 2003 and its Resolution[2] dated 9 September 2003 in CA-G.R. CV No. 67318. The assailed Court of Appeals Decision and Resolution affirmed in turn the Decision[3] dated 23 March 2000 and Order[4] dated 8 May 2000 of the Regional Trial Court (RTC), Branch 65 of Makati City, in Civil Case No. 99-314, declaring void the interest rate provided in the promissory notes executed by the respondents Spouses Samuel and Odette Beluso (spouses Beluso) in favor of petitioner United Coconut Planters Bank (UCPB).

The procedural and factual antecedents of this case are as follows:

On 16 April 1996, UCPB granted the spouses Beluso a Promissory Notes Line under a Credit Agreement whereby the latter could avail from the former credit of up to a maximum amount of P1.2 Million pesos for a term ending on 30 April 1997. The spouses Beluso constituted, other than their promissory notes, a real estate mortgage over parcels of land in Roxas City, covered by Transfer Certificates of Title No. T-31539 and T-27828, as additional security for the obligation. The Credit Agreement was subsequently amended to increase the amount of the Promissory Notes Line to a maximum of P2.35 Million pesos and to extend the term thereof to 28 February 1998.

The spouses Beluso availed themselves of the credit line under the following Promissory Notes:

PN #		
Date of PN		
Maturity Date		
Amount Secured		
8314-96-00083-3	29 April 1996	27 August 1996
	P 700,000	
8314-96-00085-0	2 May 1996	30 August 1996

P 500,000

8314-96-000292-2

20 November 1996

20 March 1997

P 800,000

The three promissory notes were renewed several times. On 30 April 1997, the payment of the principal and interest of the latter two promissory notes were debited from the spouses Beluso's account with UCPB; yet, a consolidated loan for P1.3 Million was again released to the spouses Beluso under one promissory note with a due date of 28 February 1998.

To completely avail themselves of the P2.35 Million credit line extended to them by UCPB, the spouses Beluso executed two more promissory notes for a total of P350,000.00:

PN # Date of PN

Maturity Date

Amount Secured

97-00363-1 11 December 1997

28 February 1998

P 200,000

98-00002-4 2 January 1998

28 February 1998

P 150,000

However, the spouses Beluso alleged that the amounts covered by these last two promissory notes were never released or credited to their account and, thus, claimed that the principal indebtedness was only P2 Million.

In any case, UCPB applied interest rates on the different promissory notes ranging from 18% to 34%. From 1996 to February 1998 the spouses Beluso were able to pay the total sum of P763,692.03.

From 28 February 1998 to 10 June 1998, UCPB continued to charge interest and penalty on the obligations of the spouses Beluso, as follows:

PN # Amount Secured Interest Penalty Total

97-00363-1 P 200,000 31% 36% P 225,313.24

97-00366-6 P 700,000 30.17%
(7 days) 32.786%
(102 days) P 795,294.72

97-00368-2 P 1,300,000 28%
(2 days) 30.41%

(102 days) P 1,462,124.54

98-00002-4 P 150,000 33%
(102 days) 36% P 170,034.71

The spouses Beluso, however, failed to make any payment of the foregoing amounts.

On 2 September 1998, UCPB demanded that the spouses Beluso pay their total obligation of P2,932,543.00 plus 25% attorney's fees, but the spouses Beluso failed to comply therewith. On 28 December 1998, UCPB foreclosed the properties mortgaged by the spouses Beluso to secure their credit line, which, by that time, already ballooned to P3,784,603.00.

On 9 February 1999, the spouses Beluso filed a Petition for Annulment, Accounting and Damages against UCPB with the RTC of Makati City.

On 23 March 2000, the RTC ruled in favor of the spouses Beluso, disposing of the case as follows:

> PREMISES CONSIDERED, judgment is hereby rendered declaring the interest rate used by [UCPB] void and the foreclosure and Sheriff's Certificate of Sale void. [UCPB] is hereby ordered to return to [the spouses Beluso] the properties subject of the foreclosure; to pay [the spouses Beluso] the amount of P50,000.00 by way of attorney's fees; and to pay the costs of suit. [The spouses Beluso] are hereby ordered to pay [UCPB] the sum of P1,560,308.00.[5]

On 8 May 2000, the RTC denied UCPB's Motion for Reconsideration,[6] prompting UCPB to appeal the RTC Decision with the Court of Appeals. The Court of Appeals affirmed the RTC Decision, to wit:

> WHEREFORE, premises considered, the decision dated March 23, 2000 of the Regional Trial Court, Branch 65, Makati City in Civil Case No. 99-314 is hereby AFFIRMED subject to the modification that defendant-appellant UCPB is not liable for attorney's fees or the costs of suit.[7]

On 9 September 2003, the Court of Appeals denied UCPB's Motion for Reconsideration for lack of merit. UCPB thus filed the present petition, submitting the following issues for our resolution:

> I
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT WHICH DECLARED VOID THE PROVISION ON INTEREST RATE AGREED UPON BETWEEN PETITIONER AND RESPONDENTS
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> II
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> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE COMPUTATION BY THE TRIAL COURT OF RESPONDENTS' INDEBTEDNESS AND ORDERED RESPONDENTS TO PAY PETITIONER THE AMOUNT OF ONLY ONE MILLION FIVE HUNDRED SIXTY THOUSAND THREE HUNDRED EIGHT PESOS (P1,560,308.00)
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> III
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> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT WHICH ANNULLED THE FORECLOSURE BY PETITIONER OF THE SUBJECT PROPERTIES DUE TO AN ALLEGED "INCORRECT COMPUTATION" OF RESPONDENTS' INDEBTEDNESS

> IV
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT WHICH FOUND PETITIONER LIABLE FOR VIOLATION OF THE TRUTH IN LENDING ACT
>
> V
>
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT FAILED TO ORDER THE DISMISSAL OF THE CASE BECAUSE THE RESPONDENTS ARE GUILTY OF FORUM SHOPPING[8]

Validity of the Interest Rates

The Court of Appeals held that the imposition of interest in the following provision found in the promissory notes of the spouses Beluso is void, as the interest rates and the bases therefor were determined solely by petitioner UCPB:

> FOR VALUE RECEIVED, I, and/or We, on or before due date, SPS. SAMUEL AND ODETTE BELUSO (BORROWER), jointly and severally promise to pay to UNITED COCONUT PLANTERS BANK (LENDER) or order at UCPB Bldg., Makati Avenue, Makati City, Philippines, the sum of _____ PESOS, (P_____), Philippine Currency, with interest thereon at the rate indicative of DBD retail rate or as determined by the Branch Head.[9]

UCPB asserts that this is a reversible error, and claims that while the interest rate was not numerically quantified in the face of the promissory notes, it was nonetheless categorically fixed, at the time of execution thereof, at the "rate indicative of the DBD retail rate." UCPB contends that said provision must be read with another stipulation in the promissory notes subjecting to review the interest rate as fixed:

> The interest rate shall be subject to review and may be increased or decreased by the LENDER considering among others the prevailing financial and monetary conditions; or the rate of interest and charges which other banks or financial institutions charge or offer to charge for similar accommodations; and/or the resulting profitability to the LENDER after due consideration of all dealings with the BORROWER.[10]

In this regard, UCPB avers that these are valid reference rates akin to a "prevailing rate" or "prime rate" allowed by this Court in Polotan v. Court of Appeals.[11] Furthermore, UCPB argues that even if the proviso "as determined by the branch head" is considered void, such a declaration would not ipso facto render the connecting clause "indicative of DBD retail rate" void in view of the separability clause of the Credit Agreement, which reads:

> Section 9.08 Separability Clause. If any one or more of the provisions contained in this AGREEMENT, or documents executed in connection herewith shall be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.[12]

According to UCPB, the imposition of the questioned interest rates did not infringe on the principle of mutuality of contracts, because the spouses Beluso had the liberty to choose whether or not to renew their credit line at the new interest rates pegged by petitioner.[13] UCPB also claims that assuming there was any defect in the mutuality of the contract at the time of its inception, such defect was cured by the subsequent conduct of the spouses Beluso in availing themselves of the credit line from April 1996 to February 1998 without airing any protest with respect to the interest rates imposed by UCPB. According to UCPB, therefore, the spouses Beluso are in estoppel.[14]

We agree with the Court of Appeals, and find no merit in the contentions of UCPB.

Article 1308 of the Civil Code provides:

> Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

We applied this provision in Philippine National Bank v. Court of Appeals,[15] where we held:

> In order that obligations arising from contracts may have the force of law between the parties, there must be mutuality between the parties based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void (Garcia vs. Rita Legarda, Inc., 21 SCRA 555). Hence, even assuming that the P1.8 million loan agreement between the PNB and the private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts. It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative "to take it or leave it" (Qua vs. Law Union & Rock Insurance Co., 95 Phil. 85). Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.

The provision stating that the interest shall be at the "rate indicative of DBD retail rate or as determined by the Branch Head" is indeed dependent solely on the will of petitioner UCPB. Under such provision, petitioner UCPB has two choices on what the interest rate shall be: (1) a rate indicative of the DBD retail rate; or (2) a rate as determined by the Branch Head. As UCPB is given this choice, the rate should be categorically determinable in both choices. If either of these two choices presents an opportunity for UCPB to fix the rate at will, the bank can easily choose such an option, thus making the entire interest rate provision violative of the principle of mutuality of contracts.

Not just one, but rather both, of these choices are dependent solely on the will of UCPB. Clearly, a rate "as determined by the Branch Head" gives the latter unfettered discretion on what the rate may be. The Branch Head may choose any rate he or she desires. As regards the rate "indicative of the DBD retail rate," the same cannot be considered as valid for being akin to a "prevailing rate" or "prime rate" allowed by this Court in Polotan. The interest rate in Polotan reads:

> The Cardholder agrees to pay interest per annum at 3% plus the prime rate of Security Bank and Trust Company. x x x.[16]

In this provision in Polotan, there is a fixed margin over the reference rate: 3%. Thus, the parties can easily determine the interest rate by applying simple arithmetic. On the other hand, the provision in the case at bar does not specify any margin above or below the DBD retail rate. UCPB can peg the interest at any percentage above or below the DBD retail rate, again giving it unfettered discretion in determining the interest rate.

The stipulation in the promissory notes subjecting the interest rate to review does not render the imposition by UCPB of interest rates on the obligations of the spouses Beluso valid. According to said stipulation:

> The interest rate shall be subject to review and may be increased or decreased by the LENDER considering among others the prevailing financial and monetary conditions; or the rate of interest and charges which other banks or financial institutions charge or offer to charge for similar accommodations; and/or the resulting profitability to the LENDER after due consideration of all dealings with the BORROWER.[17]

It should be pointed out that the authority to review the interest rate was given UCPB alone as the lender. Moreover, UCPB may apply the considerations enumerated in this provision as it wishes. As worded in the above provision, UCPB may give as much weight as it desires to each of the following considerations: (1) the prevailing

financial and monetary condition; (2) the rate of interest and charges which other banks or financial institutions charge or offer to charge for similar accommodations; and/or (3) the resulting profitability to the LENDER (UCPB) after due consideration of all dealings with the BORROWER (the spouses Beluso). Again, as in the case of the interest rate provision, there is no fixed margin above or below these considerations.

In view of the foregoing, the Separability Clause cannot save either of the two options of UCPB as to the interest to be imposed, as both options violate the principle of mutuality of contracts.

UCPB likewise failed to convince us that the spouses Beluso were in estoppel.

Estoppel cannot be predicated on an illegal act. As between the parties to a contract, validity cannot be given to it by estoppel if it is prohibited by law or is against public policy.[18]

The interest rate provisions in the case at bar are illegal not only because of the provisions of the Civil Code on mutuality of contracts, but also, as shall be discussed later, because they violate the Truth in Lending Act. Not disclosing the true finance charges in connection with the extensions of credit is, furthermore, a form of deception which we cannot countenance. It is against the policy of the State as stated in the Truth in Lending Act:

> Sec. 2. Declaration of Policy. - It is hereby declared to be the policy of the State to protect its citizens from a lack of awareness of the true cost of credit to the user by assuring a full disclosure of such cost with a view of preventing the uninformed use of credit to the detriment of the national economy.[19]

Moreover, while the spouses Beluso indeed agreed to renew the credit line, the offending provisions are found in the promissory notes themselves, not in the credit line. In fixing the interest rates in the promissory notes to cover the renewed credit line, UCPB still reserved to itself the same two options -- (1) a rate indicative of the DBD retail rate; or (2) a rate as determined by the Branch Head.

Error in Computation

UCPB asserts that while both the RTC and the Court of Appeals voided the interest rates imposed by UCPB, both failed to include in their computation of the outstanding obligation of the spouses Beluso the legal rate of interest of 12% per annum. Furthermore, the penalty charges were also deleted in the decisions of the RTC and the Court of Appeals. Section 2.04, Article II on "Interest and other Bank Charges" of the subject Credit Agreement, provides:

> Section 2.04 Penalty Charges. In addition to the interest provided for in Section 2.01 of this ARTICLE, any principal obligation of the CLIENT hereunder which is not paid when due shall be subject to a penalty charge of one percent (1%) of the amount of such obligation per month computed from due date until the obligation is paid in full. If the bank accelerates teh (sic) payment of availments hereunder pursuant to ARTICLE VIII hereof, the penalty charge shall be used on the total principal amount outstanding and unpaid computed from the date of acceleration until the obligation is paid in full.[20]

Paragraph 4 of the promissory notes also states:

> In case of non-payment of this Promissory Note (Note) at maturity, I/We, jointly and severally, agree to pay an additional sum equivalent to twenty-five percent (25%) of the total due on the Note as attorney's fee, aside from the expenses and costs of collection whether actually incurred or not, and a penalty charge of one percent (1%) per month on the total amount due and unpaid from date of default until fully paid.[21]

Petitioner further claims that it is likewise entitled to attorney's fees, pursuant to Section 9.06 of the Credit Agreement, thus:

> If the BANK shall require the services of counsel for the enforcement of its rights under this AGREEMENT,

> the Note(s), the collaterals and other related documents, the BANK shall be entitled to recover attorney's fees equivalent to not less than twenty-five percent (25%) of the total amounts due and outstanding exclusive of costs and other expenses.[22]

Another alleged computational error pointed out by UCPB is the negation of the Compounding Interest agreed upon by the parties under Section 2.02 of the Credit Agreement:

> Section 2.02 Compounding Interest. Interest not paid when due shall form part of the principal and shall be subject to the same interest rate as herein stipulated.[23]

and paragraph 3 of the subject promissory notes:

> Interest not paid when due shall be added to, and become part of the principal and shall likewise bear interest at the same rate.[24]

UCPB lastly avers that the application of the spouses Beluso's payments in the disputed computation does not reflect the parties' agreement. The RTC deducted the payment made by the spouses Beluso amounting to P763,693.00 from the principal of P2,350,000.00. This was allegedly inconsistent with the Credit Agreement, as well as with the agreement of the parties as to the facts of the case. In paragraph 7 of the spouses Beluso's Manifestation and Motion on Proposed Stipulation of Facts and Issues vis-á-vis UCPB's Manifestation, the parties agreed that the amount of P763,693.00 was applied to the interest and not to the principal, in accord with Section 3.03, Article II of the Credit Agreement on "Order of the Application of Payments," which provides:

> Section 3.03 Application of Payment. Payments made by the CLIENT shall be applied in accordance with the following order of preference:
>
> - Accounts receivable and other out-of-pocket expenses
>
> - Front-end Fee, Origination Fee, Attorney's Fee and other expenses of collection;
>
> - Penalty charges;
>
> - Past due interest;
>
> - Principal amortization/Payment in arrears;
>
> - Advance interest;
>
> - Outstanding balance; and
>
> - All other obligations of CLIENT to the BANK, if any.[25]

Thus, according to UCPB, the interest charges, penalty charges, and attorney's fees had been erroneously excluded by the RTC and the Court of Appeals from the computation of the total amount due and demandable from spouses Beluso.

The spouses Beluso's defense as to all these issues is that the demand made by UCPB is for a considerably bigger amount and, therefore, the demand should be considered void. There being no valid demand, according to the spouses Beluso, there would be no default, and therefore the interests and penalties would not commence to run. As it was likewise improper to foreclose the mortgaged properties or file a case against the spouses Beluso, attorney's fees were not warranted.

We agree with UCPB on this score. Default commences upon judicial or extrajudicial demand.[26] The excess amount in such a demand does not nullify the demand itself, which is valid with respect to the proper amount. A contrary ruling would put commercial transactions in disarray, as validity of demands would be dependent on the

exactness of the computations thereof, which are too often contested.

There being a valid demand on the part of UCPB, albeit excessive, the spouses Beluso are considered in default with respect to the proper amount and, therefore, the interests and the penalties began to run at that point.

As regards the award of 12% legal interest in favor of petitioner, the RTC actually recognized that said legal interest should be imposed, thus: "There being no valid stipulation as to interest, the legal rate of interest shall be charged."[27] It seems that the RTC inadvertently overlooked its non-inclusion in its computation.

The spouses Beluso had even originally asked for the RTC to impose this legal rate of interest in both the body and the prayer of its petition with the RTC:

> - Since the provision on the fixing of the rate of interest by the sole will of the respondent Bank is null and void, only the legal rate of interest which is 12% per annum can be legally charged and imposed by the bank, which would amount to only about P599,000.00 since 1996 up to August 31, 1998.
>
> x x x x
>
> WHEREFORE, in view of the foregoing, petiitoners pray for judgment or order:
>
> x x x x
>
> - By way of example for the public good against the Bank's taking unfair advantage of the weaker party to their contract, declaring the legal rate of 12% per annum, as the imposable rate of interest up to February 28, 1999 on the loan of 2.350 million.[28]

All these show that the spouses Beluso had acknowledged before the RTC their obligation to pay a 12% legal interest on their loans. When the RTC failed to include the 12% legal interest in its computation, however, the spouses Beluso merely defended in the appellate courts this non-inclusion, as the same was beneficial to them. We see, however, sufficient basis to impose a 12% legal interest in favor of petitioner in the case at bar, as what we have voided is merely the stipulated rate of interest and not the stipulation that the loan shall earn interest.

We must likewise uphold the contract stipulation providing the compounding of interest. The provisions in the Credit Agreement and in the promissory notes providing for the compounding of interest were neither nullified by the RTC or the Court of Appeals, nor assailed by the spouses Beluso in their petition with the RTC. The compounding of interests has furthermore been declared by this Court to be legal. We have held in Tan v. Court of Appeals,[29] that:

> Without prejudice to the provisions of Article 2212, interest due and unpaid shall not earn interest. However, the contracting parties may by stipulation capitalize the interest due and unpaid, which as added principal, shall earn new interest.

As regards the imposition of penalties, however, although we are likewise upholding the imposition thereof in the contract, we find the rate iniquitous. Like in the case of grossly excessive interests, the penalty stipulated in the contract may also be reduced by the courts if it is iniquitous or unconscionable.[30]

We find the penalty imposed by UCPB, ranging from 30.41% to 36%, to be iniquitous considering the fact that this penalty is already over and above the compounded interest likewise imposed in the contract. If a 36% interest in itself has been declared unconscionable by this Court,[31] what more a 30.41% to 36% penalty, over and above the payment of compounded interest? UCPB itself must have realized this, as it gave us a sample computation of the spouses Beluso's obligation if both the interest and the penalty charge are reduced to 12%.

As regards the attorney's fees, the spouses Beluso can actually be liable therefor even if there had been no

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demand. Filing a case in court is the judicial demand referred to in Article 1169[32] of the Civil Code, which would put the obligor in delay.

The RTC, however, also held UCPB liable for attorney's fees in this case, as the spouses Beluso were forced to litigate the issue on the illegality of the interest rate provision of the promissory notes. The award of attorney's fees, it must be recalled, falls under the sound discretion of the court.[33] Since both parties were forced to litigate to protect their respective rights, and both are entitled to the award of attorney's fees from the other, practical reasons dictate that we set off or compensate both parties' liabilities for attorney's fees. Therefore, instead of awarding attorney's fees in favor of petitioner, we shall merely affirm the deletion of the award of attorney's fees to the spouses Beluso.

In sum, we hold that spouses Beluso should still be held liable for a compounded legal interest of 12% per annum and a penalty charge of 12% per annum. We also hold that, instead of awarding attorney's fees in favor of petitioner, we shall merely affirm the deletion of the award of attorney's fees to the spouses Beluso.

Annulment of the Foreclosure Sale

Properties of spouses Beluso had been foreclosed, titles to which had already been consolidated on 19 February 2001 and 20 March 2001 in the name of UCPB, as the spouses Beluso failed to exercise their right of redemption which expired on 25 March 2000. The RTC, however, annulled the foreclosure of mortgage based on an alleged incorrect computation of the spouses Beluso's indebtedness.

UCPB alleges that none of the grounds for the annulment of a foreclosure sale are present in the case at bar. Furthermore, the annulment of the foreclosure proceedings and the certificates of sale were mooted by the subsequent issuance of new certificates of title in the name of said bank. UCPB claims that the spouses Beluso's action for annulment of foreclosure constitutes a collateral attack on its certificates of title, an act proscribed by Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, which provides:

> Section 48. Certificate not subject to collateral attack. - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled except in a direct proceeding in accordance with law.

The spouses Beluso retort that since they had the right to refuse payment of an excessive demand on their account, they cannot be said to be in default for refusing to pay the same. Consequently, according to the spouses Beluso, the "enforcement of such illegal and overcharged demand through foreclosure of mortgage" should be voided.

We agree with UCPB and affirm the validity of the foreclosure proceedings. Since we already found that a valid demand was made by UCPB upon the spouses Beluso, despite being excessive, the spouses Beluso are considered in default with respect to the proper amount of their obligation to UCPB and, thus, the property they mortgaged to secure such amounts may be foreclosed. Consequently, proceeds of the foreclosure sale should be applied to the extent of the amounts to which UCPB is rightfully entitled.

As argued by UCPB, none of the grounds for the annulment of a foreclosure sale are present in this case. The grounds for the proper annulment of the foreclosure sale are the following: (1) that there was fraud, collusion, accident, mutual mistake, breach of trust or misconduct by the purchaser; (2) that the sale had not been fairly and regularly conducted; or (3) that the price was inadequate and the inadequacy was so great as to shock the conscience of the court.[34]

Liability for Violation of Truth in Lending Act

The RTC, affirmed by the Court of Appeals, imposed a fine of P26,000.00 for UCPB's alleged violation of

Republic Act No. 3765, otherwise known as the Truth in Lending Act.

UCPB challenges this imposition, on the argument that Section 6(a) of the Truth in Lending Act which mandates the filing of an action to recover such penalty must be made under the following circumstances:

> Section 6. (a) Any creditor who in connection with any credit transaction fails to disclose to any person any information in violation of this Act or any regulation issued thereunder shall be liable to such person in the amount of P100 or in an amount equal to twice the finance charge required by such creditor in connection with such transaction, whichever is greater, except that such liability shall not exceed P2,000 on any credit transaction. Action to recover such penalty may be brought by such person within one year from the date of the occurrence of the violation, in any court of competent jurisdiction. x x x (Emphasis ours.)

According to UCPB, the Court of Appeals even stated that "[a]dmittedly the original complaint did not explicitly allege a violation of the 'Truth in Lending Act' and no action to formally admit the amended petition [which expressly alleges violation of the Truth in Lending Act] was made either by [respondents] spouses Beluso and the lower court. x x x."[35]

UCPB further claims that the action to recover the penalty for the violation of the Truth in Lending Act had been barred by the one-year prescriptive period provided for in the Act. UCPB asserts that per the records of the case, the latest of the subject promissory notes had been executed on 2 January 1998, but the original petition of the spouses Beluso was filed before the RTC on 9 February 1999, which was after the expiration of the period to file the same on 2 January 1999.

On the matter of allegation of the violation of the Truth in Lending Act, the Court of Appeals ruled:

> Admittedly the original complaint did not explicitly allege a violation of the 'Truth in Lending Act' and no action to formally admit the amended petition was made either by [respondents] spouses Beluso and the lower court. In such transactions, the debtor and the lending institutions do not deal on an equal footing and this law was intended to protect the public from hidden or undisclosed charges on their loan obligations, requiring a full disclosure thereof by the lender. We find that its infringement may be inferred or implied from allegations that when [respondents] spouses Beluso executed the promissory notes, the interest rate chargeable thereon were left blank. Thus, [petitioner] UCPB failed to discharge its duty to disclose in full to [respondents] Spouses Beluso the charges applicable on their loans.[36]

We agree with the Court of Appeals. The allegations in the complaint, much more than the title thereof, are controlling. Other than that stated by the Court of Appeals, we find that the allegation of violation of the Truth in Lending Act can also be inferred from the same allegation in the complaint we discussed earlier:

> b.) In unilaterally imposing an increased interest rates (sic) respondent bank has relied on the provision of their promissory note granting respondent bank the power to unilaterally fix the interest rates, which rate was not determined in the promissory note but was left solely to the will of the Branch Head of the respondent Bank, x x x.[37]

The allegation that the promissory notes grant UCPB the power to unilaterally fix the interest rates certainly also means that the promissory notes do not contain a "clear statement in writing" of "(6) the finance charge expressed in terms of pesos and centavos; and (7) the percentage that the finance charge bears to the amount to be financed expressed as a simple annual rate on the outstanding unpaid balance of the obligation."[38] Furthermore, the spouses Beluso's prayer "for such other reliefs just and equitable in the premises" should be deemed to include the civil penalty provided for in Section 6(a) of the Truth in Lending Act.

UCPB's contention that this action to recover the penalty for the violation of the Truth in Lending Act has already prescribed is likewise without merit. The penalty for the violation of the act is P100 or an amount equal to twice

the finance charge required by such creditor in connection with such transaction, whichever is greater, except that such liability shall not exceed P2,000.00 on any credit transaction.[39] As this penalty depends on the finance charge required of the borrower, the borrower's cause of action would only accrue when such finance charge is required. In the case at bar, the date of the demand for payment of the finance charge is 2 September 1998, while the foreclosure was made on 28 December 1998. The filing of the case on 9 February 1999 is therefore within the one-year prescriptive period.

UCPB argues that a violation of the Truth in Lending Act, being a criminal offense, cannot be inferred nor implied from the allegations made in the complaint.[40] Pertinent provisions of the Act read:

> Sec. 6. (a) Any creditor who in connection with any credit transaction fails to disclose to any person any information in violation of this Act or any regulation issued thereunder shall be liable to such person in the amount of P100 or in an amount equal to twice the finance charge required by such creditor in connection with such transaction, whichever is the greater, except that such liability shall not exceed P2,000 on any credit transaction. Action to recover such penalty may be brought by such person within one year from the date of the occurrence of the violation, in any court of competent jurisdiction. In any action under this subsection in which any person is entitled to a recovery, the creditor shall be liable for reasonable attorney's fees and court costs as determined by the court.
>
> x x x x
>
> (c) Any person who willfully violates any provision of this Act or any regulation issued thereunder shall be fined by not less than P1,000 or more than P5,000 or imprisonment for not less than 6 months, nor more than one year or both.

As can be gleaned from Section 6(a) and (c) of the Truth in Lending Act, the violation of the said Act gives rise to both criminal and civil liabilities. Section 6(c) considers a criminal offense the willful violation of the Act, imposing the penalty therefor of fine, imprisonment or both. Section 6(a), on the other hand, clearly provides for a civil cause of action for failure to disclose any information of the required information to any person in violation of the Act. The penalty therefor is an amount of P100 or in an amount equal to twice the finance charge required by the creditor in connection with such transaction, whichever is greater, except that the liability shall not exceed P2,000.00 on any credit transaction. The action to recover such penalty may be instituted by the aggrieved private person separately and independently from the criminal case for the same offense.

In the case at bar, therefore, the civil action to recover the penalty under Section 6(a) of the Truth in Lending Act had been jointly instituted with (1) the action to declare the interests in the promissory notes void, and (2) the action to declare the foreclosure void. This joinder is allowed under Rule 2, Section 5 of the Rules of Court, which provides:

> SEC. 5. Joinder of causes of action.-A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:
>
> (a) The party joining the causes of action shall comply with the rules on joinder of parties;
>
> (b) The joinder shall not include special civil actions or actions governed by special rules;
>
> (c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and
>
> (d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction.

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In attacking the RTC's disposition on the violation of the Truth in Lending Act since the same was not alleged in the complaint, UCPB is actually asserting a violation of due process. Indeed, due process mandates that a defendant should be sufficiently apprised of the matters he or she would be defending himself or herself against. However, in the 1 July 1999 pre-trial brief filed by the spouses Beluso before the RTC, the claim for civil sanctions for violation of the Truth in Lending Act was expressly alleged, thus:

> Moreover, since from the start, respondent bank violated the Truth in Lending Act in not informing the borrower in writing before the execution of the Promissory Notes of the interest rate expressed as a percentage of the total loan, the respondent bank instead is liable to pay petitioners double the amount the bank is charging petitioners by way of sanction for its violation.[41]

In the same pre-trial brief, the spouses Beluso also expressly raised the following issue:

> b.) Does the expression indicative rate of DBD retail (sic) comply with the Truth in Lending Act provision to express the interest rate as a simple annual percentage of the loan?[42]

These assertions are so clear and unequivocal that any attempt of UCPB to feign ignorance of the assertion of this issue in this case as to prevent it from putting up a defense thereto is plainly hogwash.

Petitioner further posits that it is the Metropolitan Trial Court which has jurisdiction to try and adjudicate the alleged violation of the Truth in Lending Act, considering that the present action allegedly involved a single credit transaction as there was only one Promissory Note Line.

We disagree. We have already ruled that the action to recover the penalty under Section 6(a) of the Truth in Lending Act had been jointly instituted with (1) the action to declare the interests in the promissory notes void, and (2) the action to declare the foreclosure void. There had been no question that the above actions belong to the jurisdiction of the RTC. Subsection (c) of the above-quoted Section 5 of the Rules of Court on Joinder of Causes of Action provides:

> (c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein.

Furthermore, opening a credit line does not create a credit transaction of loan or mutuum, since the former is merely a preparatory contract to the contract of loan or mutuum. Under such credit line, the bank is merely obliged, for the considerations specified therefor, to lend to the other party amounts not exceeding the limit provided. The credit transaction thus occurred not when the credit line was opened, but rather when the credit line was availed of. In the case at bar, the violation of the Truth in Lending Act allegedly occurred not when the parties executed the Credit Agreement, where no interest rate was mentioned, but when the parties executed the promissory notes, where the allegedly offending interest rate was stipulated.

UCPB further argues that since the spouses Beluso were duly given copies of the subject promissory notes after their execution, then they were duly notified of the terms thereof, in substantial compliance with the Truth in Lending Act.

Once more, we disagree. Section 4 of the Truth in Lending Act clearly provides that the disclosure statement must be furnished prior to the consummation of the transaction:

> SEC. 4. Any creditor shall furnish to each person to whom credit is extended, prior to the consummation of the transaction, a clear statement in writing setting forth, to the extent applicable and in accordance with rules and regulations prescribed by the Board, the following information:

(1) the cash price or delivered price of the property or service to be acquired;

(2) the amounts, if any, to be credited as down payment and/or trade-in;

(3) the difference between the amounts set forth under clauses (1) and (2)

(4) the charges, individually itemized, which are paid or to be paid by such person in connection with the transaction but which are not incident to the extension of credit;

(5) the total amount to be financed;

(6) the finance charge expressed in terms of pesos and centavos; and

(7) the percentage that the finance bears to the total amount to be financed expressed as a simple annual rate on the outstanding unpaid balance of the obligation.

The rationale of this provision is to protect users of credit from a lack of awareness of the true cost thereof, proceeding from the experience that banks are able to conceal such true cost by hidden charges, uncertainty of interest rates, deduction of interests from the loaned amount, and the like. The law thereby seeks to protect debtors by permitting them to fully appreciate the true cost of their loan, to enable them to give full consent to the contract, and to properly evaluate their options in arriving at business decisions. Upholding UCPB's claim of substantial compliance would defeat these purposes of the Truth in Lending Act. The belated discovery of the true cost of credit will too often not be able to reverse the ill effects of an already consummated business decision.

In addition, the promissory notes, the copies of which were presented to the spouses Beluso after execution, are not sufficient notification from UCPB. As earlier discussed, the interest rate provision therein does not sufficiently indicate with particularity the interest rate to be applied to the loan covered by said promissory notes.

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UCPB had earlier moved to dismiss the petition (originally Case No. 99-314 in RTC, Makati City) on the ground that the spouses Beluso instituted another case (Civil Case No. V-7227) before the RTC of Roxas City, involving the same parties and issues. UCPB claims that while Civil Case No. V-7227 initially appears to be a different action, as it prayed for the issuance of a temporary restraining order and/or injunction to stop foreclosure of spouses Beluso's properties, it poses issues which are similar to those of the present case.[43] To prove its point, UCPB cited the spouses Beluso's Amended Petition in Civil Case No. V-7227, which contains similar allegations as those in the present case. The RTC of Makati denied UCPB's Motion to Dismiss Case No. 99-314 for lack of merit. Petitioner UCPB raised the same issue with the Court of Appeals, and is raising the same issue with us now.

The spouses Beluso claim that the issue in Civil Case No. V-7227 before the RTC of Roxas City, a Petition for Injunction Against Foreclosure, is the propriety of the foreclosure before the true account of spouses Beluso is determined. On the other hand, the issue in Case No. 99-314 before the RTC of Makati City is the validity of the interest rate provision. The spouses Beluso claim that Civil Case No. V-7227 has become moot because, before the RTC of Roxas City could act on the restraining order, UCPB proceeded with the foreclosure and auction sale. As the act sought to be restrained by Civil Case No. V-7227 has already been accomplished, the spouses Beluso had to file a different action, that of Annulment of the Foreclosure Sale, Case No. 99-314 with the RTC, Makati City.

Even if we assume for the sake of argument, however, that only one cause of action is involved in the two civil actions, namely, the violation of the right of the spouses Beluso not to have their property foreclosed for an amount they do not owe, the Rules of Court nevertheless allows the filing of the second action. Civil Case No.

V-7227 was dismissed by the RTC of Roxas City before the filing of Case No. 99-314 with the RTC of Makati City, since the venue of litigation as provided for in the Credit Agreement is in Makati City.

Rule 16, Section 5 bars the refiling of an action previously dismissed only in the following instances:

> SEC. 5. Effect of dismissal.-Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of section 1 hereof shall bar the refiling of the same action or claim. (n)

Improper venue as a ground for the dismissal of an action is found in paragraph (c) of Section 1, not in paragraphs (f), (h) and (i):

> SECTION 1. Grounds.-Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> (a) That the court has no jurisdiction over the person of the defending party;
>
> (b) That the court has no jurisdiction over the subject matter of the claim;
>
> (c) That venue is improperly laid;
>
> (d) That the plaintiff has no legal capacity to sue;
>
> (e) That there is another action pending between the same parties for the same cause;
>
> (f) That the cause of action is barred by a prior judgment or by the statute of limitations;
>
> (g) That the pleading asserting the claim states no cause of action;
>
> (h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
>
> (i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and
>
> (j) That a condition precedent for filing the claim has not been complied with.[44] (Emphases supplied.)

When an action is dismissed on the motion of the other party, it is only when the ground for the dismissal of an action is found in paragraphs (f), (h) and (i) that the action cannot be refiled. As regards all the other grounds, the complainant is allowed to file same action, but should take care that, this time, it is filed with the proper court or after the accomplishment of the erstwhile absent condition precedent, as the case may be.

UCPB, however, brings to the attention of this Court a Motion for Reconsideration filed by the spouses Beluso on 15 January 1999 with the RTC of Roxas City, which Motion had not yet been ruled upon when the spouses Beluso filed Civil Case No. 99-314 with the RTC of Makati. Hence, there were allegedly two pending actions between the same parties on the same issue at the time of the filing of Civil Case No. 99-314 on 9 February 1999 with the RTC of Makati. This will still not change our findings. It is indeed the general rule that in cases where there are two pending actions between the same parties on the same issue, it should be the later case that should be dismissed. However, this rule is not absolute. According to this Court in Allied Banking Corporation v. Court of Appeals[45]:

> In these cases, it is evident that the first action was filed in anticipation of the filing of the later action and the purpose is to preempt the later suit or provide a basis for seeking the dismissal of the second action.
>
> Even if this is not the purpose for the filing of the first action, it may nevertheless be dismissed if the later action is the more appropriate vehicle for the ventilation of the issues between the parties. Thus, in Ramos v. Peralta, it was held:

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> [T]he rule on litis pendentia does not require that the later case should yield to the earlier case. What is required merely is that there be another pending action, not a prior pending action. Considering the broader scope of inquiry involved in Civil Case No. 4102 and the location of the property involved, no error was committed by the lower court in deferring to the Bataan court's jurisdiction.

Given, therefore, the pendency of two actions, the following are the relevant considerations in determining which action should be dismissed: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.

In the case at bar, Civil Case No. V-7227 before the RTC of Roxas City was an action for injunction against a foreclosure sale that has already been held, while Civil Case No. 99-314 before the RTC of Makati City includes an action for the annulment of said foreclosure, an action certainly more proper in view of the execution of the foreclosure sale. The former case was improperly filed in Roxas City, while the latter was filed in Makati City, the proper venue of the action as mandated by the Credit Agreement. It is evident, therefore, that Civil Case No. 99-314 is the more appropriate vehicle for litigating the issues between the parties, as compared to Civil Case No. V-7227. Thus, we rule that the RTC of Makati City was not in error in not dismissing Civil Case No. 99-314.

WHEREFORE, the Decision of the Court of Appeals is hereby AFFIRMED with the following MODIFICATIONS:

- In addition to the sum of P2,350,000.00 as determined by the courts a quo, respondent spouses Samuel and Odette Beluso are also liable for the following amounts:

- Penalty of 12% per annum on the amount due[46] from the date of demand; and

- Compounded legal interest of 12% per annum on the amount due[47] from date of demand;

- The following amounts shall be deducted from the liability of the spouses Samuel and Odette Beluso:

- Payments made by the spouses in the amount of P763,692.00. These payments shall be applied to the date of actual payment of the following in the order that they are listed, to wit:

- penalty charges due and demandable as of the time of payment;

- interest due and demandable as of the time of payment;

- principal amortization/payment in arrears as of the time of payment;

- outstanding balance.

- Penalty under Republic Act No. 3765 in the amount of P26,000.00. This amount shall be deducted from the liability of the spouses Samuel and Odette Beluso on 9 February 1999 to the following in the order that they are listed, to wit:

- penalty charges due and demandable as of time of payment;

- interest due and demandable as of the time of payment;

- principal amortization/payment in arrears as of the time of payment;

- outstanding balance.

- The foreclosure of mortgage is hereby declared VALID. Consequently, the amounts which the Regional Trial

Court and the Court of Appeals ordered respondents to pay, as modified in this Decision, shall be deducted from the proceeds of the foreclosure sale.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.
Reyes, J., no part being the former chairman of the CA Division w/c rendered the assailed Decision.

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[1]Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Ruben T. Reyes (now a member of this Court) and Edgardo F. Sundiam concurring; Rollo, pp. 69-81.

[2] Rollo, p. 82.

[3] Id. at 83-87.

[4]Id. at 88.

[5] Id. at 86.

[6] Id. at 88.

[7] Id. at. 81.

[8] Id. at 337-338.

[9]Id. at 184.

[10]Id.

[11] 357 Phil. 250 (1998).

[12] Rollo, p. 341.

[13] Id. at 342.

[14] Id. at 344-346.

[15] G.R. No. 88880, 30 April 1991, 196 SCRA 536, 545.

[16] Supra note 11 at 254-255.

[17] Rollo, p. 184.

[18]Eugenio v. Perdido, 97 Phil. 41, 44 (1955); Auyong Hian v. Court of Tax Appeals, G.R. No. L-28782, 12 September 1974, 59 SCRA 110, 133-134, cited in IV Tolentino, Commentaries and Jurisprudence on the Civil Code (1986 Ed.), p. 659.

[19]Section 2, Republic Act No. 3765.

[20]Rollo, p. 350.

[21]Id. at 184.

[22] Id. at 352.

[23] Id. at 353.

[24] Id. at 184.

[25]Id. at 357-358.

[26] Civil Code, Article 1169.

[27]Rollo, p. 86.

[28]Records, pp. 5-6.

[29]419 Phil. 857, 866 (2001).

[30]Equitable Banking Corporation v. Liwanag, 143 Phil. 102, 106 (1970); Civil Code, Article 1229.

[31] Ruiz v. Court of Appeals, 449 Phil. 419, 434-435 (2003).

[32] Article 1169 of the Civil Code provides:

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[33] Nielson & Co., Inc. v. Lepanto Consolidated Mining Co., 135 Phil. 532, 566 (1968); Kalalo v. Luz, 145 Phil. 152, 174 (1970); San Miguel Brewery, Inc. v. Magno, 128 Phil. 328, 337 (1967); Philippine Airlines, Inc. v. Court of Appeals, G.R. Nos. 50504-05, 13 August 1990, 188 SCRA 461, 464; Pleno v. Court of Appeals, G.R. No. L-56505, 9 May 1988, 161 SCRA 208, 225.

[34] Philippine National Bank v. Gonzalez, 45 Phil. 693, 699 (1924).

[35]Rollo, p. 80.

[36] Id.

[37] Records, p. 4.

[38] Republic Act No. 3765, Sec. 4.

[39] Republic Act No. 3765, Section 6(a).

[40]Rollo, p. 376.

[41] Records, pp. 64-65.

[42]Id. at 68.

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[43]Petitioner's Memorandum, pp. 57-62; rollo, pp. 378-382.

[44] Rules of Court, Rule 16.

[45] 328 Phil. 710, 718-719 (1996).

[46]The amount still due at the time of the application of penalty charges shall take into account the dates when the amounts in item No. 2 of this fallo shall be deducted.

[47]The amount still due at the time of the application of the compounded legal interest shall take into account the dates when the amounts in item No. 2 of this fallo shall be deducted.

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