

**SPOUSES ORLANDO M. LAMBINO AND CARMELITA C. LAMBINO,
PETITIONERS, VS. HON. PRESIDING JUDGE, REGIONAL TRIAL
COURT, BRANCH 172, VALENZUELA CITY, AND BPI FAMILY BANK,
RESPONDENTS.**

G.R. NO. 169551. January 24, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure of the Decision[1] and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 63512. The CA affirmed the Order[3] of the Regional Trial Court (RTC) of Valenzuela City, Branch 172, in Civil Case No. 4664-V-95, which denied the motion of petitioners to admit the supplemental complaint.

On July 21, 1994, petitioners Orlando M. Lambino, a lawyer, and his wife, Carmelita C. Lambino, secured a housing loan of P600,000.00 from private respondent BPI Family Savings Bank, Inc. (BPI). The interest rate was 19% per annum payable in 180 monthly installments of P10,097.26. Petitioners executed a Mortgage Loan Agreement (MLA)[4] over their property covered by Transfer Certificate of Title No. V-31431 as security for the loan.

Under the MLA, the proceeds of the loan would be released to petitioners depending on the percentage of work completed, as follows:

No. of Release % of Completion Amount

1 0% P150,000.00

2 30% 200,000.00

3 60% 150,000.00

4 90% 100,000.00

P600,000.00[5]

=====

The parties agreed that private respondent would release the net proceeds of the loan by crediting their Savings Account No. 5763250956 which petitioners maintained in the Valenzuela branch of the BPI and to debit from said account all amounts that may be due from petitioners under the MLA and other documents executed in connection thereto.[6]

However, petitioners failed to pay the monthly amortizations from January 15, 1995 to May 15, 1995. On May 22, 1995, private respondent filed a petition for the extrajudicial foreclosure of the MLA with the Ex-Officio

Sheriff of the RTC of Valenzuela City and sought to have the property sold to satisfy the balance of petitioners' loan account. The public auction was set at 10:00 a.m. on July 11, 1995.

On June 26, 1995, petitioners filed a complaint for annulment of the MLA and the extrajudicial foreclosure sale with a prayer for a Temporary Restraining Order (TRO) before the RTC of Valenzuela City. They alleged therein that private respondent had released only P555,047.19 on a staggered basis out of their P600,000.00 loan. They offered to pay their monthly amortization on their loan account, but private respondent required them to pay a monthly amortization of P12,900.00 effective December 1995. Despite demand, private respondent refused to release the difference of P44,962.78 of their loan and to readjust their monthly amortization conformably with the MLA. The court issued a TRO and the sale at public auction was reset.

In a letter[7] dated April 16, 1996, petitioners offered to settle the balance of their loan account amounting to P539,066.64, less late payment charges, mortgage redemption insurance (MRI) premium interests, foreclosure expenses, attorney's fees and liquidated damages in the total amount of P305,042.57. They proposed to pay on monthly installments for a 15-year period, at an interest rate of 19% per annum. However, private respondent rejected the offer.

In the meantime, the court suspended pretrial to enable the parties to settle the matter amicably. Private respondent furnished petitioners with statements of their account dated June 5, 1996, November 15, 1996 and August 15, 1998. It appears that the following additional charges were imposed on petitioners' account: interests, late payment charges of P25,035.36, MRI of P19,980.00, attorney's fees of P118,010.24, liquidated damages of P118,010.24 and foreclosure expenses of P24,006.73.

Petitioners objected to the aforecited damages. The updated statement of petitioners' account, dated August 15, 1998, showed that petitioners owed private respondent P1,243,919.60, inclusive of MRI, foreclosure expenses, attorney's fees, and liquidated damages.[8]

The pretrial proceeding was terminated on July 23, 1998. The hearing for petitioners to adduce their evidence was set on September 17, 1998. On July 10, 2000, petitioners filed a Motion to Admit their Supplemental Complaint wherein they alleged the following:

I

They hereby adopt the allegations of their complaint as integral part hereof;

II

The plaintiffs were forced to litigate due to the Petition for Extrajudicial Foreclosure of Mortgage filed by defendant bank and unlawful imposition of escalating and arbitrary rate of interest without the consent of the plaintiffs and not authorized under the Real Estate Mortgage Contract despite advance interest has been deducted thereon, which should not [sic] been deducted therefrom, and in spite of the fact that the principal loan of Six Hundred Thousand [P600,000.00] Pesos was not released in one occasion, but in four [4] occasions separated by one and one half [1 and ½] month, to wit:

First Release P150,000.00 July 25, 1994

Less the ff:

Processing fee

Notarial fee

MRI

1% Commitment fee

Total Deductions

Net proceeds received 1,000.00

300.00

9,990.00

6,000.00

P18,290.00

P131,710.00

Second Release P200,000.00 Sept. 5, 1994

Less the ff:

Interest charges

MRI

Total Deductions

Net proceeds received 3,279.45

3,330.00

6,609.45

193,390.55

Third Release P150,000.00 October 24, 1994

Less the ff:

Interest charges

MRI

Fire ins.

Total Deductions

Net proceeds received 8,927.40

1,665.00

2,069.90

12,662.30

137,337.70

Fourth Release P100,000.00 November 15, 1994

Less the ff:

Interest charges

MRI

Total Deductions

Net proceeds received 5,726.03

1,665.00

7,391.03

92,608.97

The aforesaid unauthorized deductions and advance interest charges were known by plaintiffs only for the first time at the Pre-Trial Brief of defendants.

III

Aside from the above unauthorized deductions and advance interest payment made, defendant bank also imposed escalating and arbitrary rate of interest. This is unlawful interest which is condemned by the Supreme Court:

“In the face of the unequivocal interest rate provisions in the credit agreement and in the law requiring the parties to agree to charges in the interest rate in writing, we hold that the unilateral and progressive increases imposed by respondent bank PNB were null and void. Their effect was to increase the total obligation on an eighteen million peso loan to an amount way over three times that which was originally granted to the borrowers. That these increases occasioned by crafty manipulations in the interest rates is unconscionable and neutralizes the salutary policies of extending loans to spur business cannot be disputed.” [Underscoring supplied]; [Almeda v. Court of Appeals, G.R. No. 113412, April 17, 1996, 256 SCRA 308].

IV

The foreclosure and/or liability of plaintiffs should be limited only to the amount in the mortgage [REM] and can not include other items, such as late payment charges, liquidated damages and attorney’s fees in accordance with the ruling of the Supreme Court:

“The mortgage provision relied upon by the petitioner is known in American jurisprudence as a ‘dragnet’” clause, which is specifically phrased to subsume all debts of past or future origin. Such clauses are ‘carefully scrutinized and strictly construed.’

The mortgage contract is also one of adhesion as it was prepared solely by the petitioner and the only participation of the other party was the affixing of his signature or his ‘adhesion’ thereto. Being a contract of adhesion, the mortgage is to be strictly construed against the petitioner, the party which prepared the agreement.

A reading not only of the earlier quoted provision, but of the entire mortgage contract yields no mention of penalty charges. Construing this silence strictly against the petitioner, it can fairly be concluded that the petitioner did not intend to include the penalties on the promissory notes in the secured amount. This explains the finding by the trial court, as affirmed by the Court of Appeals, That ‘penalties and charges are not due for want of stipulations in the mortgage contract.’

Indeed, a mortgage must sufficiently describe the debt sought to be secured, which description must not be such to mislead or deceive, and an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage. In this case, the mortgage contract provides that it secures notes and other evidences of indebtedness. Under the rule of ejusdem generis, where a description of things of a particular class or kind is accompanied by words of a generic character, the generic words will usually be limited to things of a kindred nature with those particularly enumerated. A penalty charge does not belong to the species of obligations enumerated in the mortgage; hence, the said contract cannot be understood to secure the penalty.

There is also sufficient authority to declare that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it.’ [Philippine Bank of Communications v. Court of Appeals, G.R. No. 118552, February 5, 1996, 253 SCRA 253-354].

V

That plaintiffs, in fact, wrote defendant bank, duly received by its counsel, Atty. Yolando Atienza, offering to settle their indebtedness as early as April 16, 1996 provided that the arbitrary charges, penalties and attorney’s fees be deleted but defendant bank refused and insisted for plaintiffs to pay the aforesaid charges, penalties and attorney’s fees, a copy of plaintiffs’ letter is hereto attached and marked as integral part hereof.[9]

Petitioners prayed that, after due proceedings, judgment be rendered in their favor, thus:

WHEREFORE, it is most respectfully prayed that the imposition of escalating and arbitrary rate of interest as well as the unilateral manipulations of interest rate, penalties and other charges be declared null and void/annulled/rescinded and rendered without force and effect, and that plaintiffs be extended other legal and equitable reliefs.[10]

On August 11, 2000, the trial court issued an Order[11] denying the motion of petitioners in its finding that the alleged escalating and arbitrary rate of interest and other charges imposed by private respondent had accrued long before the complaint was filed. It held that under Section 6, Rule 10 of the Revised Rules of Court, only transactions, occurrences, or events which accrued after the date of the complaint may be set forth in the supplemental complaint.

Petitioners filed a motion for reconsideration of the Order, alleging therein that the escalating, arbitrary rate of interest, and other charges referred to under paragraphs III, IV and V of their supplemental complaint took place after the filing of their complaint. They insist that it was discovered for the first time only after they had been furnished with the statements of account by defendant during pretrial.

However, on January 2, 2001, the court issued an Order[12] denying the motion of petitioners.

Petitioners filed a petition for certiorari with the CA seeking to nullify the Orders of the RTC. They alleged that the RTC committed grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the Orders.

Petitioners reiterated that they came to know of the escalating and arbitrary charges, liquidated damages, and attorney's fees only when they received the statements of account dated June 5, 1996, November 15, 1996, and August 15, 1998, after the filing of their original complaint; hence, they could not have been alleged as an integral part of their causes of action in their original complaint.

On March 7, 2005, the CA rendered judgment dismissing the petition.[13] According to the appellate court:

It is a normal practice for banks to provide stipulations with respect to interest rates, penalties, damages, attorney's fees and other charges in the loan documents. After the release of the loan, interest starts to run until the obligation is fully paid. When a party defaults in the payment of his obligations, late payment charges or penalties are imposed as stipulated. In case of litigation, provisions for attorney's fees are provided for as well as payment of damages. The imposition of interests and other charges, therefore, on the loan obligations are but mere consequences of the execution of the mortgage loan agreement. They cannot be considered supervening events because after the loans have been incurred, interests and/or other charges start to accrue until the full payment of the account. Whether or not these interests and/or charges are arbitrary or in violation of the terms and conditions of their agreement is a matter of evidence and for the court to decide.

In the present case, petitioners, in their complaint, seek to annul the mortgage loan document, which, among others, contains terms and conditions with respect to interest and other charges. As mentioned by the petitioners, their loan obligation carries a 19% per annum which under normal banking practice started to accrue upon its release. Petitioners' basic cause of action is premised on the computation made by BPI that gave rise to differences in the amount released as proceeds of the loans and the monthly amortizations. Undoubtedly, the discrepancies arose from the manner the interests and other charges were computed at the inception of the loan obligation. For this reason, it cannot be said that the imposition of such interest and other charges is an occurrence, transaction or event that happened after the filing of the complaint even on the assumption that, as alleged by the petitioners, the same was arbitrary. This is because the interest on the loan account of the petitioners started to accrue from the time the proceeds of the loan were released on staggered basis on July 25, 1994, September 5, 1994, October 24, 1994 and November 15, 1994, prior to the filing of the complaint on July 26, 1995 (sic) and continued to run thereafter.[14]

Petitioners filed a motion for reconsideration which the appellate court denied.[15]

In the present petition for review, petitioners point out that

THE COURT OF APPEALS ERRED IN DECLARING THAT THE REGIONAL TRIAL COURT, BRANCH 172, VALENZUELA CITY DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN DENYING PETITIONERS' MOTION TO ADMIT SUPPLEMENTAL COMPLAINT UNDER SEC. 6, RULE 10, REVISED RULES OF COURT.[16]

Petitioners reiterate that they came to know of the escalating interests, penalties, liquidated damages, and attorney's fees charged by private respondent only after the complaint was filed on June 26, 1995, hence, the failure to allege this in their original complaint. While it is true that interest was part of the agreement between the parties, the escalation of the interest, excessive penalties, excessive attorney's fees, and liquidated damages were not discussed nor agreed upon before the MLA was signed. Petitioners claim that they were surprised when they learned of the interests, penalties, damages, and fees during pretrial.[17]

Petitioners aver that the trial court should have admitted their Supplemental Complaint, considering that it was in no way prejudicial to private respondent. On the contrary, petitioners assert, the admission of their supplemental complaint would enable the trial court to resolve the real controversies between the parties. Further, respondent court should have granted their Motion to Admit Supplemental Complaint because the imposition of escalating and arbitrary charges by a banking or lending institution is unconscionable and unlawful. The disallowance thereof by the trial court would result to injustice. They would suffer grave or irreparable damage and injury because of the crafty manipulations in the interest rates and other unlawful charges imposed by private respondent.

Petitioners point out that despite the ongoing negotiations, private respondent proceeded with the extrajudicial foreclosure of the property. They claim that they were willing to settle their obligation. They insist that private respondent illegally required them to pay usurious interest, late payment charges, liquidated damages, and attorney's fees, such that their account ballooned to P1,243,919.94 as shown in the statement of account.[18]

In its comment on the petition, private respondent alleged that a cursory examination of petitioners' Supplemental Complaint[19] reveals that the supposed transactions, occurrences, or events alleged therein took place long before the original complaint was filed on June 26, 1995. The Supplemental Complaint itself states that the charges, interests, and penalties were charged against petitioners sometime in July 25, 1994, September 5, 1994, October 24, 1994, and November 15, 1994, before the filing of the original complaint. Consequently, the filing or admission of petitioners' Motion to Admit and the Supplemental Complaint[20] is contrary to the provisions of Section 6, Rule 10 of the 1997 Rules of Civil Procedure.

Private respondent further asserts that petitioners filed their Supplemental Complaint precisely to further delay the disposition of the case. This is shown by the fact that the complaint was filed in 1995; the pretrial conference was terminated as early as September 17, 1998; and the case had been set on numerous dates for the reception of petitioners' evidence. Nevertheless, petitioners failed to present any documentary or testimonial evidence. Private respondent insists that with the filing of their Motion to Admit the Supplemental Complaint,[21] petitioners were able to prolong the case and thereby forestall the foreclosure of the mortgaged property.

According to private respondent, the evidence on record also shows that petitioners were furnished with the statements of account[22] upon the request of petitioners to facilitate the amicable settlement of the case during the pretrial conference. The interest, penalties, and other charges imposed by private respondent on petitioners' account are in accordance with the terms and conditions of the promissory note executed by petitioners and the MLA. Besides, petitioners received copies of the statements of account during the pretrial conference of the case.

Private respondent argues that petitioners could have filed an amended complaint during the pretrial in order to incorporate the matter in the supplemental complaint, and not after the parties had agreed to terminate the pretrial conference and the case had been set on numerous settings for reception of their evidence. Having agreed to terminate the pretrial conference and set the case for reception of evidence, petitioners thereby waived their right to amend their complaint.

Private respondent also points out that, contrary to petitioners' claim, the interest rates, penalties, damages, attorney's fees, and other charges are expressly stipulated in the MLA (paragraphs 3, 4[23] and 21[24]), and the appended disclosure statement (paragraphs 29a[25] and 7, 8, and 10[26]). Petitioners were thus aware of these charges even before they filed their complaint. Private respondent further insists that there is no factual and legal basis for petitioners' claim that the escalating interests, MRI, liquidated damages, and attorney's fees are illegal and unconscionable.

The petition is denied for lack of merit.

The pertinent provision of the Rules of Court is Section 6 of Rule 10 which reads:

Sec. 6. Matters subject of supplemental pleadings. – Upon motion of a party, the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party should plead thereto, it shall so order, specifying the time therefor.

The rule is a useful device which enables the court to award complete relief in one action and to avoid the cost delay and waste of separate action.[27] Thus, a supplemental pleading is meant to supply deficiencies in aid of the original pleading and not to dispense with or substitute the latter.[28]

A supplemental complaint must be consistent with, and in aid of, the cause of action set forth in the original complaint. A new and independent cause of action cannot be set up by such complaint.[29] The supplemental complaint must be based on matters arising subsequent to the original complaint related to the claim or defense presented therein, and founded on the same cause of action. However, although the facts occur before the commencement of the suit if a party does not learn of their existence until after he has filed his pleading, he may file a supplemental pleading.[30]

As a general rule, leave will be granted to file a supplemental complaint which alleges any material fact which happened or came within plaintiff's knowledge since the original complaint was filed, such being the office of a supplemental complaint.[31] The purpose of the rule is that the entire controversy might be settled in one action; to avoid unnecessary litigation; prevent delay, unnecessary repetition of effort; unwarranted expense of litigants; to broaden the scope of the issues in an action owing to the light thrown on it by facts, events and occurrences which have accrued after the filing of the original pleading; to bring into record the facts enlarging or charging the kind of relief to which plaintiff is entitled. It is the policy of the law to grant relief as far as possible for wrongs complained of growing out of the same transaction and thus put an end to litigation.

The admission or non-admission of a supplemental pleading is not a matter of right but is discretionary on the court.[32] Among the factors that the court will consider are: (1) resulting prejudice to the parties; and (2) whether the movant would be prejudiced if the supplemental pleading were to be denied. What constitutes prejudice to the opposing party depends upon the particular circumstance of each case. An opposing party who has had notice of the general nature of the claim or matter asserted in the supplemental pleading from the beginning of the action will not be prejudiced by the granting of leave to file a supplemental pleading. A motion for leave to file a supplemental pleading may be denied if he is guilty of undue delay or laches which causes substantial prejudice to

the opposing party.[33]

It bears stressing, however, that the substantial rights of the parties and the merits of the case are not to be considered and resolved in a mere motion for leave to file a supplemental complaint.

Before they filed their original complaint, petitioners were already aware of the deductions made on the proceeds of the loan, for interest charges, MRI premium, and fire insurance premium in the total amount of P44,952.88. They received notices on the following dates: July 25, 1994, September 5, 1994, October 24, 1994, and November 15, 1994. And because petitioners had alleged all these charges in the petition for extrajudicial foreclosure sale, it behooved petitioners to have incorporated in their original complaint as a cause of action the alleged “illegal/unauthorized and unconscionable” charges for MRI, escalating interest charges, liquidated damages, attorney’s fees, and foreclosure expenses. They should have sought to nullify such charges in the original complaint, but they did not. They are thus proscribed from incorporating the same via a supplemental complaint.

We also note that the pretrial was terminated on July 23, 1998 following the failure of the parties to settle the case amicably. Petitioners filed their Motion to Admit their Supplemental Complaint on July 10, 2000, or almost two (2) years after pretrial was concluded and following their repeated failure to present their testimonial and documentary evidence. Petitioners likewise failed to put forth a meritorious justification from their abject inaction that caused a delay of almost two years. There is, thus, factual basis for private respondent’s claim that petitioners’ motion for the admission of their supplemental complaint was merely dilatory.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 63512 are AFFIRMED. Costs against petitioners.

SO ORDERED.

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

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with Associate Justices Elvi John S. Asuncion and Hakim S. Abdulwahid, concurring; rollo, pp. 44-50.

[2] Rollo, p. 55.

[3] Penned by Judge Floro P. Alejo; id at 30.

[4] Rollo, pp. 118-121.

[5] Id. at 122.

[6] Id. at 118-119.

[7] Id. at 56.

[8] Id. at 59-60.

[9] Id. at 25-28.

[10] Id. at 28.

[11] Id. at 30.

[12] Id. at 34.

[13] Id. at 44-50.

[14] Id. at 48-49.

[15] Id. at 55.

[16] Id. at 14.

[17] Id. at 16-18.

[18] Id. at 19.

[19] Annex "A-1," id. at 25.

[20] Annexes "A" to "A-1."

[21] Annex "A-1."

[22] Annexes "J," "K," and "L" to "L-1."

[23] The provisions read:

3. Interest Fixing Period:

Each and every successive period of TWELVE (12) months beginning from the date of the Agreement until the principal amount is fully paid.

4. Floating Interest Rate:

The lower of TWENTY and 00/100th percent (20.00%) per annum over and above the prevailing 180-day Manila Reference Rate as announced by the Central Bank of the Philippines or FIVE and 00/100th percent (5.00%) per annum over and above the prevailing SHORT TERM Bank's Base Rate subject further to the provisions of paragraph numbers 9 & 10 on the reverse side hereof.

[24] The provision reads:

31. Attorney's Fees. In case the Bank should engage the services of counsel to enforce its rights under this Agreement, the Borrower/Mortgagor shall pay an amount equivalent to fifteen (15%) percent of the total amount claimed by the Bank, which, in no case, shall be less than P2,000.00, Philippine currency, plus costs, collection expenses and disbursements allowed by law, all of which shall also be secured by this mortgage.

[25] The provision reads:

2a. Interest 19.00% p.a. from November 15, 1994 to November 15, 1995, Monthly.

[26] The provisions read:

7. Effective Interest Rate 19.00% p.a.

8. Schedule of Payment:

- Single payment due on December 15, 1994

- Total installment payments P121,167.12 payable in 12 months at P10,097.26

10. Additional Charges in case certain stipulations are not met by the borrower:

- Post Default Penalty – 3.00% per month of principal, interest, or any other amount due but unpaid month from due date

- Attorney's Services – 15% of sum due but not less than P2,000.00

- Liquidated Damages – 15% of sum due but not less than P10,000.00

- Collection & Legal Cost – as provided by Rules of Court

- Others (specify)

[27] *New Amsterdam Cas. v. Waller*, 323 F.2d 20 (1963).

[28] *Shoemart, Inc. v. Court of Appeals*, G.R. No. 86956, October 1, 1990, 190 SCRA 189, 196, cited in *Asset Privatization Trust v. Court of Appeals*, 381 Phil. 530, 545 (2000).

[29] *Pasay City Government v. CFI of Manila, Branch X*, 217 Phil. 153, 165 (1984).

[30] 71 C.J.S. Pleading § 327, p. 724.

[31] *Bush v. Pioner Mining Co.* Aloha, 179 F. 78 (1910); *Rio Grande Dam & Irrigation Co. v. United States*, 54 L.ed. 190 (1909).

[32] *British Traders Insurance Co., Ltd. v. Commissioner of Internal Revenue*, 121 Phil. 696, 705 (1965).

[33] 61 Am.Jur. Pleading, 20, pp. 625-626.

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