ROLANDO C. RIVERA, PETITIONER, VS. PROMULGATED: SOLIDBANK CORPORATION, RESPONDENT.

G.R. NO. 163269. April 19, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Assailed in this Petition for Review on Certiorari is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 52235 as well as its Resolution[2] denying the Motion for Partial Reconsideration of petitioner Rolando C. Rivera.

Petitioner had been working for Solidbank Corporation since July 1, 1977.[3] He was initially employed as an Audit Clerk, then as Credit Investigator, Senior Clerk, Assistant Accountant, and Assistant Manager. Prior to his retirement, he became the Manager of the Credit Investigation and Appraisal Division of the Consumer's Banking Group. In the meantime, Rivera and his brother-in-law put up a poultry business in Cavite.

In December 1994, Solidbank offered two retirement programs to its employees: (a) the Ordinary Retirement Program (ORP), under which an employee would receive 85% of his monthly basic salary multiplied by the number of years in service; and (b) the Special Retirement Program (SRP), under which a retiring employee would receive 250% of the gross monthly salary multiplied by the number of years in service.[4] Since Rivera was only 45 years old, he was not qualified for retirement under the ORP. Under the SRP, he was entitled to receive P1,045,258.95 by way of benefits.[5]

Deciding to devote his time and attention to his poultry business in Cavite, Rivera applied for retirement under the SRP. Solidbank approved the application and Rivera was entitled to receive the net amount of P963,619.28. This amount included his performance incentive award (PIA), and his unearned medical, dental and optical allowances in the amount of P1,666.67, minus his total accountabilities to Solidbank amounting to P106,973.00.[6] Rivera received the amount and confirmed his separation from Solidbank on February 25, 1995.[7]

Subsequently, Solidbank required Rivera to sign an undated Release, Waiver and Quitclaim, which was notarized on March 1, 1995.[8] Rivera acknowledged receipt of the net proceeds of his separation and retirement benefits and promised that "[he] would not, at any time, in any manner whatsoever, directly or indirectly engage in any unlawful activity prejudicial to the interest of Solidbank, its parent, affiliate or subsidiary companies, their stockholders, officers, directors, agents or employees, and their successors-in-interest and will not disclose any information concerning the business of Solidbank, its manner or operation, its plans, processes, or data of any kind."[9]

Aside from acknowledging that he had no cause of action against Solidbank or its affiliate companies, Rivera agreed that the bank may bring any action to seek an award for damages resulting from his breach of the Release, Waiver and Quitclaim, and that such award would include the return of whatever sums paid to him by virtue of his retirement under the SRP.[10] Rivera was likewise required to sign an undated Undertaking as a supplement to the Release, Waiver and Quitclaim in favor of Solidbank in which he declared that he received in full his

entitlement under the law (salaries, benefits, bonuses and other emoluments), including his separation pay in accordance with the SRP. In this Undertaking, he promised that "[he] will not seek employment with a competitor bank or financial institution within one (1) year from February 28, 1995, and that any breach of the Undertaking or the provisions of the Release, Waiver and Quitclaim would entitle Solidbank to a cause of action against him before the appropriate courts of law.[11] Unlike the Release, Waiver and Quitclaim, the Undertaking was not notarized.

On May 1, 1995, the Equitable Banking Corporation (Equitable) employed Rivera as Manager of its Credit Investigation and Appraisal Division of its Consumers' Banking Group.[12] Upon discovering this, Solidbank First Vice-President for Human Resources Division (HRD) Celia J.L. Villarosa wrote a letter dated May 18, 1995, informing Rivera that he had violated the Undertaking. She likewise demanded the return of all the monetary benefits he received in consideration of the SRP within five (5) days from receipt; otherwise, appropriate legal action would be taken against him.[13]

When Rivera refused to return the amount demanded within the given period, Solidbank filed a complaint for Sum of Money with Prayer for Writ of Preliminary Attachment[14] before the Regional Trial Court (RTC) of Manila on June 26, 1995. Solidbank, as plaintiff, alleged therein that in accepting employment with a competitor bank for the same position he held in Solidbank before his retirement, Rivera violated his Undertaking under the SRP. Considering that Rivera accepted employment with Equitable barely three months after executing the Undertaking, it was clear that he had no intention of honoring his commitment under said deed.

Solidbank prayed that Rivera be ordered to return the net amount of P963,619.28 plus interests therein, and attorney's fees, thus:

> WHEREFORE, it is respectfully prayed that:
>
> - At the commencement of this action and upon the filing of a bond in such amount as this Honorable Court may fix, a writ of preliminary attachment be forthwith issued against the properties of the defendant as satisfaction of any judgment that plaintiff may secure;
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> - After trial, judgment be rendered ordering defendant to pay plaintiff the following sums: NINE HUNDRED SIXTY-THREE THOUSAND SIX HUNDRED NINETEEN AND 28/100 ONLY (P963,619.28) PESOS, Philippine Currency, as of 23 May 1995, plus legal interest of 12% per annum until fully paid;
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> - Such sum equivalent to 10% of plaintiff's claims plus P2,000.00 for every appearance by way of attorney's fees; and
>
> - Costs of suit.
>
> PLAINTIFF prays for other reliefs just and equitable under the premises.[15]

Solidbank appended the Affidavit of HRD First Vice-President Celia Villarosa and a copy of the Release, Waiver and Quitclaim and Undertaking which Rivera executed.[16]

In an Order dated July 6, 1995, the trial court issued a Writ of Preliminary Attachment[17] ordering Deputy Sheriff Eduardo Centeno to attach all of Rivera's properties not exempt from execution. Thus, the Sheriff levied on a parcel of land owned by Rivera.

In his Answer with Affirmative Defenses and Counterclaim, Rivera admitted that he received the net amount of P963,619.28 as separation pay. However, the employment ban provision in the Undertaking was never conveyed to him until he was made to sign it on February 28, 1995. He emphasized that, prior to said date, Solidbank never disclosed any condition to the retirement scheme, nor did it impose such employment ban on the bank officers and

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employees who had previously availed of the SRP. He alleged that the undertaking not to "seek employment with any competitor bank or financial institution within one (1) year from February 28, 1995" was void for being contrary to the Constitution, the law and public policy, that it was unreasonable, arbitrary, oppressive, discriminatory, cruel, unjust, inhuman, and violative of his human rights. He further claimed that the Undertaking was a contract of adhesion because it was prepared solely by Solidbank without his participation; considering his moral and economic disadvantage, it must be liberally construed in his favor and strictly against the bank.

On August 15, 1995, Solidbank filed a Verified Motion for Summary Judgment, alleging therein that Rivera raised no genuine issue as to any material fact in his Answer except as to the amount of damages. It prayed that the RTC render summary judgment against Rivera. Solidbank alleged that whether or not the employment ban provision contained in the Undertaking is unreasonable, arbitrary, or oppressive is a question of law. It insisted that Rivera signed the Undertaking voluntarily and for valuable consideration; and under the Release, Waiver and Quitclaim, he was obliged to return the P963,619.28 upon accepting employment from a competitor bank within the one-year proscribed period. Solidbank appended to its motion the Affidavit of Villarosa, where she declared that Rivera was employed by Equitable on May 1, 1995 for the same position he held before his retirement from Solidbank.

Rivera opposed the motion contending that, as gleaned from the pleadings of the parties as well as Villarosa's Affidavit, there are genuine issues as to material facts which call for the presentation of evidence. He averred that there was a need for the parties to adduce evidence to prove that he did not sign the Undertaking voluntarily. He claimed that he would not have been allowed to avail of the SRP if he had not signed it, and consequently, his retirement benefits would not have been paid. This was what Ed Nallas, Solidbank Assistant Vice-President for HRD and Personnel, told him when he received his check on February 28, 1995. Senior Vice-President Henry Valdez, his superior in the Consumers' Banking Group, also did not mention that he would have to sign such Undertaking which contained the assailed provision. Thus, he had no choice but to sign it. He insisted that the question of whether he violated the Undertaking is a genuine issue of fact which called for the presentation of evidence during the hearing on the merits of the case. He also asserted that he could not cause injury or prejudice to Solidbank's interest since he never acquired any sensitive or delicate information which could prejudice the bank's interest if disclosed.

Rivera averred that he had the right to adduce evidence to prove that he had been faithful to the provisions of the Release, Waiver and Quitclaim, and the Undertaking, and had not committed any act or done or said anything to cause injury to Solidbank.[18]

Rivera appended to his Opposition his Counter-Affidavit in which he reiterated that he had to sign the Undertaking containing the employment ban provision, otherwise his availment of the SRP would not push through. There was no truth to the bank's allegation that, "in exchange for receiving the larger amount of P1,045,258.95 under the SRP, instead of the very much smaller amount of P224,875.81 under the ORP, he agreed that he will not seek employment in a competitor bank or financial institution within one year from February 28, 1995." It was the bank which conceived the SRP to streamline its organization and all he did was accept it. He stressed that the decision whether to allow him to avail of the SRP belonged solely to Solidbank. He also pointed out that the employment ban provision in the Undertaking was not a consideration for his availment of the SRP, and that if he did not avail of the retirement program, he would have continued working for Solidbank for at least 15 more years, earning more than what he received under the SRP. He alleged that he intended to go full time into the poultry business, but after about two months, found out that, contrary to his expectations, the business did not provide income sufficient to support his family. Being the breadwinner, he was then forced to look for a job, and considering his training and experience as a former bank employee, the job with Equitable was all he could find.

He insisted that he had remained faithful to Solidbank and would continue to do so despite the case against him, the attachment of his family home, and the resulting mental anguish, torture and expense it has caused them.[19]

In his Supplemental Opposition, Rivera stressed that, being a former bank employee, it was the only kind of work he knew. The ban was, in fact, practically absolute since it applied to all financial institutions for one year from February 28, 1995. He pointed out that he could not work in any other company because he did not have the qualifications, especially considering his age. Moreover, after one year from February 28, 1995, he would no longer have any marketable skill, because by then, it would have been rendered obsolete by non-use and rapid technological advances. He insisted that the ban was not necessary to protect the interest of Solidbank, as, in the first place, he had no access to any "secret" information which, if revealed would be prejudicial to Solidbank's interest. In any case, he was not one to reveal whatever knowledge or information he may have acquired during his employment with said bank.[20]

In its Reply, Solidbank averred that the wisdom of requiring the Undertaking from the 1995 SRP is purely a management prerogative. It was not for Rivera to question and decry the bank's policy to protect itself from unfair competition and disclosure of its trade secrets. The substantial monetary windfall given the retiring officers was meant to tide them over the one-year period of hiatus, and did not prevent them from engaging in any kind of business or bar them from being employed except with competitor banks/financial institutions.[21]

On December 18, 1995, the trial court issued an Order of Summary Judgment.[22] The fallo of the decision reads:

> WHEREFORE, SUMMARY JUDGMENT is hereby rendered in favor of plaintiff and against defendant ordering the latter to pay to plaintiff bank the amount of NINE HUNDRED SIXTY-THREE THOUSAND SIX HUNDRED NINETEEN AND 28/100 (P963,619.28) PESOS, Philippine Currency, as of May 23, 1995, plus legal interest at 12% per annum until fully paid, and the costs of the suit.
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> FURTHER, NEVERTHELESS, both parties are hereby encouraged as they are directed to meet again and sit down to find out how they can finally end this rift and litigation, all in the name of equity, for after all, defendant had worked for the bank for some 18 years.[23]

The trial court declared that there was no genuine issue as to a matter of fact in the case since Rivera voluntarily executed the Release, Waiver and Quitclaim, and the Undertaking. He had a choice not to retire, but opted to do so under the SRP, and, in fact, received the benefits under it. According to the RTC, the prohibition incorporated in the Undertaking was not unreasonable. To allow Rivera to be excused from his undertakings in said deed and, at the same time, benefit therefrom would be to allow him to enrich himself at the expense of Solidbank. The RTC ruled that Rivera had to return the P963,619.28 he received from Solidbank, plus interest of 12% per annum from May 23, 1998 until fully paid.

Aggrieved, Rivera appealed the ruling to the CA which rendered judgment on June 14, 2002 partially granting the appeal. The fallo of the decision reads:

> WHEREFORE, the appeal is PARTIALLY GRANTED. The decision appealed from is AFFIRMED with the modification that the attachment and levy upon the family home covered by TCT No. 51621 of the Register of Deeds, Las Piñas, Metro Manila, is hereby SET ASIDE and DISCHARGED.
>
> SO ORDERED.[24]

The CA declared that there was no genuine issue regarding any material fact except as to the amount of damages. It ratiocinated that the agreement between Rivera and Solidbank was the law between them, and that the interpretation of the stipulations therein could not be left upon the whims of Rivera. According to the CA, Rivera never denied signing the Release, Waiver, and Quitclaim, including the Undertaking regarding the employment

prohibition. He even admitted joining Equitable as an employee within the proscribed one-year period. The alleged defenses of Rivera, the CA declared, could not prevail over the admissions in his pleadings. Moreover, Rivera's justification for taking the job with Equitable, "dire necessity," was not an acceptable ground for annulling the Undertaking since there were no earmarks of coercion, undue influence, or fraud in its execution. Having executed the said deed and thereafter receiving the benefits under the SRP, he is deemed to have waived the right

to assail the same, hence, is estopped from insisting or retaining the said amount of P963,619.28.

However, the CA ruled that the attachment made upon Rivera's family home was void, and, pursuant to the mandate of Article 155, in relation to Article 153 of the Family Code, must be discharged.

Hence, this recourse to the Court.

Petitioner avers that "

> I.
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> THE COURT OF APPEALS ERRED IN UPHOLDING THE PROPRIETY OF THE SUMMARY JUDGMENT RENDERED BY THE TRIAL COURT CONSIDERING THE EXISTENCE OF GENUINE ISSUES AS TO MATERIAL FACTS WHICH CALL FOR THE PRESENTATION OF EVIDENCE IN A TRIAL ON THE MERITS.
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> II.
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> THE COURT OF APPEALS ERRED IN NOT DECLARING THE ONE-YEAR EMPLOYMENT BAN IMPOSED BY RESPONDENT SOLIDBANK UPON HEREIN PETITIONER NULL AND VOID FOR BEING UNREASONABLE AND OPPRESSIVE AND FOR CONSTITUTING RESTRAINT OF TRADE WHICH VIOLATES PUBLIC POLICY AS ENUNCIATED IN OUR CONSTITUTION AND LAWS.
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> III.
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> THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION ORDERING HEREIN RESPONDENT TO PAY SOLIDBANK THE AMOUNT OF P963,619.28 AS OF MAY 23, 1995, PLUS LEGAL INTEREST OF 12% PER ANNUM UNTIL FULLY PAID.
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> IV.
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> MORE SPECIFICALLY, THE COURT OF APPEALS ERRED IN AFFIRMING THE PORTION OF THE SUMMARY JUDGMENT ORDERING PETITIONER TO PAY SOLIDBANK LEGAL INTEREST OF 12% PER ANNUM UNTIL FULLY PAID ON THE AFOREMENTIONED SUM [OF] P963,619.28.[25]

The issues for resolution are: (1) whether the parties raised a genuine issue in their pleadings, affidavits, and documents, that is, whether the employment ban incorporated in the Undertaking which petitioner executed upon his retirement is unreasonable, oppressive, hence, contrary to public policy; and (2) whether petitioner is liable to respondent for the restitution of P963,619.28 representing his retirement benefits, and interest thereon at 12% per annum as of May 23, 1995 until payment of the full amount.

On the first issue, petitioner claims that, based on the pleadings of the parties, and the documents and affidavits appended thereto, genuine issues as to matters of fact were raised therein. He insists that the resolution of the issue of whether the employment ban is unreasonable requires the presentation of evidence on the circumstances which led to respondent bank's offer of the SRP and ORP, and petitioner's eventual acceptance and signing of the Undertaking on March 1, 1995. There is likewise a need to adduce evidence on whether the employment ban is necessary to protect respondent's interest, and whether it is an undue restraint on petitioner's constitutional right to

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earn a living to support his family. He further insists that respondent is burdened to prove that it sustained damage or injury by reason of his alleged breach of the employment ban since neither the Release, Waiver and Quitclaim, and Undertaking he executed contain any provision that respondent is automatically entitled to the restitution of the P963,619.28. Petitioner points out that all the deeds provide is that, in case of breach thereof, respondent is entitled to protection before the appropriate courts of law.

On the second issue, petitioner avers that the prohibition incorporated in the Release, Waiver and Quitclaim barring him as retiree from engaging directly or indirectly in any unlawful activity and disclosing any information concerning the business of respondent bank, as well as the employment ban contained in the Undertaking he executed, are oppressive, unreasonable, cruel and inhuman because of its overbreath. He reiterates that it is against public policy, an unreasonable restraint of trade, because it prohibits him to work for one year in the Philippines, ultimately preventing him from supporting his family. He points out that a breadwinner in a family of four minor daughters who are all studying, with a wife who does not work, one would have a very difficult time meeting the financial obligations even with a steady, regular-paying job. He insists that the Undertaking deprives him of the means to support his family, and ultimately, his children's chance for a good education and future. He reiterates that the returns in his poultry business fell short of his expectations, and unfortunately, the business was totally destroyed by typhoon "Rosing" in November 1995.

Petitioner further maintains that respondent's management prerogative does not give it a license to entice its employees to retire at a very young age and prohibit them from seeking employment in a so-called competitor bank or financial institution, thus prevent them from working and supporting their families (considering that banking is the only kind of work they know). Petitioner avers that "management's prerogative must be without abuse of discretion. A line must be drawn between management prerogative regarding business operations per se and those which affect the rights of the employees. In treating its employees, management should see to it that its employees are at least properly informed of its decision or modes of action."

On the last issue, petitioner alleges that the P1,045,258.95 he received was his retirement benefit which he earned after serving the bank for 18 years. It was not a mere gift or gratuity given by respondent bank, without the latter giving up something of value in return. On the contrary, respondent bank received "valuable consideration," that is, petitioner quit his job at the relatively young age of 45, thus enabling respondent to effect its reorganization plan and forego the salary, benefits, bonuses, and promotions he would have received had he not retired early.

Petitioner avers that, under the Undertaking, respondent would be entitled to a cause of action against him before the appropriate courts of law if he had violated the employment ban. He avers that respondent must prove its entitlement to the P963,619.28. The Undertaking contains no provision that he would have to return the amount he received under the SRP; much less does it provide that he would have to pay 12% interest per annum on said amount. On the other hand, the Release, Waiver and Quitclaim does not contain the provision prohibiting him from being employed with any competitor bank or financial institution within one year from February 28, 1995. Petitioner insists that he acted in good faith when he received his retirement benefits; hence, he cannot be punished by being ordered to return the sum of P963,619.28 which was given to him for and in consideration of his early retirement.

Neither can petitioner be subjected to the penalty of paying 12% interest per annum on his retirement pay of P963,619.28 from May 23, 1995, as it is improper and oppressive to him and his family. As of July 3, 2002, the interest alone would amount to P822,609.67, thus doubling the amount to be returned to respondent bank under the decision of the RTC and the CA. The imposition of interest has no basis because the Release, Waiver and Quitclaim, and the Undertaking do not provide for payment of interest. The deeds only state that breach thereof would entitle respondent to bring an action to seek damages, to include the return of the amount that may have

been paid to petitioner by virtue thereof. On the other hand, any breach of the Undertaking or the Release, Waiver and Quitclaim would only entitle respondent to a cause of action before the appropriate courts of law. Besides, the amount received by petitioner was not a loan and, therefore, should not earn interest pursuant to Article 1956 of the Civil Code.

Finally, petitioner insists that he acted in good faith in seeking employment with another bank within one year from February 28, 1995 because he needed to earn a living to support his family and finance his children's education. Hence, the imposition of interest, which is a penalty, is unwarranted.

By way of Comment on the petition, respondent avers that the Undertaking is the law between it and petitioner. As such, the latter could not assail the deed after receiving the retirement benefit under the SRP. As gleaned from the averments in his petition, petitioner admitted that he executed the Undertaking after having been informed of the nature and consequences of his refusal to sign the same, i.e., he would not be able to receive the retirement benefit under the SRP.

Respondent maintains that courts have no power to relieve parties of obligations voluntarily entered into simply because their contracts turned out to be disastrous deeds. Citing the ruling of this Court in Eastern Shipping Lines, Inc. v. Court of Appeals,[26] respondent avers that petitioner is obliged to pay 12% per annum interest of the P963,619.28 from judicial or extrajudicial demand.

In reply, petitioner asserts that respondent failed to prove that it sustained damages, including the amount thereof, and that neither the Release, Waiver and Quitclaim nor the Undertaking obliged him to pay interest to respondent.

The petition is meritorious.

Sections 1 and 3, Rule 34 of the Revised Rules of Civil Procedure provide:

> Section 1. Summary judgment for claimant. - A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.
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> x x x x
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> Sec. 3. Motion and proceedings thereon. - The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.[27] Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment.[28]

A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or a false claim. The trial court can determine a genuine issue on the basis of the pleadings, admissions, documents, affidavits or counteraffidavits submitted by the parties. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to any fact and

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summary judgment called for. On the other hand, where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.[29] The evidence on record must be viewed in light most favorable to the party opposing the motion who must be given the benefit of all favorable inferences as can reasonably be drawn from the evidence.[30]

Courts must be critical of the papers presented by the moving party and not of the papers/documents in opposition thereto.[31] Conclusory assertions are insufficient to raise an issue of material fact.[32] A party cannot create a genuine dispute of material fact through mere speculations or compilation of differences.[33] He may not create an issue of fact through bald assertions, unsupported contentions and conclusory statements.[34] He must do more than rely upon allegations but must come forward with specific facts in support of a claim. Where the factual context makes his claim implausible, he must come forward with more persuasive evidence demonstrating a genuine issue for trial.[35]

Where there are no disputed material facts, the determination of whether a party breached a contract is a question of law and is appropriate for summary judgment.[36] When interpreting an ambiguous contract with extrinsic evidence, summary judgment is proper so long as the extrinsic evidence presented to the court supports only one of the conflicting interpretations.[37] Where reasonable men could differ as to the contentions shown from the evidence, summary judgment might be denied.

In United Rentals (North America), Inc. v. Keizer,[38] the U.S. Circuit Court of Appeals resolved the issue of whether a summary judgment is proper in a breach of contract action involving the interpretation of such contract, and ruled that:

> [A] contract can be interpreted by the court on summary judgment if (a) the contract's terms are clear, or (b) the evidence supports only one construction of the controverted provision, notwithstanding some ambiguity. x x x If the court finds no ambiguity, it should proceed to interpret the contract - and it may do so at the summary judgment stage. If, however, the court discerns an ambiguity, the next step - involving an examination of extrinsic evidence - becomes essential. x x x Summary judgment may be appropriate even if ambiguity lurks as long as the extrinsic evidence presented to the court supports only one of the conflicting interpretations.[39]

In this case, there is no dispute between the parties that, in consideration for his availment of the SRP, petitioner executed the Release, Waiver and Quitclaim, and the Undertaking as supplement thereto, and that he received retirement pay amounting to P963,619.28 from respondent. On May 1, 1995, within the one-year ban and without prior knowledge of respondent, petitioner was employed by Equitable as Manager of its Credit Investigation and Appraisal Division, Consumers' Banking Group. Despite demands, petitioner failed to return the P963,619.28 to respondent on the latter's allegation that he had breached the one-year ban by accepting employment from Equitable, which according to respondent was a competitor bank.

We agree with petitioner's contention that the issue as to whether the post-retirement competitive employment ban incorporated in the Undertaking is against public policy is a genuine issue of fact, requiring the parties to present evidence to support their respective claims.

As gleaned from the records, petitioner made two undertakings. The first is incorporated in the Release, Waiver and Quitclaim that he signed, to wit:

> 4. I will not, at any time, in any manner whatsoever, directly or indirectly engage in any unlawful activity prejudicial to the interest of the BANK, its parent, affiliate or subsidiary companies, their stockholders, officers, directors, agents or employees, and their successors-in-interest and will not disclose any information concerning the business of the BANK, its manner or operation, its plans, processes or data of any kind.[40]

The second undertaking is incorporated in the Undertaking following petitioner's execution of the Release,

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Waiver and Quitclaim which reads:

> 4. That as a supplement to the Release and Quitclaim, I executed in favor of Solidbank on FEBRUARY 28, 1995, I hereby expressly undertake that I will not seek employment with any competitor bank or financial institution within one (1) year from February 28, 1995.[41]

In the Release, Waiver and Quitclaim, petitioner declared that respondent may bring "an action for damages which may include, but not limited to the return of whatever sums he may have received from respondent under said deed if he breaks his undertaking therein."[42] On the other hand, petitioner declared in the Undertaking that "any breach on his part of said Undertaking or the terms and conditions of the Release, Waiver and Quitclaim will entitle respondent to a cause of action against [petitioner] for protection before the appropriate courts of law."[43]

Article 1306 of the New Civil Code provides that the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy. The freedom of contract is both a constitutional and statutory right.[44] A contract is the law between the parties and courts have no choice but to enforce such contract as long as it is not contrary to law, morals, good customs and against public policy.

The well-entrenched doctrine is that the law does not relieve a party from the effects of an unwise, foolish or disastrous contract, entered into with full awareness of what he was doing and entered into and carried out in good faith. Such a contract will not be discarded even if there was a mistake of law or fact. Courts have no jurisdiction to look into the wisdom of the contract entered into by and between the parties or to render a decision different therefrom. They have no power to relieve parties from obligation voluntarily assailed, simply because their contracts turned out to be disastrous deals.[45]

On the other hand, retirement plans, in light of the constitutional mandate of affording full protection to labor, must be liberally construed in favor of the employee, it being the general rule that pension or retirement plans formulated by the employer are to be construed against it.[46] Retirement benefits, after all, are intended to help the employee enjoy the remaining years of his life, releasing him from the burden of worrying for his financial support, and are a form of reward for being loyal to the employer.[47]

In Ferrazzini v. Gsell,[48] the Court defined public policy in civil law countries and in the United States and the Philippines:

> By "public policy," as defined by the courts in the United States and England, is intended that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good, which may be termed the "policy of the law," or "public policy in relation to the administration of the law." (Words & Phrases Judicially Defined, vol. 6, p. 5813, and cases cited.) Public policy is the principle under which freedom of contract or private dealing is restricted by law for the good of the public. (Id., Id.) In determining whether a contract is contrary to public policy the nature of the subject matter determines the source from which such question is to be solved. (Hartford Fire Ins. Co. v. Chicago, M. & St. P. Ry. Co., 62 Fed. 904, 906.)
>
> The foregoing is sufficient to show that there is no difference in principle between the public policy (orden publico) in the two jurisdictions (the United States and the Philippine Islands) as determined by the Constitution, laws, and judicial decisions.[49]

The Court proceeded to define "trade" as follows:

> x x x In the broader sense, it is any occupation or business carried on for subsistence or profit. Anderson's Dictionary of Law gives the following definition: "Generally equivalent to occupation, employment, or business, whether manual or mercantile; any occupation, employment or business carried on for profit, gain, or

> livelihood, not in the liberal arts or in the learned professions." In Abbott's Law Dictionary, the word is defined as "an occupation, employment or business carried on for gain or profit." Among the definitions given in the Encyclopaedic Dictionary is the following: "The business which a person has learnt, and which he carries on for subsistence or profit; occupation; particularly employment, whether manual or mercantile, as distinguished from the liberal arts or the learned professions and agriculture." Bouvier limits the meaning to commerce and traffic, and the handicraft of mechanics. (In re Pinkney, 47 Kan., 89.) We are inclined to adopt and apply the broader meaning given by the lexicographers.[50]

In the present case, the trial court ruled that the prohibition against petitioner accepting employment with a competitor bank or financial institution within one year from February 28, 1995 is not unreasonable. The appellate court held that petitioner was estopped from assailing the post-retirement competitive employment ban because of his admission that he signed the Undertaking and had already received benefits under the SRP.

The rulings of the trial court and the appellate court are incorrect.

There is no factual basis for the trial court's ruling, for the simple reason that it rendered summary judgment and thereby foreclosed the presentation of evidence by the parties to prove whether the restrictive covenant is reasonable or not. Moreover, on the face of the Undertaking, the post-retirement competitive employment ban is unreasonable because it has no geographical limits; respondent is barred from accepting any kind of employment in any competitive bank within the proscribed period. Although the period of one year may appear reasonable, the matter of whether the restriction is reasonable or unreasonable cannot be ascertained with finality solely from the terms and conditions of the Undertaking, or even in tandem with the Release, Waiver and Quitclaim.

Undeniably, petitioner retired under the SRP and received P963,619.28 from respondent. However, petitioner is not proscribed, by waiver or estoppel, from assailing the post-retirement competitive employment ban since under Article 1409 of the New Civil Code, those contracts whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy are inexistent or void from the beginning. Estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.[51]

Respondent, as employer, is burdened to establish that a restrictive covenant barring an employee from accepting a competitive employment after retirement or resignation is not an unreasonable or oppressive, or in undue or unreasonable restraint of trade, thus, unenforceable for being repugnant to public policy. As the Court stated in Ferrazzini v. Gsell,[52] cases involving contracts in restraint of trade are to be judged according to their circumstances, to wit:

> x x x There are two principal grounds on which the doctrine is founded that a contract in restraint of trade is void as against public policy. One is, the injury to the public by being deprived of the restricted party's industry; and the other is, the injury to the party himself by being precluded from pursuing his occupation, and thus being prevented from supporting himself and his family.

And in Gibbs vs. Consolidated Gas Co. of Baltimore, supra, the court stated the rule thus:

> Public welfare is first considered, and if it be not involved, and the restraint upon one party is not greater than protection to the other party requires, the contract may be sustained. The question is, whether, under the particular circumstances of the case and the nature of the particular contract involved in it, the contract is, or is not, unreasonable.[53]

In cases where an employee assails a contract containing a provision prohibiting him or her from accepting competitive employment as against public policy, the employer has to adduce evidence to prove that the restriction is reasonable and not greater than necessary to protect the employer's legitimate business interests.[54] The restraint may not be unduly harsh or oppressive in curtailing the employee's legitimate efforts to earn a

livelihood and must be reasonable in light of sound public policy.[55]

Courts should carefully scrutinize all contracts limiting a man's natural right to follow any trade or profession anywhere he pleases and in any lawful manner. But it is just as important to protect the enjoyment of an establishment in trade or profession, which its employer has built up by his own honest application to every day duty and the faithful performance of the tasks which every day imposes upon the ordinary man. What one creates by his own labor is his. Public policy does not intend that another than the producer shall reap the fruits of labor; rather, it gives to him who labors the right by every legitimate means to protect the fruits of his labor and secure the enjoyment of them to himself.[56] Freedom to contract must not be unreasonably abridged. Neither must the right to protect by reasonable restrictions that which a man by industry, skill and good judgment has built up, be denied.[57]

The Court reiterates that the determination of reasonableness is made on the particular facts and circumstances of each case.[58] In Esmerson Electric Co. v. Rogers,[59] it was held that the question of reasonableness of a restraint requires a thorough consideration of surrounding circumstances, including the subject matter of the contract, the purpose to be served, the determination of the parties, the extent of the restraint and the specialization of the business of the employer. The court has to consider whether its enforcement will be injurious to the public or cause undue hardships to the employee, and whether the restraint imposed is greater than necessary to protect the employer. Thus, the court must have before it evidence relating to the legitimate interests of the employer which might be protected in terms of time, space and the types of activity proscribed.[60]

Consideration must be given to the employee's right to earn a living and to his ability to determine with certainty the area within which his employment ban is restituted. A provision on territorial limitation is necessary to guide an employee of what constitutes as violation of a restrictive covenant and whether the geographic scope is co-extensive with that in which the employer is doing business. In considering a territorial restriction, the facts and circumstances surrounding the case must be considered.[61]

Thus, in determining whether the contract is reasonable or not, the trial court should consider the following factors: (a) whether the covenant protects a legitimate business interest of the employer; (b) whether the covenant creates an undue burden on the employee; (c) whether the covenant is injurious to the public welfare; (d) whether the time and territorial limitations contained in the covenant are reasonable; and (e) whether the restraint is reasonable from the standpoint of public policy.[62]

Not to be ignored is the fact that the banking business is so impressed with public interest where the trust and interest of the public in general is of paramount importance such that the appropriate standard of diligence must be very high, if not the highest degree of diligence.[63]

We are not impervious of the distinction between restrictive covenants barring an employee to accept a post-employment competitive employment or restraint on trade in employment contracts and restraints on post-retirement competitive employment in pension and retirement plans either incorporated in employment contracts or in collective bargaining agreements between the employer and the union of employees, or separate from said contracts or collective bargaining agreements which provide that an employee who accepts post retirement competitive employment will forfeit retirement and other benefits or will be obliged to restitute the same to the employer. The strong weight of authority is that forfeitures for engaging in subsequent competitive employment included in pension and retirement plans are valid even though unrestricted in time or geography. The raison d'etre is explained by the United States Circuit Court of Appeals in Rochester Corporation v. W.L. Rochester, Jr.:[64]

> x x x The authorities, though, generally draw a clear and obvious distinction between restraints on competitive

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> employment in employment contracts and in pension plans. The strong weight of authority holds that forfeitures for engaging in subsequent competitive employment, included in pension retirement plans, are valid, even though unrestricted in time or geography. The reasoning behind this conclusion is that the forfeiture, unlike the restraint included in the employment contract, is not a prohibition on the employee's engaging in competitive work but is merely a denial of the right to participate in the retirement plan if he does so engage. A leading case on this point is Van Pelt v. Berefco, Inc., supra, 208 N.E.2d at p. 865, where, in passing on a forfeiture provision similar to that here, the Court said:
> "A restriction in the contract which does not preclude the employee from engaging in competitive activity, but simply provides for the loss of rights or privileges if he does so is not in restraint of trade." (emphasis added)[65]

A post-retirement competitive employment restriction is designed to protect the employer against competition by former employees who may retire and obtain retirement or pension benefits and, at the same time, engage in competitive employment.[66]

We have reviewed the Undertaking which respondent impelled petitioner to sign, and find that in case of failure to comply with the promise not to accept competitive employment within one year from February 28, 1995, respondent will have a cause of action against petitioner for "protection in the courts of law." The words "cause of action for protection in the courts of law" are so broad and comprehensive, that they may also include a cause of action for prohibitory and mandatory injunction against petitioner, specific performance plus damages, or a damage suit (for actual, moral and/or exemplary damages), all inclusive of the restitution of the P963,619.28 which petitioner received from respondent. The Undertaking and the Release, Waiver and Quitclaim do not provide for the automatic forfeiture of the benefits petitioner received under the SRP upon his breach of said deeds. Thus, the post-retirement competitive employment ban incorporated in the Undertaking of respondent does not, on its face, appear to be of the same class or genre as that contemplated in Rochester.

It is settled that actual damages or compensatory damages may be awarded for breach of contracts. Actual damages are primarily intended to simply make good or replace the loss covered by said breach.[67] They cannot be presumed. Even if petitioner had admitted to having breached the Undertaking, respondent must still prove that it suffered damages and the amount thereof.[68] In determining the amount of actual damages, the Court cannot rely on mere assertions, speculations, conjectures or guesswork but must depend on competent proof and on the best evidence obtainable regarding the actual amount of losses.[69] The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent a matter of speculation of the injured party.

On the assumption that the competitive employment ban in the Undertaking is valid, petitioner is not automatically entitled to return the P963,619.28 he received from respondent. To reiterate, the terms of the Undertaking clearly state that any breach by petitioner of his promise would entitle respondent to a cause of action for protection in the courts of law; as such, restitution of the P963,619.28 will not follow as a matter of course. Respondent is still burdened to prove its entitlement to the aforesaid amount by producing the best evidence of which its case is susceptible.[70]

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 52235 is SET ASIDE. Let this case be REMANDED to the Regional Trial Court of Manila for further proceedings conformably with this decision of the Court.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Oswaldo D. Agcaoili, with Associate Justices Eriberto U. Rosario, Jr. and Danilo B. Pine, concurring; rollo, pp. 35-44.

[2] Penned by Associate Justice Danilo B. Pine, with Associate Justices Portia A. Hormachuelos and Rodrigo V. Cosico, concurring; id. at 46.

[3] Id. at 64.

[4] Records, p. 2.

[5] Id.

[6] Rollo, p. 55.

[7] Records, p. 7.

[8] Rollo, pp. 57-58.

[9] Id. at 57.

[10] Id. at 57-58.

[11] Id. at 56.

[12] Records, p. 13.

[13] Rollo, p. 59.

[14] Id. at 48-54.

[15] Id. at 53.

[16] Records, pp. 7-15.

[17] Id. at 16.

[18] Id. at 107-109.

[19] Id. at 116, 119-120.

[20] Id. at 163-165.

[21] Id. at 170-171.

[22] Penned by Presiding Judge Juan C. Nabong, Jr.

[23] Rollo, p. 143.

[24] Id. at 44.

[25] Id. at 16-17.

[26] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[27] Solidbank Corporation v. Court of Appeals, 439 Phil. 23, 25, 34 (2002).

[28] Planmatics, Inc. v. Showers, 137 F.Supp.2d 616 (2001).

[29] Paz v. Court of Appeals, G.R. No. 85332, January 11, 1990, 181 SCRA 26, 31.

[30] Warner and Company v. Solberg, 639 N.W.2d 65, 69 (2001).

[31] Supra note 27, at 25 and 35.

[32] Jones v. Barnett, 619 N.W.2d 490, 492 (2000).

[33] Demst v. CSF Transportation Company, 153 F.3d 326 (1998).

[34] Supra note 28, at 628.

[35] United Rentals (North America), Inc. v. Keizer, 202 F.Supp.2d 727 (2004).

[36] Allen, Gibbs & Houlik v. Ristow, 32 Kan.App.2d 1051, 1053, 94 P.3d 724, 726.

[37] Supra note 35, at 410.

[38] Id. at 406.

[39] Id.

[40] Rollo, p. 57.

[41] Id. at 56.

[42] Id. at 58.

[43] Id. at 56.

[44] Government Service Insurance System v. Province of Tarlac, G.R. No. 157860, December 1, 2003, 417 SCRA 60, 64 (2003).

[45] Sanchez v. Court of Appeals, 345 Phil. 155, 190-191 (1997).

[46] Brion v. South Philippine Union Mission of the 7th Day Adventist Church, 366 Phil. 967, 976 (1999).
[47]Sta. Catalina College v. National Labor Relations Commission, G.R. No. 144483, November 19, 2003, 416 SCRA 233, 243.

[48] 34 Phil. 697 (1916).

[49] Id. at 711-712.

[50] Id. at 714.

[51] Ouano v. Court of Appeals, 446 Phil. 690, 708 (2003).

[52] Supra note 48.

[53] Id. at 712-713.

[54] Foti v. Cook, Jr., 263 S.E.2d 430 (1980).

[55] Motion Control Systems, Inc. v. East, 546 S.E.2d 424, 425 (2001).

[56] Faust v. Rohr, 81 S.E. 1096.

[57] Scott v. Gillis, 148 S.E. 315 (1929).

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[58] Weber v. Tillman, Jr., 259 Kan. 457, 464, 913 P.2d 84, 90 (1996).

[59] 418 F.3d 841, 846 (2005).

[60] Smithereen Co. v. Renfroe, 59 N.E.2d 545, 549 (1945).

[61] W.R. Grace Co. v. Mouyal, 422 S.E.2d 529, 531 (1992).

[62] Supra note 58, at 464.

[63] Philippine Commercial International Bank v. Court of Appeals, G.R. No. 121413, January 29, 2001, 350 SCRA 446, 472.

[64] 450 F.2d 118 (1971).

[65] Id at 123.

[66] Van Pelt v. Berefco, Inc., 208 N.E.2d 858, 865 (1965).

[67] Flores v. Uy, 420 Phil. 408, 420 (2001).

[68] Ticzon v. Video Post Manila, Inc., 389 Phil. 20, 33 (2000).

[69] Tsai v. Court of Appeals, 418 Phil. 606, 622 (2001).

[70] Producers Bank of the Philippines v. Court of Appeals, 417 Phil. 646, 660 (2001).

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