

NORTON RESOURCES AND DEVELOPMENT CORPORATION, PETITIONER, VS. ALL ASIA BANK CORPORATION, RESPONDENT.

G.R. No. 162523. November 25, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated November 28, 2002 which set aside the Decision[3] of the Regional Trial Court (RTC) of Davao City, Branch 14, dated August 27, 1999.

The Facts

Petitioner Norton Resources and Development Corporation (petitioner) is a domestic corporation engaged in the business of construction and development of housing subdivisions based in Davao City, while respondent All Asia Bank Corporation (respondent), formerly known as Banco Davao-Davao City Development Bank, is a domestic banking corporation operating in Davao City.

On April 13, 1982, petitioner applied for and was granted a loan by respondent in the amount of Three Million Eight Hundred Thousand Pesos (P3,800,000.00) as evidenced by a Loan Agreement.[4] The loan was intended for the construction of 160 housing units on a 3.9 hectare property located in Matina Aplaya, Davao City which was subdivided by petitioner per Subdivision Sketch Plan.[5] To speed up the processing of all documents necessary for the release of the funds, petitioner allegedly offered respondent a service/commitment fee of P320,000.00 for the construction of 160 housing units, or at P2,000.00 per unit. The offer having been accepted, both parties executed a Memorandum of Agreement[6] (MOA) on the same date.

As guarantor, the Home Financing Corporation (HFC), a government entity tasked to encourage lending institutions to participate in the government's housing programs, extended security coverage obligating itself to pay the said loan upon default of petitioner. Out of the loan proceeds in the amount of P3,800,000.00, respondent deducted in advance the amount of P320,000.00 as commitment/service fee.

Unfortunately, petitioner was only able to construct 35 out of the 160 housing units proposed to be constructed under the contract. In addition, petitioner defaulted in the payment of its loan obligation. Thus, respondent made a call on the unconditional cash guarantee of HFC. In order to recover from HFC, respondent assigned to HFC its interest over the mortgage by virtue of a Deed of Assignment[7] on August 28, 1983 coupled with the delivery of the Transfer Certificate of Title.

As of August 2, 1983, the outstanding obligation of petitioner amounted to P3,240,757.99. HFC paid only P2,990,757.99, withholding the amount of P250,000.00. Upon payment, HFC executed a Deed of Release of Mortgage[8] on February 14, 1984, thereby canceling the mortgage of all properties listed in the Deed of Assignment. Respondent made several demands from HFC for the payment of the amount of P250,000.00 but HFC continued to withhold the same upon the request of petitioner. Thus, respondent filed an action to recover

the P250,000.00 with the RTC, Branch 15, of Davao City, docketed as Civil Case No. 17048.[9] On April 13, 1987, said RTC rendered a Decision[10] in favor of respondent, the dispositive portion thereof reads as follows:

IN VIEW WHEREOF, judgment is hereby rendered as follows:

1. The defendant shall return to the plaintiff the P250,000.00 with legal interest to be computed from April 12, 1984 until fully paid.
2. The defendant shall pay the plaintiff fifty thousand pesos (P50,000.00) as attorney's fees and P7,174.82 as collection expenses.
3. The defendant shall pay the costs of this suit.

SO ORDERED.[11]

HFC appealed to the CA which, in turn, sustained the decision of the RTC. The CA decision became final and executory.

However, on February 22, 1993, petitioner filed a Complaint[12] for Sum of Money, Damages and Attorney's Fees against respondent with the RTC, docketed as Civil Case No. 21-880-93. Petitioner alleged that the P320,000.00 commitment/service fee mentioned in the MOA was to be paid on a per-unit basis at P2,000.00 per unit. Inasmuch as only 35 housing units were constructed, petitioner posited that it was only liable to pay P70,000.00 and not the whole amount of P320,000.00, which was deducted in advance from the proceeds of the loan. As such, petitioner demanded the return of P250,000.00, representing the commitment fee for the 125 housing units left unconstructed and unduly collected by respondent.

In its Answer,[13] respondent denied that the P320,000.00 commitment/service fee provided in the MOA was broken down into P2,000.00 per housing unit for 160 units. Moreover, respondent averred that petitioner's action was already barred by res judicata considering that the present controversy had already been settled in a previous judgment rendered by RTC, Branch 15, of Davao City in Civil Case No. 17048.

The RTC's Ruling

After trial on the merits, the RTC rendered a Decision[14] on August 27, 1999 in favor of petitioner. It held that the amount of P320,000.00, as commitment/service fee provided in the MOA, was based on the 160 proposed housing units at P2,000.00 per unit. Since petitioner was able to construct only 35 units, there was overpayment to respondent in the amount of P250,000.00. Thus, the RTC disposed of the case in this wise:

THE FOREGOING CONSIDERED, judgment is hereby rendered for the plaintiff and against the defendant ordering the said defendant:

1. To pay the plaintiff the amount of TWO HUNDRED FIFTY THOUSAND PESOS (P250,000.00) with interest at the legal rate reckoned from February 22, 1993, the date of the filing of the plaintiff's complaint until the same shall have been fully paid and satisfied;
2. To pay the plaintiff the sum of THIRTY THOUSAND PESOS (P30,000.00) representing litigation expenses;
3. To pay the plaintiff the sum of SIXTY TWO THOUSAND FIVE HUNDRED PESOS (P62,500.00) as and for attorney's fees; and
4. To pay the costs.

SO ORDERED.[15]

Aggrieved, respondent appealed to the CA.[16]

The CA's Ruling

On November 28, 2002, the CA reversed the ruling of the RTC. The CA held that from the literal import of the MOA, nothing was mentioned about the arrangement that the payment of the commitment/service fee of P320,000.00 was on a per unit basis valued at P2,000.00 per housing unit and dependent upon the actual construction or completion of said units. The CA opined that the MOA duly contained all the terms agreed upon by the parties.

Undaunted, petitioner filed a Motion for Reconsideration[17] which was, however, denied by the CA in its Resolution[18] dated February 13, 2004.

Hence, this Petition which raised the following issues:

- WHETHER OR NOT THE MEMORANDU[M] OF AGREEMENT (MOA) REFLECTS THE TRUE INTENTION OF THE PARTIES[;]
- WHETHER OR NOT HEREIN PETITIONER IS ENTITLED TO RECOVER THE AMOUNT OF TWO HUNDRED [FIFTY] THOUSAND PESOS REPRESENTING THE ONE HUNDRED TWENTY FIVE (125) UNCONSTRUCTED HOUSING UNITS AT TWO THOUSAND PESOS (PHP. 2,000.00) EACH AS AGREED [; AND]
- WHETHER OR NOT VICTOR FACUNDO AS THE VICE PRESIDENT AND GENERAL MANAGER AT THE TIME THE AFOREMENTIONED MOA WAS EXECUTED, WAS AUTHORIZED TO ENTER INTO [AN] AGREEMENT AND TO NEGOTIATE THE TERMS AND CONDITIONS THEREOF TO THEIR CLIENTELE.[19]

Our Ruling

The instant Petition is bereft of merit.

Our ruling in *Benguet Corporation, et al. v. Cesar Cabildo*[20] is instructive:

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." It also resembles the "four corners" rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.

In our jurisdiction, the rule is thoroughly discussed in *Bautista v. Court of Appeals*:

The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good

reason can be assigned to show that the words should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from the terms which he voluntarily consented to, or impose on him those which he did not.[21]

Moreover, Section 9, Rule 130 of the Revised Rules of Court clearly provides:

SEC. 9. Evidence of written agreements. -- When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

- (a) An intrinsic ambiguity, mistake, or imperfection in the written agreement;
- (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- (c) The validity of the written agreement; or
- (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The "parol evidence rule" forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. When an agreement has been reduced to writing, the parties cannot be permitted to adduce evidence to prove alleged practices which, to all purposes, would alter the terms of the written agreement. Whatever is not found in the writing is understood to have been waived and abandoned.[22] None of the above-cited exceptions finds application in this case, more particularly the alleged failure of the MOA to express the true intent and agreement of the parties concerning the commitment/service fee of P320,000.00.

In this case, paragraph 4 of the MOA plainly states:

4. That the CLIENT offers and agrees to pay a commitment and service fee of THREE HUNDRED TWENTY THOUSAND PESOS (P320,000.00), which shall be paid in two (2) equal installments, on the same dates as the first and second partial releases of the proceeds of the loan.[23]

As such, we agree with the findings of the CA when it aptly and judiciously held, to wit:

Unmistakably, the testimonies of Antonio Soriano and Victor Facundo jibed in material points especially when they testified that the P320,000.00 commitment/service fee mentioned in Paragraph 4 of Exhibit "B" is not to be paid in lump sum but on a per unit basis valued at P2,000.00 per housing unit. But a careful scrutiny of such testimonies discloses that they are not in accord with the documentary evidence on record. It must be stressed that both Antonio Soriano and Victor Facundo testified that the P320,000.00 commitment/service fee was arrived at by multiplying P2,000.00, the cost per housing unit; by 160, the total number of housing units proposed to be constructed by the [petitioner] as evidenced by a certain subdivision survey plan of [petitioner] marked as Exhibit "C."

x x x x

Looking closely at Exhibit "C," noticeable are the date of survey of the subdivision which is May 15-31, 1982 and the date of its approval which is June 25, 1982, which dates are unmistakably later than the execution of the Loan Agreement (Exhibit "A") and Exhibit "B" which was on April 13, 1982. With these dates, we cannot

lose sight of the fact that it was impossible for Victor Facundo to have considered Exhibit "C" as one of the documents presented by [petitioner] to support its proposal that the commitment/service fee be paid on a per unit basis at P2,000.00 a unit. x x x.

x x x x

To stress, there is not even a slim possibility that said blue print (referring to Exhibit "C") was submitted to [respondent] bank during the negotiation of the terms of Exhibit "B" and was made the basis for the computation of P320,000.00 commitment/service fee. As seen on its face, Exhibit "C" was approved in a much later date than the execution of Exhibit "B" which was on April 13, 1982. In addition, as viewed from the foregoing testimony, no less than Victor Facundo himself admitted that there were only 127 proposed housing units instead of 160. Considering these factual milieus, there is sufficient justification to discredit the stance of [petitioner] that Exhibit "B" was not reflective of the true intention or agreement of the parties. Paragraph 4 of Exhibit "B" is clear and explicit in its terms, leaving no room for different interpretation. Considering the absence of any credible and competent evidence of the alleged true and real intention of the parties, the terms of Paragraph 4 of Exhibit "B" remains as it was written. Therefore, the payment of P320,000.00 commitment/service fee mentioned in Exhibit "B" must be paid in lump sum and not on a per unit basis. Consequently, we rule that [petitioner] is not entitled to the return of P250,000.00.[24]

The agreement or contract between the parties is the formal expression of the parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement between the parties and their successors in interest. [25] Time and again, we have stressed the rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs or public policy. Otherwise, courts would be interfering with the freedom of contract of the parties. Simply put, courts cannot stipulate for the parties or amend the latter's agreement, for to do so would be to alter the real intention of the contracting parties when the contrary function of courts is to give force and effect to the intention of the parties.[26]

Finally, as correctly observed by respondent, petitioner's claim that the MOA is a contract of adhesion was never raised by petitioner before the lower courts. Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court. They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice and due process.[27]

A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.[28] It must be borne in mind, however, that contracts of adhesion are not invalid per se. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he adheres, he gives his consent.[29]

All told, we find no reason to disturb, much less, to reverse the assailed CA Decision.

WHEREFORE, the instant Petition is DENIED and the assailed Court of Appeals Decision is AFFIRMED. Costs against petitioner.

SO ORDERED.

Corona, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

[*] Formerly known as Banco Davao-Davao City Development Bank.

[1] Rollo, pp. 11-20.

[2] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Romeo A. Brawner (deceased) and Danilo B. Pine, concurring; rollo, pp. 27-39.

[3] Records, pp. 221-231.

[4] Exhibit "1," id. at 148-151.

[5] Exhibit "C," id. at 134.

[6] Exhibit "2," id. at 152-154.

[7] Records, pp. 185-188.

[8] Id. at 189-190.

[9] CA rollo, pp. 58-63.

[10] Id. at 64-79.

[11] Id. at 79.

[12] Records, pp. 1-4.

[13] Id. at 19-22.

[14] Supra note 3.

[15] Id. at 231.

[16] Records, p. 232.

[17] CA rollo, pp. 125-129.

[18] Id. at 138-139.

[19] Supra note 1, at 14.

[20] G.R. No. 151402, August 22, 2008, citing *Abad v. Goldloop Properties, Inc.*, 521 SCRA 131, 143-145 (2007).

[21] Citations omitted.

[22] *Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc.*, G.R. No. 146428, January 19, 2009.

[23] Supra note 6, at 153.

[24] Supra note 2, at 35-39.

[25] *Gamboa, Rodriguez, Rivera & Co., Inc. v. Court of Appeals*, G.R. No. 117456, May 6, 2005, 458 SCRA 68,

73.

[26] Heirs of San Andres v. Rodriguez, 388 Phil. 571, 586 (2000).

[27] Stronghold Insurance Company, Inc. v. Tokyu Construction Company, Ltd., G.R. Nos. 158820-21, June 5, 2009, citing Eastern Assurance and Surety Corporation v. Con-Field Construction and Development Corporation, 552 SCRA 271, 279-280 (2008).

[28] Radio Communications of the Philippines, Inc. v. Verchez, G.R. No. 164349, January 31, 2006, 481 SCRA 384, 401, citing Philippine Commercial International Bank v. Court of Appeals, 325 Phil. 588, 597 (1996).

[29] Premiere Development Bank v. Central Surety & Insurance Company, Inc., G.R. No. 176246, February 13, 2009.

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