

**ASIAN CATHAY FINANCE AND LEASING CORPORATION,
PETITIONER, VS. SPOUSES CESARIO GRAVADOR AND NORMA DE
VERA AND SPOUSES EMMA CONCEPCION G. DUMIGPI AND
FEDERICO L. DUMIGPI, RESPONDE...**

G.R. No. 186550. July 05, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

On appeal is the June 10, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 83197, setting aside the April 5, 2004 decision[2] of the Regional Trial Court (RTC), Branch 9, Bulacan, as well as its subsequent Resolution[3] dated February 11, 2009, denying petitioner's motion for reconsideration.

On October 22, 1999, petitioner Asian Cathay Finance and Leasing Corporation (ACFLC) extended a loan of Eight Hundred Thousand Pesos (P800,000.00)[4] to respondent Cesario Gravador, with respondents Norma de Vera and Emma Concepcion Dumigpi as co-makers. The loan was payable in sixty (60) monthly installments of P24,400.00 each. To secure the loan, respondent Cesario executed a real estate mortgage[5] over his property in Sta. Maria, Bulacan, covered by Transfer Certificate of Title No. T-29234.[6]

Respondents paid the initial installment due in November 1999. However, they were unable to pay the subsequent ones. Consequently, on February 1, 2000, respondents received a letter demanding payment of P1,871,480.00 within five (5) days from receipt thereof. Respondents requested for an additional period to settle their account, but ACFLC denied the request. Petitioner filed a petition for extrajudicial foreclosure of mortgage with the Office of the Deputy Sheriff of Malolos, Bulacan.

On April 7, 2000, respondents filed a suit for annulment of real estate mortgage and promissory note with damages and prayer for issuance of a temporary restraining order (TRO) and writ of preliminary injunction. Respondents claimed that the real estate mortgage is null and void. They pointed out that the mortgage does not make reference to the promissory note dated October 22, 1999. The promissory note does not specify the maturity date of the loan, the interest rate, and the mode of payment; and it illegally imposed liquidated damages. The real estate mortgage, on the other hand, contains a provision on the waiver of the mortgagor's right of redemption, a provision that is contrary to law and public policy. Respondents added that ACFLC violated Republic Act No. 3765, or the Truth in Lending Act, in the disclosure statement that should be issued to the borrower. Respondents, thus, claimed that ACFLC's petition for foreclosure lacked factual and legal basis, and prayed that the promissory note, real estate mortgage, and any certificate of sale that might be issued in connection with ACFLC's petition for extrajudicial foreclosure be declared null and void. In the alternative, respondents prayed that the court fix their obligation at P800,000.00 if the mortgage could not be annulled, and declare as null and void the provisions on the waiver of mortgagor's right of redemption and imposition of the liquidated damages. Respondents further prayed for moral and exemplary damages, as well as attorney's fees, and for the issuance of a TRO to enjoin ACFLC from foreclosing their property.

On April 12, 2000, the RTC issued an Order,[7] denying respondents' application for TRO, as the acts sought to be enjoined were already *fait accompli*.

On May 12, 2000, ACFLC filed its Answer, denying the material allegations in the complaint and averring failure to state a cause of action and lack of cause of action, as defenses. ACFLC claimed that it was merely exercising its right as mortgagor; hence, it prayed for the dismissal of the complaint.

After trial, the RTC rendered a decision, dismissing the complaint for lack of cause of action. Sustaining the validity of the promissory note and the real estate mortgage, the RTC held that respondents are well-educated individuals who could not feign naiveté in the execution of the loan documents. It, therefore, rejected respondents' claim that ACFLC deceived them into signing the promissory note, disclosure statement, and deed of real estate mortgage. The RTC further held that the alleged defects in the promissory note and in the deed of real estate mortgage are too insubstantial to warrant the nullification of the mortgage. It added that a promissory note is not one of the essential elements of a mortgage; thus, reference to a promissory note is neither indispensable nor imperative for the validity of the mortgage. The RTC also upheld the interest rate and the penalty charge imposed by ACFLC, and the waiver of respondents' right of redemption provided in the deed of real estate mortgage.

The RTC disposed thus:

WHEREFORE, on the basis of the evidence on record and the laws/jurisprudence applicable thereto, judgment is hereby rendered **DISMISSING** the complaint in the above-entitled case for want of cause of action as well as the counterclaim of [petitioner] Asian Cathay Finance & Leasing Corporation for moral and exemplary damages and attorney's fees for abject lack of proof to justify the same.

SO ORDERED.[8]

Aggrieved, respondents appealed to the CA. On June 10, 2008, the CA rendered the assailed Decision, reversing the RTC. It held that the amount of P1,871,480.00 demanded by ACFLC from respondents is unconscionable and excessive. Thus, it declared respondents' principal loan to be P800,000.00, and fixed the interest rate at 12% per annum and reduced the penalty charge to 1% per month. It explained that ACFLC could not insist on the interest rate provided on the note because it failed to provide respondents with the disclosure statement prior to the consummation of the loan transaction. Finally, the CA invalidated the waiver of respondents' right of redemption for reasons of public policy. Thus, the CA ordered:

WHEREFORE, premises considered, the appealed decision is **REVERSED AND SET ASIDE**. Judgment is hereby rendered as follows:

1) Affirming the amount of the principal loan under the REM and Disclosure Statement both dated October 22, 1999 to be P800,000.00, subject to:

- a. 1% interest per month (12% per annum) on the principal from November 23, 1999 until the date of the foreclosure sale, less P24,000.00 paid by [respondents] as first month amortization[;]
- b. 1% penalty charge per month on the principal from December 23, 1999 until the date of the foreclosure sale.

2) Declaring par. 14 of the REM as null and void by reason of public policy, and granting mortgagors a period of one year from the finality of this Decision within which to redeem the subject property by paying the redemption price as computed under paragraph 1 hereof, plus one percent (1%) interest thereon from the time of foreclosure up to the time of the actual redemption pursuant to Section 28, Rule 39 of the 1997 Rules on Civil Procedure.

The claim of the [respondents] for moral and exemplary damages and attorney's fees is dismissed for lack of merit.

SO ORDERED.[9]

ACFLC filed a motion for reconsideration, but the CA denied it on February 11, 2009.

ACFLC is now before us, faulting the CA for reversing the dismissal of respondents' complaint. It points out that respondents are well-educated persons who are familiar with the execution of loan documents. Thus, they cannot be deceived into signing a document containing provisions that they are not amenable to. ACFLC ascribes error on the part of the CA for invalidating the interest rates imposed on respondents' loan, and the waiver of the right of redemption.

The appeal lacks merit.

It is true that parties to a loan agreement have a wide latitude to stipulate on any interest rate in view of Central Bank Circular No. 905, series of 1982, which suspended the Usury Law ceiling on interest rate effective January 1, 1983. However, interest rates, whenever unconscionable, may be equitably reduced or even invalidated. In several cases,[10] this Court had declared as null and void stipulations on interest and charges that were found excessive, iniquitous and unconscionable.

Records show that the amount of loan obtained by respondents on October 22, 1999 was P800,000.00. Respondents paid the installment for November 1999, but failed to pay the subsequent ones. On February 1, 2000, ACFLC demanded payment of P1,871,480.00. In a span of three months, respondents' obligation ballooned by more than P1,000,000.00. ACFLC failed to show any computation on how much interest was imposed and on the penalties charged. Thus, we fully agree with the CA that the amount claimed by ACFLC is unconscionable.

In *Spouses Isagani and Diosdada Castro v. Angelina de Leon Tan, Sps. Concepcion T. Clemente and Alexander C. Clemente, Sps. Elizabeth T. Carpio and Alvin Carpio, Sps. Marie Rose T. Soliman and Arvin Soliman and Julius Amiel Tan*,[11] this Court held:

The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.

Stipulations authorizing the imposition of iniquitous or unconscionable interest are contrary to morals, if not against the law. Under Article 1409 of the Civil Code, these contracts are inexistent and void from the beginning. They cannot be ratified nor the right to set up their illegality as a defense be waived. The nullity of the stipulation on the usurious interest does not, however, affect the lender's right to recover the principal of the loan. Nor would it affect the terms of the real estate mortgage. The right to foreclose the mortgage remains with the creditors, and said right can be exercised upon the failure of the debtors to pay the debt due. The debt due is to be considered without the stipulation of the excessive interest. A legal interest of 12% per annum will be added in place of the excessive interest formerly imposed.[12] The nullification by the CA of the interest rate and the penalty charge and the consequent imposition of an interest rate of 12% and penalty charge of 1% per month cannot, therefore, be considered a reversible error.

ACFLC next faults the CA for invalidating paragraph 14 of the real estate mortgage which provides for the waiver of the mortgagor's right of redemption. It argues that the right of redemption is a privilege; hence, respondents are at liberty to waive their right of redemption, as they did in this case.

Settled is the rule that for a waiver to be valid and effective, it must, in the first place, be couched in clear and unequivocal terms which will leave no doubt as to the intention of a party to give up a right or benefit which

legally pertains to him. Additionally, the intention to waive a right or an advantage must be shown clearly and convincingly.[13] Unfortunately, ACFLC failed to convince us that respondents waived their right of redemption voluntarily.

As the CA had taken pains to demonstrate:

The supposed waiver by the mortgagors was contained in a statement made in fine print in the REM. It was made in the form and language prepared by [petitioner]ACFLC while the [respondents] merely affixed their signatures or adhesion thereto. It thus partakes of the nature of a contract of adhesion. It is settled that doubts in the interpretation of stipulations in contracts of adhesion should be resolved against the party that prepared them. This principle especially holds true with regard to waivers, which are not presumed, but which must be clearly and convincingly shown. [Petitioner] ACFLC presented no evidence hence it failed to show the efficacy of this waiver.

Moreover, to say that the mortgagor's right of redemption may be waived through a fine print in a mortgage contract is, in the last analysis, tantamount to placing at the mortgagee's absolute disposal the property foreclosed. It would render practically nugatory this right that is provided by law for the mortgagor for reasons of public policy. A contract of adhesion may be struck down as void and unenforceable for being subversive to public policy, when the weaker party is completely deprived of the opportunity to bargain on equal footing.[14]

In fine, when the redemptioner chooses to exercise his right of redemption, it is the policy of the law to aid rather than to defeat his right.[15] Thus, we affirm the CA in nullifying the waiver of the right of redemption provided in the real estate mortgage.

Finally, ACFLC claims that respondents' complaint for annulment of mortgage is a collateral attack on its certificate of title. The argument is specious.

The instant complaint for annulment of mortgage was filed on April 7, 2000, long before the consolidation of ACFLC's title over the property. In fact, when respondents filed this suit at the first instance, the title to the property was still in the name of respondent Cesario. The instant case was pending with the RTC when ACFLC filed a petition for foreclosure of mortgage and even when a writ of possession was issued. Clearly, ACFLC's title is subject to the final outcome of the present case.

WHEREFORE, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 83197 are AFFIRMED. Costs against petitioner.

SO ORDERED.

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

[1] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Rosemari D. Carandang and Estela M. Perlas-Bernabe, concurring; rollo, pp. 72-88.

[2] Records, pp. 207-215.

[3] Rollo, pp. 90-92.

[4] Exhibit "C," records, p. 16.

[5] Exhibit "B," id. at 14-15.

[6] Exhibit "A," id. at 12.

[7] Id. at 40.

[8] Id. at 215.

[9] Rollo, pp. 86-87.

[10] Heirs of Zoilo Espiritu v. Landrito, G.R. No. 169617, April 3, 2007, 520 SCRA 383, 393; Ruiz v. Court of Appeals, 449 Phil. 419, 433-435 (2003); Spouses Solan gon v. Salazar, 412 Phil. 816, 822-823 (2001).

[11] G.R. No. 168940, November 24, 2009.

[12] Heirs of Zoilo Espiritu v. Landrito, supra note 11, at 398.

[13] See Thomson v. Court of Appeals, G.R. No. 116631, October 28, 1998, 358 Phil. 761, 778 (1998).

[14] Rollo, pp. 85-86.

[15] Iligan Bay Manufacturing Corporation v. Dy, G.R. Nos. 140836 & 140907, June 8, 2007, 524 SCRA 55, 70.

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