

LOTTO RESTAURANT CORPORATION, REPRESENTED BY SUAT KIM GO, PETITIONER, VS. BPI FAMILY SAVINGS BANK, INC., RESPONDENT.

G.R. No. 177260. March 30, 2011

Ponente: ABAD, J.

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ABAD, J.:

This case is about a bank's right under the loan agreement to adjust the loan interest from a fixed rate to the prevailing market rate and, further, to foreclose the real estate mortgage that secures the same upon the borrower's default.

The Facts and the Case

On December 23, 1999 petitioner Lotto Restaurant Corporation (Lotto) got a loan of P3,000,000.00 from the DBS Bank (DBS) at an interest rate of 11.5% per annum. The promissory note it executed provided that Lotto would pay DBS a monthly amortization of P35,045.69 for 180 months. To secure payment of the loan, Lotto, represented by Suat Kim Go (Go), its General Manager, mortgaged to DBS a condominium unit that belonged to it.[1]

Lotto paid its monthly amortizations for 12 months from December 24, 1999 to December 24, 2000. But in January 2001, after DBS increased the interest to 19% per annum, Lotto contested the increase and stopped paying the loan. After respondent BPI Family Savings Bank, Inc. (BPI) acquired DBS, Lotto tried to negotiate with BPI for reduction of interest but the latter agreed to reduce it to only 14.7% per annum, which was still unacceptable to Lotto.[2]

On October 21, 2002 BPI foreclosed the mortgage on Lotto's condominium unit[3] to satisfy its unpaid claim of P5,283,470.26, which included interest, penalties, fire insurance premium, attorney's fees, and estimated foreclosure expenses. BPI's computation applied an interest rate of 19% per annum for the period December 24, 2000 to November 24, 2001; and 14.7% per annum for the period December 24, 2001 to October 10, 2002.[4]

To stop the foreclosure, Lotto filed against BPI with the Regional Trial Court (RTC) of Manila[5] in Civil Case 02-105415 an action for reformation or annulment of real estate mortgage with prayer for a temporary restraining order (TRO) and preliminary injunction.[6] The RTC issued a TRO on January 3, 2003 and a preliminary injunction on February 6, 2003,[7] enjoining the foreclosure sale of the condominium unit. Mediation in the case failed.[8]

On January 11, 2005 the RTC rendered a decision in Lotto's favor,[9] finding that DBS breached the stipulations in the promissory note when it unilaterally increased the interest rate on its loan from 11.5% to 19% per annum. Further, the RTC held that the mortgage on the condominium unit was void since the Lotto Board of Directors did not authorize Go to sign the document. The RTC directed the Register of Deeds to cancel the encumbrance on Lotto's title and ordered Lotto to pay BPI its loan of P2,990,832.00 at P35,045.69 a month, less the amortizations

that it already paid.

Aggrieved, BPI appealed to the Court of Appeals (CA), which reversed the RTC Decision on November 22, 2006[10] in CA-G.R. CV 84701. The CA held that Lotto was estopped from questioning the validity of the promissory note and the real estate mortgage since, having authorized Go to take out a loan from the bank, it followed that it also authorized her to provide the security that the loan required. The CA also clarified that Lotto's gross loan was P3,000,000.00; the P2,990,832.00 that the RTC referred to was the net proceeds of the loan.

As to the increase in the interest rate, the CA found that the 11.5% rate provided in the promissory note pertained only to the period from December 24, 1999 to December 24, 2000. The note provided that, upon the lapse of that period, the loan would already bear an interest based on the prevailing market rate. The increase from 11.5% to 19% for the subsequent period was thus valid. The CA upheld the mortgage and lifted the RTC's writ of preliminary injunction. With the denial of its motion for reconsideration,[11] Lotto filed the present petition for review.

The Issues Presented

The issues in this case are:

1. Whether or not DBS, now BPI, validly adjusted the rate of interest on Lotto's loan from 11.5% to 19% per annum beginning on December 24, 2000; and
2. Whether or not BPI has the right to foreclose the real estate mortgage for non-payment of the loan.

The Court's Ruling

One. Lotto insists that DBS had no right to unilaterally increase the interest rate on its loan from 11.5% to 19% per annum after the passage of a year. Lotto argues that DBS could, under the terms and conditions of the promissory note, make such adjustments only after 180 months following the execution of the promissory note.

But, paragraphs 7 and 8 of the promissory note[12] clearly provide that the 11.5% interest rate per annum applied only to the first year of the loan. Thus:

7. EFFECTIVE INTEREST RATE (nr=er) 11.5* %p.a.
(Method of Computation attached) 12.24.99-12.24.2000

8. SCHEDULE OF PAYMENT

a. Single payment due on _____ P_____
(Date)

b. Total Installment Payments _____ P_____
Payable in 180* months/year
(no. of payments) * Thereafter interest to be based
on prevailing market rate.

at P 35,045.69 each installment_____
1.24.00 (sic)-12.24.00 (Emphasis added)

It is plainly clear from paragraph 7 above that the 11.5% per annum interest was to apply to the period December 24, 1999 to December 24, 2000 ("12.24.99-12.24.00"). They form but one statement of the stipulated interest rate

and the period to which such interest rate applied. Additionally, the statement of applicable interest rate bears an asterisk sign, which footnoted the information that "[t]hereafter interest to be based on prevailing market rate." This means that the rate of interest would be adjusted to the prevailing market rate after December 24, 2000.

Lotto of course calls attention to the statement down in paragraph 8 of the promissory note (Schedule of Payment), particularly in its sub-paragraph b, that the "Total Installment Payments" are "Payable in 180* months x x x." Lotto claims that the asterisk sign after the figure "180" means that the interest would be adjusted to the prevailing market rate at the end of 180 months. But Lotto's interpretation would have a ridiculous implication since that "180 months" is the statement of the pay out period for the loan. The loan would have been paid after 180 months and, therefore, there would be no occasion for charging Lotto a new rate of interest on a past loan.

Besides such interpretation would directly contravene the clear provision of paragraph 7 that the 11.5% per annum interest was to apply only to the period December 24, 1999 to December 24, 2000 ("12.24.99-12.24.00"). As held in *Manila International Airport Authority v. Judge Gingoyon*,^[13] various stipulations in a contract must be read together and given effect as their meanings warrant. Taken together, paragraphs 7 and 8 intended the 11.5% interest rate to apply only to the first year of the loan.

The Court has previously upheld as valid the proviso in loans that the interest rate would be made to depend on the prevailing market rate. Such provision does not signify an automatic increase in the interest. It simply means that the bank may adjust the interest according to the prevailing market rate. This may result to either an increase or a decrease in the interest.^[14]

Two. Lotto claims that the real estate mortgage that Go executed was void since it did not authorize her to execute the same and since DBS did not sign it. But Lotto admitted in its complaint below that Go had obtained a loan from DBS on its behalf, with the condominium unit as collateral.^[15] With this admission, Lotto should be deemed estopped from assailing the validity and due execution of that mortgage deed.

As to BPI's right to foreclose, the records show that Lotto defaulted in its obligation when it unjustifiably stopped paying its amortizations after the first year. Consequently, there is no question that BPI (which succeeded DBS) had a clear right to foreclose on Lotto's collateral. The Court held in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*^[16] that foreclosure is but a necessary consequence of non-payment of mortgage indebtedness. The creditor-mortgagee has the right to foreclose the mortgage, sell the property, and apply the proceeds of the sale to the satisfaction of the unpaid loan.^[17]

At any rate, not all is lost for Lotto. It could avail itself of lower interest where the prevailing market rate warrants. And, under Section 47^[18] of the General Banking Law, it has the right to redeem the property by paying the amount due, with interest rate specified under the mortgage deed, as well as all the costs and expenses incurred by the bank.^[19]

WHEREFORE, the Court DENIES the petition and AFFIRMS the November 22, 2006 decision and the March 28, 2007 resolution of the Court of Appeals in CA-G.R. CV 84701.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] Condominium Certificate of Title 6062-Ind.

[2] Records, pp. 4-5.

[3] Id. at 14-17.

[4] Id. at 16.

[5] Branch 36.

[6] Records, pp. 3-8.

[7] Id. at 72.

[8] Id. at 98.

[9] Rollo, pp. 30-41. Penned by Judge Wilfredo D. Reyes.

[10] Id. at 75-95. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Ramon M. Bato, Jr.

[11] Id. at 130-131.

[12] Records, p. 13.

[13] 513 Phil. 43, 50-51 (2005).

[14] Polotan, Sr. v. Court of Appeals (Eleventh Division), 357 Phil. 250, 260 (1998).

[15] Records, p. 4.

[16] G.R. No. 165950, August 11, 2010.

[17] Ramos v. Sarao, 491 Phil. 288, 300 (2005).

[18] Section 47. Foreclosure of Real Estate Mortgage. -- In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

[19] Supra note 16.

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