

PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION (NOW TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES), PETITIONER, VS. AMALGAMATED MANAGEMENT AND DEVELO...

G.R. No. 177729. September 28, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The matter for resolution refers to the liability of persons who agree to be jointly and solidarily liable with the main obligor.

In its decision rendered on April 30, 2007 in C.A.-G.R. CV No. 78427,[1] the Court of Appeals (CA) affirmed the decision dated December 27, 2002 of the Regional Trial Court (RTC), Branch 148, in Makati City in Civil Case No. 94-638,[2] absolving the co-obligors. Not satisfied with the result, the petitioner is now before us to assail the CA's decision.

Antecedents

The petitioner, formerly the Philippine Export and Foreign Loan Guarantee Corporation but now known as the Trade and Investment Development Corporation of the Philippines, is a government-owned and controlled-corporation created by virtue of Presidential Decree No. 1080, as amended by Republic Act No. 8497. Its primary purpose is to guarantee the foreign loans, in whole or in part, granted to any domestic entity, enterprise, or corporation, majority of the capital of which is owned by Filipino citizens.

Respondent Amalgamated Management and Development Corporation (AMDC), a domestic corporation, had as its main business the hauling of different commodities within the Middle East countries. Its co-respondents Felimon R. Cuevas (Cuevas) and Jose A. Saddul, Jr. (Saddul) were, respectively, its President and Vice-President.[3]

In early 1982, AMDC obtained from the National Commercial Bank of Saudi Arabia (NCBSA) a loan amounting to SR3.3 million (equivalent to P9,000,000.00) to finance the working capital requirements and the down payment for the trucks to be used in AMDC's hauling project in the Middle East. On April 23, 1982, the petitioner issued a letter of guaranty in favor of NCBSA as the lending bank upon the request of AMDC.[4] As the security for the guaranty, Amalgamated Motors Philippines Incorporated (AMPI), a sister company of AMDC, acted as an accommodation mortgagor, and executed in favor of the petitioner a real estate mortgage over two parcels of land located in Dasmariñas, Cavite and covered by Transfer Certificate of Title (TCT) No. 119031 and TCT No.119032 of the Registry of Deeds of Cavite.[5] AMDC also executed in favor of the petitioner a deed of undertaking dated April 21, 1982,[6] with Cuevas and Saddul as its co-obligors. In the deed of undertaking, AMDC, Cuevas, and Saddul jointly and severally bound themselves to pay to the petitioner, as obligee, whatever damages or liabilities that the petitioner would incur by reason of the guaranty.

AMDC defaulted on the obligation. Upon demand, the petitioner paid the obligation to NCBSA. By subrogation and pursuant to the Deed of Undertaking, the petitioner then demanded that AMDC, Cuevas and Saddul should pay the obligation, but its demand was not complied with. Hence, it extra-judicially foreclosed the real estate mortgage.[7] The Provincial Sheriff of Cavite conducted a public auction, in which the petitioner acquired the mortgaged properties as the highest bidder for P4,688,482.00 (TCT No. 119031) and P69,518.00 (TCT No. 119032).[8]

On the premise that the proceeds of the foreclosure sale were not sufficient to cover the guaranty because a balance of P45,839,219.95 plus interest and other charges remained unpaid, the petitioner sued AMDC, Cuevas and Saddul in the RTC to collect the deficiency.[9]

In a consolidated answer,[10] AMDC and Cuevas admitted the existence of the real estate mortgage and deed of undertaking, but raised defenses, as follows: (a) that they did not receive from the petitioner any demand for the payment of the loan; (b) that the interests, penalties, fees, charges, and attorney's fees were usurious, exorbitant, unconscionable, and in violation of law; (c) that the value of the foreclosed properties was more than sufficient to pay the loan; (d) that the deficiency claim was unconscionable and unilaterally computed by the petitioner; and (e) that they made several payments to the petitioner in the form of rental or otherwise.

For his part, Saddul submitted a separate answer,[11] averring that he was not liable to the petitioner for any amount because he did not benefit from the guaranty; that the deed of undertaking was unenforceable for being executed without any consideration; and that the petitioner did not notify him that AMDC had incurred in delay in the payment of the obligation.

Saddul averred a cross-claim against AMDC.

AMDC, Cuevas, and Saddul all sought the dismissal of the complaint.

Ruling of the RTC

After trial, the RTC rendered its decision on December 27, 2002,[12] decreeing thusly:

WHEREFORE, premises considered judgment is hereby rendered in favor of the plaintiff and against defendant AMDC. Defendants Cuevas and Saddul are hereby rendered absolved from the obligation as well as from the deficiency claim as a consequence, the case against them is hereby dismissed. The cross-claim of defendant/cross-claimant defendant Saddul against defendant AMDC is hereby dismissed for lack of sufficient basis to grant the same.

Defendant AMDC is hereby ordered to pay the plaintiff the following:

- (1) The amount P45,839,219.25 as of March 31, 1993, representing deficiency claim;
- (2) The accruing interest of 6% per annum from April 1, 1993 until deficiency claim is fully paid.
- (3) The accruing penalty charge of 6% per annum from April 1, 1993 until deficiency claim is fully paid.
- (4) P4,583,921.92 represents attorney's fees equivalent to 10% of the deficiency claim.
- (5) Costs of suit.

SO ORDERED.

Ruling of the CA

The petitioner appealed to the CA, asserting that Cuevas and Saddul should be held jointly and severally liable with AMDC on its deficiency claim; and that the rates of interest and penalty charges on the deficiency claim

should each be at 16% per annum instead of only 6% per annum.

On April 30, 2007, the CA promulgated its assailed decision,[13] viz:

Time and again, We stress the well-settled rule that findings of fact of the trial court as well as its calibration of the evidence of parties, its assessment of the credibility and probative weight of the witnesses, and its conclusion based on its findings are accorded by the appellate court with high respect, if not conclusive effect. In fine, findings of the trial court should not be disturbed on appeal, unless some facts or circumstances of substance and value have been overlooked which, if considered, might well affect the result of the case.

In the extant case, We do not find any fact or circumstance which if considered, might affect the result of the case.

WHEREFORE, premises considered, the judgment of the Regional Trial Court dated December 27, 2002 is hereby AFFIRMED in toto.

SO ORDERED.

Issues

Hence, the petitioner appeals, raising the following issues, to wit:

- (1) Whether the CA erred in affirming the RTC's ruling that Cuevas and Saddul were absolved of personal liability on the petitioner's deficiency claim;
- (2) Whether the CA erred in ruling that Cuevas and Saddul had not been notified of the guaranty period extension, and had been thereby exonerated from liability on the deficiency claim;
- (3) Whether the CA erred in holding that Cuevas and Saddul did not receive any demand letter from the petitioner;
- (4) Whether the CA erred in finding that the petitioner's claim against Cuevas and Saddul, Jr. had already prescribed; and
- (5) Whether the CA erred in declaring that AMDC was liable to pay interest and penalty charge at the rate of only 6% per annum instead of 16% per annum.[14]

Ruling

The appeal is partly meritorious.

I

Pre-trial order is not exclusive about the issues to be resolved by the trial court

The petitioner posits that based on the RTC's pre-trial order,[15] the only issue to be resolved was whether there was a deficiency claim after the foreclosure of the real estate mortgage; that the liability of Cuevas and Saddul on the deficiency claim was already an admitted fact under the pre-trial order; and that the RTC improperly considered and determined their liability.[16]

The Court cannot sustain the petitioner's position.

The pre-trial order nowhere stated that Cuevas and Saddul already admitted their liability on the petitioner's deficiency claim. Their admission appearing in the pre-trial order referred only to the fact that they and AMDC had received advances in large amounts from the petitioner, and that the real estate mortgage securing the loan had already been foreclosed.

Whether Cuevas and Saddul were liable on the deficiency claim was proper for the ascertainment and determination by the RTC as the trial court and the CA as the appellate tribunal, notwithstanding the silence of the pre-trial order on it, because such issue was deemed necessarily included in or inferred from the stated issue of whether there was a deficiency still to be paid by AMDC, Cuevas and Saddul.

It is true that the issues to be tried between the parties in a case shall be limited to those defined in the pre-trial order, as Section 7, Rule 18 of the Rules of Court explicitly provides:

Section 7. Record of pre-trial. -- The proceedings in the pre-trial shall be recorded. Upon the termination thereof, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings, and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice. (5a, R20)

However, a pre-trial order is not intended to be a detailed catalogue of each and every issue that is to be taken during the trial, for it is unavoidable that there are issues that are impliedly included among those listed or that may be inferable from those listed by necessary implication which are as much integral parts of the pre-trial order as those expressly listed.[17]

At any rate, it remains that the petitioner impleaded Cuevas and Saddul as defendants, and adduced against them evidence to prove their liabilities. With Cuevas and Saddul being parties to be affected by the judgment, it was only appropriate for the RTC to inquire into and determine their liability for the purpose of arriving at a complete determination of the suit. Thereby, the RTC acted in conformity with the avowed reason for which the courts are organized, which was to put an end to controversies, to decide the questions submitted by the litigants, and to settle the rights and obligations of the parties.[18]

II

Notice on the guaranty period extension

The petitioner insists that Cuevas and Saddul were liable on the deficiency claim despite the lack of notice to them about the extension of the guaranty.

The insistence of the petitioner has merit.

To start with, the records indicate that on several occasions, Cuevas and Saddul, as President and Vice-President, respectively, of AMDC, separately wrote to the petitioner to request the extension of the guaranty period because AMDC could not pay the obligation on its due date;[19] and that the petitioner granted each request and correspondingly sent letters to NCBSA informing it of the extensions of the guaranty period.[20] The letters granting the requests for extension of the guaranty period bore the approval and signatures of Cuevas and Saddul as President and Vice-President, respectively, of AMDC.[21] Having thus admitted their letters on the extension of the guaranty period, Cuevas and Saddul could not anymore feign ignorance of the guaranty extension.

Moreover, the deed of undertaking specifically stated that the grant of the extension of the guaranty period did not extinguish or diminish the obligation of Cuevas and Saddul under the guaranty.[22] Hence, whether or not the guaranty period was extended, and whether or not they were notified of the extension, Cuevas and Saddul remained liable under the guaranty. The stipulation, which was not illegal or immoral, necessarily bound Cuevas and Saddul. It is worth noting, too, that a solidary obligation existed among AMDC, Cuevas and Saddul because they had assented to be jointly and severally liable to the petitioner for whatever damages or liabilities that it might incur by virtue of the guaranty.[23] In a solidary obligation, each debtor was liable for the entire obligation.[24] The petitioner could compel any of the solidary obligors to perform the entire obligation.

III

Demand to pay the deficiency claim

The petitioner claims that it made a demand on Cuevas and Saddul to pay the deficiency claim,[25] but they still deny the claim.

The petitioner's claim is upheld.

In the deed of undertaking, Cuevas and Saddul bound themselves to reimburse or to pay to the petitioner their obligation under the guaranty upon the latter's demand.[26] The Civil Code provides that the obligor incurs in delay from the time the obligee judicially or extrajudicially demands the fulfillment of the obligation, viz:

Article 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (1100a)

It is noted that the petitioner's complaint to recover its deficiency claim from obligors AMDC, Cuevas and Saddul, being a judicial demand, sufficed to render Cuevas and Saddul in delay in the payment of the deficiency claim.

IV

When prescriptive period for the deficiency claim began to run

There is no dispute that the prescriptive period of the petitioner's deficiency claim is ten years under Article 1144 of the Civil Code.[27] What remains in issue was the date when the prescriptive period began to run. The petitioner submits that the 10-year period should be reckoned from the date of the foreclosure.[28]

The petitioner is correct.

In *Quirino Gonzales Logging Concessionaire v. Court of Appeals*,[29] we have ruled that the 10-year period to recover a deficiency claim starts to run upon the foreclosure of the property mortgaged, viz:

With respect to the first to the fifth causes of action, as can be gleaned from the complaint, the Bank seeks the recovery of the deficient amount of the obligation after the foreclosure of the mortgage. Such suit is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract. A mortgage action prescribes after ten years from the time the right of action accrued.

The law gives the mortgagee the right to claim for the deficiency resulting from the price obtained in the sale of the property at public auction and the outstanding obligation at the time of the foreclosure proceedings. In the present case, the Bank, as mortgagee, had the right to claim payment of the deficiency after it had foreclosed the mortgage in 1965. In other words, the prescriptive period started to run against the Bank in

1965. As it filed the complaint only on January 27, 1977, more than ten years had already elapsed, hence, the action on its first to fifth causes had by then prescribed. No other conclusion can be reached even if the suit is considered as one upon a written contract or upon an obligation to pay the deficiency which is created by law, the prescriptive period of both being also ten years (citing Article 1144 of the Civil Code). (emphasis supplied)[30]

In view of the real property mortgage having been foreclosed on February 22, 1988 and March 24, 1988,[31] the petitioner's filing on February 17, 1994 of its complaint to recover the deficiency claim was well within the 10-year prescriptive period.

V

Rate of interest and penalty charge

The petitioner submits that the interest rate and penalty charge on the amount of the deficiency claim should each be 16% per annum, not 6% per annum, as the RTC and CA both ruled.[32]

We do not subscribe to the petitioner's submission.

In contracts, the law empowers the courts to reduce interest rates and penalty charges that are iniquitous, unconscionable and exorbitant.[33] Whether an interest rate or penalty charge is reasonable or excessive is addressed to the sound discretion of the courts. In determining what is iniquitous and unconscionable, courts must consider the circumstances of the case.[34]

Although the market value of the two parcels of land at the time of the foreclosure sale and acquisition by the petitioner totaled P15,225,000.00,[35] the parcels were sold to the petitioner for only P4,758,000.00, a price much lower than the market value. The huge disparity between the market value and the price realized at the foreclosure sale obviously gave a clear financial advantage to the petitioner, and this did not escape the attention of both the RTC and the CA. The disparity became more defined considering that the original amount of the guaranteed obligation was only P9,000,000.00. These circumstances notwithstanding, the RTC and the CA still granted the petitioner's deficiency claim for P45,839,219.95, plus interest and attorney's fees. In view of these, to still fix the interest rate and penalty charge at 16% per annum each would be plainly inequitable and oppressive. The Court agrees with the CA and the RTC that reducing the interest rate and penalty charge from 16% per annum to 6% per annum was justified.

WHEREFORE, we AFFIRM the decision the Court of Appeals promulgated on April 30, 2007, subject to the MODIFICATION that respondents FELIMON R. CUEVAS and JOSE A. SADDUL, JR. are DECLARED jointly and solidarily liable with AMALGAMATED MANAGEMENT AND DEVELOPMENT CORPORATION on the petitioner's deficiency claim, interest, penalty charges, and attorney's fees.

The respondents shall pay the costs of suit.

SO ORDERED.

Leonardo-De Castro, (Acting Chairperson), Del Castillo, Perez,[*] and Mendoza,** JJ., concur.

[*] Vice Associate Justice Martin S. Villarama, per Special Order No. 1080 dated September 13, 2011.

[**] Vice Chief Justice Renato C. Corona, per Special Order No. 1093 dated September 21, 2011.

[1] Rollo, pp. 37-50; penned by Associate Justice Enrico A. Lanzas (retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Rosalinda Asuncion-Vicente, concurring.

[2] Id., pp. 145-160.

[3] Id., p. 10.

[4] Id., p. 162.

[5] Id. pp. 69-70; Cuevas and Saddul signed the real estate mortgage as President and Vice-President, respectively, of AMPI.

[6] Id., pp. 164-166.

[7] Id., pp. 101-102.

[8] Id., p. 15.

[9] Id., pp. 57-66.

[10] Id., pp. 133-137.

[11] Id., pp. 138-142.

[12] Supra, note 2, p. 160.

[13] Supra, note 1.

[14] Supra, note 1, pp. 16-17.

[15] Rollo, pp. 143-144.

[16] Id., pp. 19-20.

[17] See Velasco v. Apostol, G.R. No. 44588, May 9, 1989, 173 SCRA 228, 232.

[18] Arnedo v. Llorente and Liongson, 18 Phil. 257 (1911).

[19] Records, Vol. I, pp. 283-285 & 295-297.

[20] Id., pp. 286-292.

[21] Id.

[22] Rollo, p. 78.

[23] Id., p. 164.

[24] Cerezo v. Tuazon, G.R. No. 141538, March 23, 2004, 426 SCRA 167, 186.

[25] Rollo, pp. 22-23.

[26] Id., p. 78.

[27] Article 1144. The following actions must be brought within ten years from the time the right of action accrues: (1) Upon a written contract; (2) Upon an obligation created by law; and (3) Upon a judgment.

[28] Rollo, pp. 24-26.

[29] G.R. No. 126568, April 30, 2003, 402 SCRA 181.

[30] Id., p. 190.

[31] Rollo, pp. 101-102.

[32] Id.

[33] See Article 1229 of the Civil Code, to wit:

Article 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

See also *Palmares v. Court of Appeals*, G.R. No. 126490, March 31, 1998, 288 SCRA 422, 445; *Asia Trust Development Bank v. Concepts Trading Corporation*, G.R. No. 130759, June 20, 2003 404 SCRA 449, 461; *Filinvest Land, Inc. v. Court of Appeals*, G.R. No. 138980, September 20, 2005, 470 SCRA 260, 274; *Segovia Development Corporation v. J. L. Dumatol Realty and Development Corporation*, G.R. No. 141283 August 30, 2001, 364 SCRA 159, 169; *Patron v. Union Bank of the Philippines*, G.R. No. 177348, October 17, 2008, 569, 738, 746; *Diño v. Jardines*, G.R. No. 145871 January 31, 2006 481 SCRA 226, 238; *Florentino v. Supervalve Inc.*, G.R. No. 172384, September 12, 2007, 533 SCRA 156, 167, 168.

[34] *Land Bank of the Philippines v. David*, G.R. No. 176344, 563 SCRA 172, 177-178.

[35] Records, Volume II, p. 430.

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