

**EQUITABLE PCI BANK, AIMEE YU AND BEJAN LIONEL APAS,
PETITIONERS, VS. NG SHEUNG NGOR DOING BUSINESS UNDER THE
NAME AND STYLE “KEN MARKETING,” KEN APPLIANCE
DIVISION, INC. AND BENJ...**

G.R. No. 171545. December 19, 2007

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[1] seeks to set aside the decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83112 and its resolution[3] denying reconsideration.

On October 7, 2001, respondents Ng Sheung Ngor,[4] Ken Appliance Division, Inc. and Benjamin E. Go filed an action for annulment and/or reformation of documents and contracts[5] against petitioner Equitable PCI Bank (Equitable) and its employees, Aimee Yu and Bejan Lionel Apas, in the Regional Trial Court (RTC), Branch 16 of Cebu City.[6] They claimed that Equitable induced them to avail of its peso and dollar credit facilities by offering low interest rates[7] so they accepted Equitable's proposal and signed the bank's pre-printed promissory notes on various dates beginning 1996. They, however, were unaware that the documents contained identical escalation clauses granting Equitable authority to increase interest rates without their consent.[8]

Equitable, in its answer, asserted that respondents knowingly accepted all the terms and conditions contained in the promissory notes.[9] In fact, they continuously availed of and benefited from Equitable's credit facilities for five years.[10]

After trial, the RTC upheld the validity of the promissory notes. It found that, in 2001 alone, Equitable restructured respondents' loans amounting to US\$228,200 and P1,000,000.[11] The trial court, however, invalidated the escalation clause contained therein because it violated the principle of mutuality of contracts.[12] Nevertheless, it took judicial notice of the steep depreciation of the peso during the intervening period[13] and declared the existence of extraordinary deflation.[14] Consequently, the RTC ordered the use of the 1996 dollar exchange rate in computing respondents' dollar-denominated loans.[15] Lastly, because the business reputation of respondents was (allegedly) severely damaged when Equitable froze their accounts,[16] the trial court awarded moral and exemplary damages to them.[17]

The dispositive portion of the February 5, 2004 RTC decision[18] provided:

WHEREFORE, premises considered, judgment is hereby rendered:

A)

Ordering [Equitable] to reinstate and return the amount of [respondents'] deposit placed on hold status;

B)

Ordering [Equitable] to pay [respondents] the sum of P12 [m]illion [p]esos as moral damages;

C)

Ordering [Equitable] to pay [respondents] the sum of P10 [m]illion [p]esos as exemplary damages;

D)

Ordering defendants Aimee Yu and Bejan [Lionel] Apas to pay [respondents], jointly and severally, the sum of [t]wo [m]illion [p]esos as moral and exemplary damages;

E)

Ordering [Equitable, Aimee Yu and Bejan Lionel Apas], jointly and severally, to pay [respondents'] attorney's fees in the sum of P300,000; litigation expenses in the sum of P50,000 and the cost of suit;

F)

Directing plaintiffs Ng Sheung Ngor and Ken Marketing to pay [Equitable] the unpaid principal obligation for the peso loan as well as the unpaid obligation for the dollar denominated loan;

G)

Directing plaintiff Ng Sheung Ngor and Ken Marketing to pay [Equitable] interest as follows:

1)

12% per annum for the peso loans;

2)

8% per annum for the dollar loans. The basis for the payment of the dollar obligation is the conversion rate of P26.50 per dollar availed of at the time of incurring of the obligation in accordance with Article 1250 of the Civil Code of the Philippines;

H)

Dismissing [Equitable's] counterclaim except the payment of the aforestated unpaid principal loan obligations

and interest.

SO ORDERED.[19]

Equitable and respondents filed their respective notices of appeal.[20]

In the March 1, 2004 order of the RTC, both notices were denied due course because Equitable and respondents "failed to submit proof that they paid their respective appeal fees." [21]

WHEREFORE, premises considered, the appeal interposed by defendants from the Decision in the above-entitled case is DENIED due course. As of February 27, 2004, the Decision dated February 5, 2004, is considered final and executory in so far as [Equitable, Aimee Yu and Bejan Lionel Apas] are concerned.[22](emphasis supplied)

Equitable moved for the reconsideration of the March 1, 2004 order of the RTC[23] on the ground that it did in fact pay the appeal fees. Respondents, on the other hand, prayed for the issuance of a writ of execution.[24]

On March 24, 2004, the RTC issued an omnibus order denying Equitable's motion for reconsideration for lack of merit[25] and ordered the issuance of a writ of execution in favor of respondents.[26] According to the RTC, because respondents did not move for the reconsideration of the previous order (denying due course to the parties' notices of appeal),[27] the February 5, 2004 decision became final and executory as to both parties and a writ of execution against Equitable was in order.[28]

A writ of execution was thereafter issued[29] and three real properties of Equitable were levied upon.[30]

On March 26, 2004, Equitable filed a petition for relief in the RTC from the March 1, 2004 order.[31] It, however, withdrew that petition on March 30, 2004[32] and instead filed a petition for certiorari with an application for an injunction in the CA to enjoin the implementation and execution of the March 24, 2004 omnibus order.[33]

On June 16, 2004, the CA granted Equitable's application for injunction. A writ of preliminary injunction was correspondingly issued.[34]

Notwithstanding the writ of injunction, the properties of Equitable previously levied upon were sold in a public auction on July 1, 2004. Respondents were the highest bidders and certificates of sale were issued to them.[35]

On August 10, 2004, Equitable moved to annul the July 1, 2004 auction sale and to cite the sheriffs who conducted the sale in contempt for proceeding with the auction despite the injunction order of the CA.[36]

On October 28, 2005, the CA dismissed the petition for certiorari.[37] It found Equitable guilty of forum shopping because the bank filed its petition for certiorari in the CA several hours before withdrawing its petition for relief in the RTC.[38] Moreover, Equitable failed to disclose, both in the statement of material dates and certificate of non-forum shopping (attached to its petition for certiorari in the CA), that it had a pending petition for relief in the RTC.[39]

Equitable moved for reconsideration[40] but it was denied.[41] Thus, this petition.

Equitable asserts that it was not guilty of forum shopping because the petition for relief was withdrawn on the same day the petition for certiorari was filed.[42] It likewise avers that its petition for certiorari was meritorious because the RTC committed grave abuse of discretion in issuing the March 24, 2004 omnibus order which was based on an erroneous assumption. The March 1, 2004 order denying its notice of appeal for non payment of appeal fees was erroneous because it had in fact paid the required fees.[43] Thus, the RTC, by issuing its March 24, 2004 omnibus order, effectively prevented Equitable from appealing the patently wrong February 5, 2004 decision.[44]

This petition is meritorious.

EQUITABLE WAS NOT GUILTY OF FORUM SHOPPING

Forum shopping exists when two or more actions involving the same transactions, essential facts and circumstances are filed and those actions raise identical issues, subject matter and causes of action.[45] The test is whether, in two or more pending cases, there is identity of parties, rights or causes of actions and reliefs.[46]

Equitable's petition for relief in the RTC and its petition for certiorari in the CA did not have identical causes of action. The petition for relief from the denial of its notice of appeal was based on the RTC's judgment or final order preventing it from taking an appeal by "fraud, accident, mistake or excusable negligence." [47] On the other hand, its petition for certiorari in the CA, a special civil action, sought to correct the grave abuse of discretion amounting to lack of jurisdiction committed by the RTC.[48]

In a petition for relief, the judgment or final order is rendered by a court with competent jurisdiction. In a petition for certiorari, the order is rendered by a court without or in excess of its jurisdiction.

Moreover, Equitable substantially complied with the rule on non-forum shopping when it moved to withdraw its petition for relief in the RTC on the same day (in fact just four hours and forty minutes after) it filed the petition for certiorari in the CA. Even if Equitable failed to disclose that it had a pending petition for relief in the RTC, it rectified what was doubtlessly a careless oversight by withdrawing the petition for relief just a few hours after it filed its petition for certiorari in the CA — a clear indication that it had no intention of maintaining the two actions at the same time.

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING ITS MARCH 1, 2004 AND MARCH 24, 2004 ORDERS

Section 1, Rule 65 of the Rules of Court provides:

Section 1. Petition for Certiorari. When any tribunal, board or officer exercising judicial or quasi-judicial function has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy or adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certificate of non-forum shopping as provided in the third paragraph of Section 3, Rule 46

There are two substantial requirements in a petition for certiorari. These are:

- that the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of his or its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
- that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

For a petition for certiorari premised on grave abuse of discretion to prosper, petitioner must show that the public respondent patently and grossly abused his discretion and that abuse amounted to an evasion of positive duty or a

virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power was exercised in an arbitrary and despotic manner by reason of passion or hostility.[49]

The March 1, 2004 order denied due course to the notices of appeal of both Equitable and respondents. However, it declared that the February 5, 2004 decision was final and executory only with respect to Equitable.[50] As expected, the March 24, 2004 omnibus order denied Equitable's motion for reconsideration and granted respondents' motion for the issuance of a writ of execution.[51]

The March 1, 2004 and March 24, 2004 orders of the RTC were obviously intended to prevent Equitable, et al. from appealing the February 5, 2004 decision. Not only that. The execution of the decision was undertaken with indecent haste, effectively obviating or defeating Equitable's right to avail of possible legal remedies. No matter how we look at it, the RTC committed grave abuse of discretion in rendering those orders.

With regard to whether Equitable had a plain, speedy and adequate remedy in the ordinary course of law, we hold that there was none. The RTC denied due course to its notice of appeal in the March 1, 2004 order. It affirmed that denial in the March 24, 2004 omnibus order. Hence, there was no way Equitable could have possibly appealed the February 5, 2004 decision.[52]

Although Equitable filed a petition for relief from the March 24, 2004 order, that petition was not a plain, speedy and adequate remedy in the ordinary course of law.[53] A petition for relief under Rule 38 is an equitable remedy allowed only in exceptional circumstances or where there is no other available or adequate remedy.[54]

Thus, we grant Equitable's petition for certiorari and consequently give due course to its appeal.

EQUITABLE RAISED PURE QUESTIONS OF LAW IN ITS PETITION FOR REVIEW

The jurisdiction of this Court in Rule 45 petitions is limited to questions of law.[55] There is a question of law "when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for the probative value of the evidence presented, the truth or falsehood of facts being admitted." [56]

Equitable does not assail the factual findings of the trial court. Its arguments essentially focus on the nullity of the RTC's February 5, 2004 decision. Equitable points out that that decision was patently erroneous, specially the exorbitant award of damages, as it was inconsistent with existing law and jurisprudence.[57]

THE PROMISSORY NOTES WERE VALID

The RTC upheld the validity of the promissory notes despite respondents' assertion that those documents were contracts of adhesion.

A contract of adhesion is a contract whereby almost all of its provisions are drafted by one party.[58] The participation of the other party is limited to affixing his signature or his "adhesion" to the contract.[59] For this reason, contracts of adhesion are strictly construed against the party who drafted it.[60]

It is erroneous, however, to conclude that contracts of adhesion are invalid per se. They are, on the contrary, as binding as ordinary contracts. A party is in reality free to accept or reject it. A contract of adhesion becomes void only when the dominant party takes advantage of the weakness of the other party, completely depriving the latter of the opportunity to bargain on equal footing.[61]

That was not the case here. As the trial court noted, if the terms and conditions offered by Equitable had been truly prejudicial to respondents, they would have walked out and negotiated with another bank at the first available instance. But they did not. Instead, they continuously availed of Equitable's credit facilities for five long years.

While the RTC categorically found that respondents had outstanding dollar- and peso-denominated loans with Equitable, it, however, failed to ascertain the total amount due (principal, interest and penalties, if any) as of July 9, 2001. The trial court did not explain how it arrived at the amounts of US\$228,200 and P1,000,000.[62] In *Metro Manila Transit Corporation v. D.M. Consunji*,[63] we reiterated that this Court is not a trier of facts and it shall pass upon them only for compelling reasons which unfortunately are not present in this case.[64] Hence, we ordered the partial remand of the case for the sole purpose of determining the amount of actual damages.[65]

ESCALATION CLAUSE VIOLATED THE PRINCIPLE OF MUTUALITY OF CONTRACTS

Escalation clauses are not void per se. However, one "which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. Clauses of that nature violate the principle of mutuality of contracts.[66] Article 1308[67] of the Civil Code holds that a contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.[68]

For this reason, we have consistently held that a valid escalation clause provides:

- that the rate of interest will only be increased if the applicable maximum rate of interest is increased by law or by the Monetary Board; and
- that the stipulated rate of interest will be reduced if the applicable maximum rate of interest is reduced by law or by the Monetary Board (de-escalation clause).[69]

The RTC found that Equitable's promissory notes uniformly stated:

If subject promissory note is extended, the interest for subsequent extensions shall be at such rate as shall be determined by the bank.[70]

Equitable dictated the interest rates if the term (or period for repayment) of the loan was extended. Respondents had no choice but to accept them. This was a violation of Article 1308 of the Civil Code. Furthermore, the assailed escalation clause did not contain the necessary provisions for validity, that is, it neither provided that the rate of interest would be increased only if allowed by law or the Monetary Board, nor allowed de-escalation. For these reasons, the escalation clause was void.

With regard to the proper rate of interest, in *New Sampaguita Builders v. Philippine National Bank*[71] we held that, because the escalation clause was annulled, the principal amount of the loan was subject to the original or stipulated rate of interest. Upon maturity, the amount due was subject to legal interest at the rate of 12% per annum.[72]

Consequently, respondents should pay Equitable the interest rates of 12.66% p.a. for their dollar-denominated loans and 20% p.a. for their peso-denominated loans from January 10, 2001 to July 9, 2001. Thereafter, Equitable was entitled to legal interest of 12% p.a. on all amounts due.

THERE WAS NO EXTRAORDINARY DEFLATION

Extraordinary inflation exists when there is an unusual decrease in the purchasing power of currency (that is, beyond the common fluctuation in the value of currency) and such decrease could not be reasonably foreseen or was manifestly beyond the contemplation of the parties at the time of the obligation. Extraordinary deflation, on the other hand, involves an inverse situation.[73]

Article 1250 of the Civil Code provides:

Article 1250. In case an extraordinary inflation or deflation of the currency stipulated should intervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary.

For extraordinary inflation (or deflation) to affect an obligation, the following requisites must be proven:

- that there was an official declaration of extraordinary inflation or deflation from the Bangko Sentral ng Pilipinas (BSP);[74]
- that the obligation was contractual in nature;[75] and
- that the parties expressly agreed to consider the effects of the extraordinary inflation or deflation.[76]

Despite the devaluation of the peso, the BSP never declared a situation of extraordinary inflation. Moreover, although the obligation in this instance arose out of a contract, the parties did not agree to recognize the effects of extraordinary inflation (or deflation).[77] The RTC never mentioned that there was a such stipulation either in the promissory note or loan agreement. Therefore, respondents should pay their dollar-denominated loans at the exchange rate fixed by the BSP on the date of maturity.[78]

THE AWARD OF MORAL AND EXEMPLARY DAMAGES LACKED BASIS

Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered, not to impose a penalty to the wrongdoer.[79] To be entitled to moral damages, a claimant must prove:

- That he or she suffered besmirched reputation, or physical, mental or psychological suffering sustained by the claimant;
- That the defendant committed a wrongful act or omission;
- That the wrongful act or omission was the proximate cause of the damages the claimant sustained;
- The case is predicated on any of the instances expressed or envisioned by Article 2219[80] and 2220[81].
[82]

In culpa contractual or breach of contract, moral damages are recoverable only if the defendant acted fraudulently or in bad faith or in wanton disregard of his contractual obligations.[83] The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive.[84]

The RTC found that respondents did not pay Equitable the interest due on February 9, 2001 (or any month thereafter prior to the maturity of the loan)[85] or the amount due (principal plus interest) due on July 9, 2001.[86] Consequently, Equitable applied respondents' deposits to their loans upon maturity.

The relationship between a bank and its depositor is that of creditor and debtor.[87] For this reason, a bank has the right to set-off the deposits in its hands for the payment of a depositor's indebtedness.[88]

Respondents indeed defaulted on their obligation. For this reason, Equitable had the option to exercise its legal

right to set-off or compensation. However, the RTC mistakenly (or, as it now appears, deliberately) concluded that Equitable acted "fraudulently or in bad faith or in wanton disregard" of its contractual obligations despite the absence of proof. The undeniable fact was that, whatever damage respondents sustained was purely the consequence of their failure to pay their loans. There was therefore absolutely no basis for the award of moral damages to them.

Neither was there reason to award exemplary damages. Since respondents were not entitled to moral damages, neither should they be awarded exemplary damages.[89] And if respondents were not entitled to moral and exemplary damages, neither could they be awarded attorney's fees and litigation expenses.[90]

ACCORDINGLY, the petition is hereby GRANTED.

The October 28, 2005 decision and February 3, 2006 resolution of the Court of Appeals in CA-G.R. SP No. 83112 are hereby REVERSED and SET ASIDE.

The March 24, 2004 omnibus order of the Regional Trial Court, Branch 16, Cebu City in Civil Case No. CEB-26983 is hereby ANNULLED for being rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. All proceedings undertaken pursuant thereto are likewise declared null and void.

The March 1, 2004 order of the Regional Trial Court, Branch 16 of Cebu City in Civil Case No. CEB-26983 is hereby SET ASIDE. The appeal of petitioners Equitable PCI Bank, Aimee Yu and Bejan Lionel Apas is therefore given due course.

The February 5, 2004 decision of the Regional Trial Court, Branch 16 of Cebu City in Civil Case No. CEB-26983 is accordingly SET ASIDE. New judgment is hereby entered:

- ordering respondents Ng Sheung Ngor, doing business under the name and style of "Ken Marketing," Ken Appliance Division, Inc. and Benjamin E. Go to pay petitioner Equitable PCI Bank the principal amount of their dollar- and peso-denominated loans;

- ordering respondents Ng Sheung Ngor, doing business under the name and style of "Ken Marketing," Ken Appliance Division, Inc. and Benjamin E. Go to pay petitioner Equitable PCI Bank interest at:

a)

12.66% p.a. with respect to their dollar-denominated loans from January 10, 2001 to July 9, 2001;

b)

20% p.a. with respect to their peso-denominated loans from January 10, 2001 to July 9, 2001;[91]

c)

pursuant to our ruling in *Eastern Shipping Lines v. Court of Appeals*,[92] the total amount due on July 9, 2001 shall earn legal interest at 12% p.a. from the time petitioner Equitable PCI Bank demanded payment, whether judicially or extra-judicially; and

d)

after this Decision becomes final and executory, the applicable rate shall be 12% p.a. until full satisfaction;

- all other claims and counterclaims are dismissed.

As a starting point, the Regional Trial Court, Branch 16 of Cebu City shall compute the exact amounts due on the respective dollar-denominated and peso-denominated loans, as of July 9, 2001, of respondents Ng Sheung Ngor, doing business under the name and style of "Ken Marketing," Ken Appliance Division and Benjamin E. Go.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Leonardo-De Castro, JJ., concur.

[*] Now, Banco De Oro Unibank.

[**] Also referred to as Ng Seung Ngor in the records.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Mercedes Gozo-Dadole (retired) and concurred in by Associate Justices Pampio A. Abarintos and Enrico A. Lanzanas of the Eighteenth Division of the Court of Appeals. Dated October 28, 2005. Rollo, pp. 88-111.

[3] Penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Isaias P. Dicdican and Pampio A. Abarintos of the Special Former Eighteenth Division of the Court of Appeals. Dated February 3, 2006. Id., pp. 112-115.

[4] Doing business in the name and style of "Ken Marketing."

[5] Docketed as Civil Case No. CEB-26983. Rollo, pp. 115-143.

[6] Id., pp. 116-117, 177.

[7] The interest rate initially offered by Equitable was 12.75% p.a. for dollar-denominated loans. Id., p. 187.

[8] Id., p. 118.

[9] Id., pp. 155-175.

[10] Id.

[11] Id., pp. 180, 183. SCHEDULE OF LOANS:

Respondents' submission

Principal Interest Date Availed Date of Maturity Amount Due

US\$223,000 12.66%, p.a. 10 January 2001 9 July 2001 (total=)

36,700 12.66%, p.a. 10 January 2001 9 July 2001 US\$232,248.00

P995,000 20%, p.a. 10 January 2001 9 July 2001 P1,081,703.14

Equitable's submission

Principal Interest Date Availed Date of Maturity Amount due

US\$184,000 12.66%, p.a. 10 January 2001 9 July 2001 US\$207,771.78

37,700 12.66%, p.a. 10 January 2001 9 July 2001 41,441.44

P1,050,000 20%, p.a. 10 January 2001 9 July 2001 P1,166,193.34

Note:

- Equitable and respondents agreed neither as to the amount of the principal nor as to the amount due.

- The RTC concluded that the rates of interest stated in the promissory notes were only applicable for 30 days (or from January 10, 2001 to February 9, 2001). Thereafter (or every 30 days until the loan matures), Equitable may change the rates if it so desired without the prior notice to respondents.

- Interest due must be paid every month beginning February 9, 2001 until maturity.

- The findings of the trial court, with regard to the amount of respondents' obligation to Equitable, agreed neither with the submission of Equitable nor with that of respondents. The RTC made its own finding as to the amount of respondent's obligation to Equitable but did not explain how it arrived at the figures. It merely stated: "The evidence adduced during trial show [respondents] received the proceeds of peso and dollar loans from defendant bank as follows: (a) US\$228,200 in four (4) different availments and the (b) principal amount of P1,000,000. xxx"

[12] Id., pp. 185-186.

[13] Id. The RTC took judicial notice of the fact that the exchange rate in 1996 was US\$1 = P26.50 while in 2001, it was US\$1 = P55. Because the cost of purchasing dollar increased by 200% over the relatively short period of six years, it concluded that there was extraordinary inflation.

[14] Id.

[15] Id., p. 190.

[16] Id., pp. 188-189.

[17] Id.

[18] Penned by Judge Agapito L. Hontanosas, Jr. (dismissed from the service per resolution in *J. King and Sons Company, Inc. v. Judge Agapito L. Hontanosas, Jr.*, A.M. No. RTJ-03-1802, 21 September 2004, 438 SCRA 525). Id., pp. 177-190.

[19] Id., pp. 189-190.

[20] Id., pp. 191-193.

[21] Id., p. 194.

[22] Id.

[23] Id., pp. 195-202. Equitable attached proof that it paid the appeal fees.

[24] Id., pp. 203-204.

[25] Id., p. 206.

[26] Id., pp. 205-207.

[27] Id., p. 205.

[28] Id., p. 207.

[29] Id., pp. 208-210.

[30] Id., p. 218. Covered by TCT No. 124096, TCT No. 118031 and tax declarations GR2K-06-038-00391 and GRK-06-038-00392.

[31] Id., pp. 272-276.

See RULES OF COURT, Rule 38, Sec. 2. The section provides:

Sec. 2. Petition for relief from denial of appeal.-- When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

[32] Id., pp. 279-281.

[33] Docketed as CA-G.R. SP No. 83112. Id., p. 221.

[34] Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Monina Arevalo-Zenarosa and Vicente I. Yap (retired) of the Special Eighteenth Division of the Court of Appeals. Dated June 16, 2004. Id., pp. 221-223.

[35] Id., pp. 226-231.

[36] Id., pp. 232-240.

[37] Supra note 2.

[38] Id., pp. 106-110. The petition for certiorari was filed in the CA on March 30, 2004 at 9 a.m. while the motion to withdraw the petition for relief in the RTC was filed also on March 30, 2004 at 1:40 p.m.

[39] Id.

[40] Id., pp. 248-271.

[41] Supra note 3.

[42] Id., p. 38.

[43] Id., p. 55.

[44] Id., pp. 62-68.

[45] Ligon v. Court of Appeals, G.R. No. 127683, 7 August 1998, 294 SCRA 73, 88.

[46] Id.

[47] Supra note 31.

[48] Florenz B. Regalado, 2 REMEDIAL LAW COMPENDIUM 18[th]ed., 716 citing *Matute v. Macadaeg, et al.*, 99 Phil. 340 (1956) and *de Gala-Sison v. Maddela, et al.*, 160-B Phil. 626 (1975).

[49] See *Aggabao v. Commission on Elections*, G.R. No. 163756, 26 January 2005, 449 SCRA 400. See also *Zarate v. Maybank*, G.R. No. 160976, 8 June 2005, 459 SCRA 785. See also *Agustin v. Court of Appeals*, G.R. No. 162571, 15 June 2005, 460 SCRA 315.

[50] Rollo, p. 194.

[51] *Id.*, pp. 225-231.

[52] See Rules of Court, Rule 41, Sec. 2. The section provides:

Section 2. Modes of appeal.--

(a) Ordinary appeal.-- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in the like manner.

(b) Petition for review.-- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Appeal by certiorari.-- In all cases where only questions of law are raised or involved the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45. (emphasis supplied)

[53] *Supra* note 48 at 400 citing *Palmares, et al. v. Jimenez, et al.*, 90 Phil. 773. (1952).

[54] *Tuason v. Court of Appeals*, G.R. No. 116607, 10 April 1996, 256 SCRA 158, 167. See also *Cerezo v. Tuazon*, G.R. No. 141538, 23 March 2004, 426 SCRA 167, 183. See also *Azucena v. Foreign Manpower Services*, G.R. No. 147955, 25 October 2004, 441 SCRA 346, 354-355.

[55] *Supra* note 52 and *Usero v. Court of Appeals*, G.R. Nos. 152112 and 155055, 26 January 2005, 449 SCRA 352, 358.

[56] *Bukidnon Doctor's Hospital v. Metropolitan Bank and Trust Company*, G.R. No. 161882, 8 July 2005, 463 SCRA 222, 233.

[57] *Rollo*, pp. 46-50.

[58] *Citibank, N.A. v. Sabeniano*, G.R. No. 156132, 6 February 2007.

[59] *Id.*

[60] *Id.*

[61] *Perez v. Development Bank of the Philippines*, G.R. No. 148541, 11 November 2004, 442 SCRA 238, 249-250 citing *Rizal Commercial Banking Corporation v. Court of Appeals*, G.R. No. 127139, 19 February 1999, 303 SCRA 449, 454.

[62] *Supra* note 11.

[63] G.R. No. 147594, 7 March 2007.

[64] *Id.*

[65] *Id.*

[66] See *New Sampaguita Builders Construction, Inc. v. Philippine National Bank*, G.R. No. 148753, 30 July 2004, 435 SCRA 565, 581 citing *Philippine National Bank v. Court of Appeals*, 328 Phil. 54, 62-63 (1996).

[67] Art. 1308. The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

[68] Jose B.L. Reyes and Ricardo C. Puno, 4 AN OUTLINE OF PHILIPPINE CIVIL LAW 1957 ed., p. 178.

[69] Llorin v. Court of Appeals, G.R. No. 103592, 4 February 1993, 218 SCRA 438, 442.

[70] Rollo, p. 147.

[71] Supra note 66.

[72] Id., pp. 608-609.

[73] Sangrador v. Valderrama, G.R. No. 58122, 29 December 1989, 168 SCRA 215, 228 citing Filipino Pipe and Foundry Corporation v. National Waterworks and Sewage Authority, G.R. No. L- 43446, 3 May 1988.

[74] Citibank v. Sabeniano, supra note 58. See also Mobil Oil Philippines v. Court of Appeals, G.R. No. 58122, 29 December 1989, 180 SCRA 651, 667.

[75] Extraordinary inflation or deflation does not affect obligations which arise from sources other than contracts. See Velasco v. Manila Electric Company, 149 Phil. 657 (1971).

See Civil Code, Art. 1157. The article provides:

Art. 1157. Obligations arise from:

- Law;
- Contracts;
- Quasi-contracts;
- Acts or omission punished by law; and
- Quasi-delicts.

[76] Commissioner of Public Highway v. Burgos, G.R. No. L-36706, 31 March 1980, 96 SCRA 831, 837.

[77] The requisites for Article 1250 apply to both extraordinary inflation and deflation. This case involved extraordinary inflation because, as RTC Judge Hontanosas noted, the peso substantially depreciated during the intervening period.

For Article 1250 to apply, not only must the obligation be contractual, the parties must more importantly agree to recognize the effects of extraordinary inflation (or deflation, as the case may be). Here, despite the fact that the obligation was contractual (i.e., a loan), neither the loan agreement nor the promissory notes contained a provision stating that the parties agreed to recognize the effects of extraordinary inflation or deflation. For this reason, Article 1250 was inapplicable.

[78] Bank of the Philippine Islands v. Leobrera, G.R. Nos. 137147-48, 18 November 2003, 416 SCRA 15, 19 citing C.F. Sharp & Co. v. Northwest Airlines, Inc., G.R. No. 133498, 18 April 2002, 381 SCRA 314. See also Jammang v. Takahashi, G.R. No. 149429, 9 October 2006, 504 SCRA 31, 36. Note that Equitable did not present proof that respondents agreed to pay their dollar-denominated loans in US dollars.

[79] Supercars Management & Development Corporation v. Flores, G.R. No. 148173, 10 December 2004, 446 SCRA 34, 44.

See CIVIL CODE, Art. 2217. The article provides:

Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched

reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary estimation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. (emphasis supplied)

[80] Art. 2219. Moral damages may be recovered in the following and analogous cases:

- A criminal offense resulting in physical injury;
- Quasi-delict causing physical injuries;
- Seduction, abduction, rape or other lascivious acts;
- Adultery or concubinage;
- Illegal or arbitrary detention or arrest;
- Illegal search;
- Libel, slander or any other form of defamation;
- Malicious prosecution;
- Acts mentioned in Art. 309;
- Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[81] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith. (emphasis supplied)

[82] *Philippine National Bank v. Pike*, G.R. No. 157845, 20 September 2005, 470 SCRA 328, 349-350 citing *Philippine Telegraph & Telephone Corporation v. Court of Appeals*, G.R. No. 139268, 3 September 2002, 388 SCRA 270.

[83] *Id.*

[84] *Id.* citing *Herbosa v. Court of Appeals*, G.R. No. 119086, 25 January 2002, 374 SCRA 578. See also *Salvador v. Court of Appeals*, G.R. No. 124899, 30 March 2004, 426 SCRA 433.

[85] *Supra* note 11.

[86] *Id.*

[87] *Gullas v. National Bank*, 62 Phil. 519, 521 (1935) citing *Fulton Iron Works Co. v. China Banking Corporation*, 55 Phil. 208 (1930) and *San Carlos Milling Co. v. Bank of the Philippine Islands and China Banking Corporation*, 59 Phil. 59 (1933).

[88] *Id.*, pp. 521-522.

[89] *Mahinay v. Velasquez, Jr.*, G.R. No. 152753, 13 January 2004, 419 SCRA 118, 122.

[90] Supercars Management & Development Corporation v. Flores, *supra* note 79 at 44.

[91] While this case involved extraordinary inflation because of the substantial depreciation of the peso during the intervening period, Article 1250 of the Civil Code was inapplicable. For Article 1250 to apply, not only must the obligation be contractual, the parties must, more importantly, agree to recognize the effects of extraordinary inflation (or deflation, as the case may be). Here, despite the contractual obligation (i.e., a loan), neither the loan agreement nor the promissory notes contained a provision stating that the parties agreed to recognize the effects of extraordinary inflation or deflation. (See note 77.)

[92] G.R. No. 97412, 12 July 1994, 234 SCRA 74, 95.

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