

**SPOUSES NELSON R. VILLANUEVA AND MYRA P. VILLANUEVA,
PETITIONERS, VS. THE COURT OF APPEALS, PROVIDENT RURAL
BANK OF SANTA CRUZ (LAGUNA), INC., AND THE CLERK OF COURT
OF THE REGI...**

G.R. No. 163433. August 22, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in the present petition for review on certiorari under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated June 16, 2003 and April 28, 2004, respectively, in CA-G.R. CV No. 73256. The CA Decision affirmed the July 31, 2001 Order[3] of the Regional Trial Court (RTC) of Santa Cruz, Laguna, Branch 91, which dismissed herein petitioners' petition for declaratory relief, while the CA Resolution denied petitioners' Motion for Reconsideration.

The pertinent facts of the case are as follows:

Sometime in 1994, herein petitioners applied for separate loans amounting to P100,000.00 and P125,000.00, which were granted by herein respondent Provident Rural Bank of Sta. Cruz, Laguna, Inc. (respondent Bank).

As security for the loans, petitioners executed two separate promissory notes the due dates of which both fall on August 20, 1995.[4] Petitioners also executed two separate real estate mortgages over the same parcel of agricultural land located in Sta. Cruz, Laguna.[5]

Petitioners failed to pay their loans when they became due.

As a consequence, on June 14, 1996, respondent Bank filed a petition for extrajudicial foreclosure of the abovementioned mortgages with the Office of the Provincial Sheriff of Laguna. As of June 10, 1996, petitioners' obligations amounted to P287,187.50, plus interests, charges and expenses. On June 25, 1996 the Provincial Sheriff issued a Notice of Sale of the subject mortgaged property.[6] It would appear, however, that the auction sale did not push through because on June 9, 2000, respondent Bank re-applied for extrajudicial foreclosure of the same mortgage. On July 25, 2000, the Provincial Sheriff issued a Notice of Sale Re-Application of Foreclosure Case and set the public auction of the subject property on August 25, 2000.[7] As of June 15, 2000, petitioners' mortgage debt was P713,465.35, plus interests, charges and expenses.

Petitioners then wrote a letter-request addressed to the Officer-in-Charge of the Office of the Clerk of Court of the RTC, Santa Cruz, Laguna questioning the amount of its outstanding obligations to respondent Bank and requesting that the public auction scheduled on August 25, 2000 be suspended until after its objection to the amount being sought by respondent Bank is resolved by the court.[8]

However, petitioners' letter-request was denied.

Aggrieved, petitioners filed, on August 2, 2000, a Petition for Declaratory Relief, Accounting and Damages

praying that the stipulated interests, charges and expenses on its loans be declared null and void for being contrary to law, morals, good customs, public order or public policy as they are exorbitant, usurious, iniquitous and unconscionable. The Petition was docketed as Civil Case No. SC-4032.[9]

On September 5, 2000, respondent Bank filed a Motion to Dismiss contending that the petition is barred by res judicata and that petitioners are guilty of forum shopping.[10] Respondent Bank argued that: on August 23, 1996, petitioners filed a complaint (docketed as Civil Case No. SC-3422) against it (respondent Bank) before the RTC of Sta. Cruz, Laguna, Branch 86, seeking to declare as usurious the interests, penalties and other charges which petitioners and respondent Bank had agreed upon in the subject real estate mortgages and promissory notes; that these same stipulated interest, penalties and other charges are the subject matter of the petition for declaratory relief; that respondent Bank also filed a Motion to Dismiss in Civil Case No. SC-3422 on the ground of lack of cause of action and suspension of the usury law; that respondent Bank's Motion to Dismiss was denied by the RTC but upon appeal, the CA, in CA-G.R. SP No. 49065, annulled the RTC Order and granted the said Motion.

Petitioners filed their Opposition to respondent Bank's Motion to Dismiss.[11]

Subsequently, on July 31, 2001, the RTC issued an Order dismissing petitioners' Petition for Declaratory Relief holding that the said Petition is barred by prior judgment, considering that the decision of the CA in CA-G.R. SP No. 49065 already settled the issues of usury and the right of petitioners to claim the abolition or reduction of the subject interest rates, which are the same issues raised by petitioners in their Petition for Declaratory Relief.[12]

Petitioners then filed an appeal with the CA assailing the abovementioned Order of the RTC.

On June 16, 2003, the CA promulgated the presently assailed Decision affirming the Order of the RTC and ruling that all the elements of res judicata are present.

Petitioners' Motion for Reconsideration was denied by the CA via its April 28, 2004 Resolution.

Hence, the present petition for review on certiorari.

Petitioners contend that the principle of res judicata does not apply in the present case on the ground that there is no identity of subject matter and cause of action in Civil Case Nos. 3422 and 4032.

Petitioners further argue that even if all the elements of res judicata are present in the instant case, equity dictates that this principle should not be applied; otherwise, the court would be sanctioning respondent Bank's enrichment at the expense of petitioners through the imposition of exorbitant, unconscionable and usurious interest rates, penalties and other charges; in such a case, petitioners claim that justice would be sacrificed in favor of technicality.

Lastly, petitioners aver that they did not violate the rule on forum shopping because Civil Case No. SC-3422, the case being cited by respondent Bank in its Motion to Dismiss, was already decided by the CA in 1999, before petitioners filed their Petition for Declaratory Relief on August 2, 2000, and that there is no other pending case involving the same parties, subject matter and cause of action.

The petition lacks merit.

Anent petitioners' first contention, res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." [13] It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[14]

The elements of res judicata are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[15]]The Court finds that the CA and the RTC did not err in finding that all of the abovementioned elements are present in the instant case.

There is no dispute that the first three elements, as enumerated above, are present. As correctly held by the CA, the issues raised in Civil Case No. SC-3422 were already decided with finality by this Court when it denied petitioners' petition for review on certiorari in its Resolution dated August 23, 1999 in G.R. No. 139385. The said Resolution became final and executory on December 20, 1999.

With respect to the fourth element, there is also no dispute that there is identity of parties. However, the Court is not persuaded by petitioners' argument that there is no identity of subject matter and cause of action.

On the issue of identity of subject matter, this Court has held that the subject of an action is defined as the matter or thing with respect to which the controversy has arisen, concerning which a wrong has been done.[16]

The subject matters in Civil Case No. SC-3422 are the interest rates as well as penalties and other charges stipulated in the promissory notes and real estate mortgages executed by petitioners. These are the same subject matters in Civil Case No. SC-4032.

As to the cause of action, Rule 2, Section 2 of the Rules of Court defines cause of action as the act or omission by which a party violates a right of another. With respect to the identity of causes of action, this Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action.[17]

In the instant case, the cause of action in both Civil Case Nos. SC-3422 and 4032 is the act of respondent Bank in imposing what petitioners alleged as exorbitant, unconscionable and usurious interest rates, penalties and other charges. There is, thus, no doubt that the same evidence is required to establish the cause of action in both of these cases.

In fact, the issues (whether or not the interest rates, penalties and charges imposed by respondent Bank are usurious and unconscionable) and the reliefs sought (reduction of the said interest rates, penalties and surcharges to an amount not exceeding 12% per annum) in both cases are essentially the same.

Neither is the Court persuaded by petitioners' contention that, in any case, the Court should not apply the principle of res judicata because to do so would be tantamount to allowing respondent Bank to unjustifiably and illegally enrich itself at the expense of petitioners by imposing interests, penalties and other charges beyond what the law and equity allows.

It is true that res judicata is to be disregarded if its rigid application would involve the sacrifice of justice to technicality.[18] However, the present case does not fall under this exception.

Petitioners contend that the interest rate of 24% per annum stipulated in the mortgage contract, which they executed in favor of respondent Bank, is usurious. This Court has consistently held that for sometime now, usury has been legally non-existent and that interest can now be charged as lender and borrower may agree upon.[19] In fact, Section 1 of Central Bank Circular No. 905, Series of 1982, which took effect on January 1, 1983, expressly provides that "[t]he rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of any money, goods, or credits, regardless of maturity and whether secured or unsecured, that may

be charged or collected by any person, whether natural or juridical, shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended." Nonetheless, this Court has also held in a number of cases, that nothing in the circular grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.[20] Thus, the stipulated interest rates are illegal if they are unconscionable.

The question now is whether the 24% per annum interest rate is unreasonable under the circumstances obtaining in the present case.

The Court rules in the negative.

In *Spouses Zacarias Bacolor and Catherine Bacolor v. Banco Filipino Savings and Mortgage Bank, Dagupan City Branch*,[21] this Court held that the interest rate of 24% per annum on a loan of P244,000.00, agreed upon by the parties, may not be considered as unconscionable and excessive. As such, the Court ruled that the borrowers cannot renege on their obligation to comply with what is incumbent upon them under the contract of loan as the said contract is the law between the parties and they are bound by its stipulations.[22]

Also, in *Garcia v. Court of Appeals*,[23] this Court sustained the agreement of the parties to a 24% per annum interest on an P8,649,250.00 loan finding the same to be reasonable and clearly evidenced by the amended credit line agreement entered into by the parties as well as two promissory notes executed by the borrower in favor of the lender.

Based on the above jurisprudence, the Court finds that the 24% per annum interest rate, provided for in the subject mortgage contracts for a loan of P225,000.00, may not be considered unconscionable. Moreover, considering that the mortgage agreement was freely entered into by both parties, the same is the law between them and they are bound to comply with the provisions contained therein.

The Court also upholds the validity of the 6% per annum penalty charge. In *Development Bank of the Philippines v. Family Foods Manufacturing Co., Ltd.*,[24] this Court, sustaining the validity of an 8% per annum penalty charge on separate loans of P500,000.00 and P440,000.00, held that:

This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled. The enforcement of the penalty can be demanded by the creditor only when the non-performance is due to the fault or fraud of the debtor. The non-performance gives rise to the presumption of fault; in order to avoid the payment of the penalty, the debtor has the burden of proving an excuse -- the failure of the performance was due to either force majeure or the acts of the creditor himself.

In this case, respondents failed to discharge the burden. Thus, they cannot avoid the payment of the agreed penalty charge.[25]

In a similar manner, herein petitioners bound themselves to pay the stipulated penalty charge of 6% per annum "of the principal amount of loan as penalty for inexcusable neglect to pay any amount of t[he] loan when due." [26] Since petitioners failed to present evidence that their failure to perform their obligation was due to either force majeure or the acts of respondent Bank or to any justifiable or excusable cause, they are obliged to pay the penalty charge as agreed upon.

Lastly, it is wrong for petitioners to argue that they are not guilty of forum shopping on the ground that there is no other pending case involving the same parties, subject matter and cause of action as their petition for declaratory relief.

Settled is the rule that forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[27]

Forum shopping can be committed in three ways: (1) by filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) by filing multiple cases based on the same cause of action and with the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) by filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[28]

More particularly, the elements of forum-shopping are: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[29]

All the abovementioned elements are present in the instant case. As discussed earlier, petitioners' petition for declaratory relief involves the same parties, cause of action and reliefs prayed for as Civil Case No. SC-3422 which case was decided with finality by this Court as shown by the entry of judgment dated December 20, 1999 in G.R. No. 139385. In addition, it has been held above that the judgment in Civil Case No. SC-3422 (G.R. No. 139385) amounts to *res judicata* in the present case.

Contrary to petitioners' asseveration, Civil Case No. SC-3422 need not be pending in order that the rule on forum shopping may apply, because as mentioned above, forum shopping may still be committed if one files multiple cases involving the same parties' causes of action and prayer and the previous case has already been finally resolved.

Hence, there is no other conclusion than that petitioners are guilty of forum shopping.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Court of Appeals dated June 16, 2003 and April 28, 2004, respectively, are AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Leonardo-De Castro[*] Abad, and Mendoza, JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 1069 dated August 23, 2011.

[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Remedios A. Salazar-Fernando and Edgardo F. Sundiam, concurring; rollo, pp. 28-34.

[2] *Id.* at 36.

[3] Penned by Judge Florencio S. Arellano; records, pp. 239-242.

[4] Records, pp. 14 and 16.

[5] *Id.* at 13 and 15.

[6] Id. at 24.

[7] Id. at 25.

[8] Id. at 26.

[9] Id. at 1.

[10] Id. at 93.

[11] Id. at 119.

[12] Id. at 239-242.

[13] Heirs of Maximino Derla, et al. v. Heirs of Catalina Derla Vda. de Hipolito, et al., G.R. No. 157717, April 13, 2011.

[14] Id.

[15] Social Security Commission v. Rizal Poultry and Livestock Association, Inc., et al., G.R. No. 167050, June 1, 2011.

[16] Agustin v. Spouses Delos Santos, G.R. No. 168139, January 20, 2009, 576 SCRA 576, 586-587; Taganas v. Emuslan, 457 Phil. 305, 313 (2003), citing Yusingco v. Ong Hing Lian, G.R. No. L-26523, December 24, 1971, 42 SCRA 598, 603.

[17] Government Service Insurance System v. Group Management Corporation/Group Management Corporation and Lapu-Lapu Development and Housing Corporation, G.R. Nos. 167000/169971, June 8, 2011, citing Peñalosa v. Tuason, Phil. 303, 322 (1912).

[18] Philippine National Bank v. The Intestate Estate of Francisco de Guzman, G.R. No. 182507, June 16, 2010, 621 SCRA 131, 141.

[19] Chua v. Timan, G.R. No. 170452, August 13, 2008, 562 SCRA 146, 151, citing Medel v. Court of Appeals, G.R. No. 131622, November 27, 1998, 299 SCRA 481, 489.

[20] Jocelyn M. Toledo v. Marilou M. Hyden, G.R. No. 172139, December 8, 2010; Castro v. Tan, G.R. No. 168940, November 24, 2009, 605 SCRA 231, 238; Spouses Toring v. Ganzon-Olan, G.R. No. 168782, October 10, 2008, 568 SCRA 376, 383, citing Ruiz v. Court of Appeals, G.R. No. 146942, April 22, 2003, 401 SCRA 410, 421.

[21] G.R. No. 148491, February 8, 2007, 515 SCRA 79.

[22] Id. at 87

[23] 249 Phil. 739 (1988).

[24] G.R. No. 180458, July 30, 2009, 594 SCRA 461, 473, citing Development Bank of the Philippines v. Go, G.R. No. 168779, September 14, 2007, 533 SCRA 460, 470-471.

[25] Id.

[26] See Promissory Notes, records, pp. 14 and 16.

[27] Pilipino Telephone Corporation v. Radiomarine Network, Inc., G.R. No. 152092, August 4, 2010, 626 SCRA 702, 728-729; Tokio Marine Malayan Insurance Company, Incorporated v. Valdez, G.R. Nos. 150107/150108,

January 28, 2008, 542 SCRA 455, 464-465.

[28] Asia United Bank v. Goodland Company, Inc., G.R. No. 191388, March 9, 2011.

[29] Pentacapital Investment Corporation v. Mahinay, G.R. Nos. 171736/181482, July 5, 2010, 623 SCRA 284, 311.

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