

MCMP CONSTRUCTION CORP., PETITIONER, VS. MONARK EQUIPMENT CORP., RESPONDENT.*G.R. No. 201001. November 10, 2014*

Ponente: VELASCO JR., J.

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For consideration of the Court is a Petition for Review on Certiorari dated April 20, 2012[1] filed by MCMP Construction Corp. under Rule 45 of the Rules of Court. The petition seeks the reversal of the Decision dated October 14, 2011[2] and Resolution dated March 9, 2012[3] issued by the Court of Appeals (CA) in CA G.R. CV No. 91860 entitled Monark Equipment Corporation v. MCMP Construction Corporation. The CA Decision affirmed the Decision dated November 20, 2007[4] and Order dated April 28, 2008[5] issued by the Regional Trial Court, Branch 96 in Quezon City (RTC) in Civil Case No. Q-02-47092 entitled Monark Equipment Corporation v. MCMP Construction Corporation.

The facts of the case are as follows:

MCMP Construction Corporation (MCMP) leased heavy equipment from Monark Equipment Corporation (Monark) for various periods in 2000, the lease covered by a Rental Equipment Contract (Contract). Thus, Monark delivered five (5) pieces of heavy equipment to the project site of MCMP in Tanay, Rizal and Llavac, Quezon, the delivery evidenced by invoices as well as Documents Acknowledgment Receipt Nos. 04667 and 5706, received and signed by representatives of MCMP, namely, Jorge Samonte on December 5, 2000 and Rose Takahashi on January 29, 2001, respectively. Notably, the invoices state:

"Credit sales are payable within 30 days from the date of invoice. Customer agrees to pay interest at 24% p.a. on all amounts. In addition, customer agrees to pay a collection fee of 1% compounded monthly and 2% per month penalty charge for late payment on amounts overdue. Customer agrees to pay a sum equal to 25% of any amount due as attorney's fees in case of suit, and expressly submit to the jurisdiction of the courts of Quezon City, Makati, Pasig or Manila, Metro Manila, for any legal action arising from, this transactions."

Despite the lapse of the thirty (30)-day period indicated in the invoices, MCMP failed to pay the rental fees. Upon demands made upon MCMP to pay the amount due, partial payments were made in the amount of Php100,000.00 on April 15, 2001 and Php100,000.00 on August 15, 2001. Further demands went unheeded. As of April 30, 2002, MCMP owed Monark the amount of Php1,282,481.83, broken down as follows:

Principal Accumulated

Php 765,380.33

Interest (2%)

253,226.17

2% Monthly Penalty Charge

253,226.17

Collection Fee (1%)

10,649.16

=====

PhPl,282,481.83[6]

Thus, on June 18, 2002, Monark filed a suit for a Sum of Money with the RTC docketed as Civil Case No. Q-02-47092.[7] In its Answer filed on July 5, 2002,[8] MCMP alleged in defense that the complaint was premature as Monark has refused to give a detailed breakdown of its claims. MCMP further averred that it had an agreement with Monark that it would not be charged for the whole time that the leased equipment was in its possession but rather only for the actual time that the equipment was used although still on the project site. MCMP, however, admitted that this agreement was not contained in the Contract.

During trial, Monark presented as one of its witnesses, Reynaldo Peregrino (Peregrino), its Senior Account Manager. Peregrino testified that there were two (2) original copies of the Contract, one retained by Monark, while the other was given to MCMP. He further testified that Monark's copy had been lost and that diligent efforts to recover the copy proved futile. Instead, Peregrino presented a photocopy of the Contract which he personally had on file. MCMP objected to the presentation of secondary evidence to prove the contents of the Contract arguing that there were no diligent efforts to search for the original copy. Notably, MCMP did not present its copy of the Contract notwithstanding the directive of the trial court to produce the same.[9]

On November 20, 2007, the RTC issued its Decision finding for Monark as plaintiff, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing findings and legal premises, judgment is hereby rendered in favor of the plaintiff, and ordering the defendant to pay the former:

- PhP 1,282,481.83 as balance for the rental fees of the subject heavy equipments (sic) as of April 30, 2002, inclusive of the interests thereof;
- Twenty-Five percent (25%) of the total amount to be recovered as payment for the attorney's fees; and,
- The costs of suit.

SO ORDERED."

From this Decision of the RTC, MCMP filed a Motion for Reconsideration dated January 31, 2008 while Monark interposed a Motion for Clarification and/or Partial Reconsideration.[10] On April 28, 2008, the RTC issued an Order, disposing as follows:

"WHEREFORE, in light of the foregoing, the Court finds no reversible error in the assailed decision henceforth, the Motion for Reconsideration of defendant is hereby DENIED for lack of merit. On the other hand, the plaintiffs Motion for Clarification and/or Partial Reconsideration is hereby GRANTED for being meritorious. Therefore, in the dispositive portion of the assailed decision dated 20 November 2007, the following should be included:

'The payment of interests, charges and fees due after April 30, 2002 and up to the time when all the obligations of the defendant to the plaintiff shall have been fully paid, computed in accordance with the stipulations entered into between the parties under Exhibits "A" to "G", and uniformly stated in the following wise:

Credit sales are payable within 30 days from the date of invoice. Customer agrees to pay interest at 24% p.a. on all amounts. In addition, customer agrees to pay a collection fee of 1% compounded monthly and 2% per

month penalty charge for late payment on amounts overdue. Customer agrees to pay a sum equal to 25% of any amount due as attorney's fees in case of suit, and expressly submit to the jurisdiction of the courts of Quezon City, Makati, Pasig or Manila, Metro Manila, for any legal action arising from, this transactions.'

SO ORDERED."

Unsatisfied, MCMP appealed the RTC's Decision and Order to the Court of Appeals (CA). Eventually, the appellate court, by a Decision dated October 14, 2011, affirmed in toto the Decision and Order of the RTC. MCMP's motion for reconsideration of the CA Decision was denied by the CA in its Resolution dated March 9, 2012.

Hence, the instant petition.

MCMP challenges the ruling of the CA arguing that the appellate court should have disallowed the presentation of secondary evidence to prove the existence of the Contract, following the Best Evidence Rule. MCMP specifically argues that based on the testimony of Peregrino, Monark did not diligently search for the original copy of the Contract as evidenced by the fact that: 1) the actual custodian of the document was not presented; 2) the alleged loss was not even reported to management or the police; and 3) Monark only searched for the original copy of the document for the purposes of the instant case.

Petitioner's contention is erroneous.

The Best Evidence Rule, a basic postulate requiring the production of the original document whenever its contents are the subject of inquiry, is contained in Section 3 of Rule 130 of the Rules of Court which provides:

"Section 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office. (Emphasis supplied)"

Relative thereto, Sections 5 and 6 of Rule 130 provide the relevant rules on the presentation of secondary evidence to prove the contents of a lost document:

"Section 5. When original document is unavailable. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (4a)

Section 6. When original document is in adverse party's custody or control. — If the document is in the custody or under the control of adverse party, he must have reasonable notice to produce it. If after such notice and after satisfactory proof of its existence, he fails to produce the document, secondary evidence may be presented as in the case of its loss."

In *Country Bankers Insurance Corporation v. Lagman*,^[11] the Court set down the requirements before a party may present secondary evidence to prove the contents of the original document whenever the original copy has been lost:

Before a party is allowed to adduce secondary evidence to prove the contents of the original, the offeror must prove the following: (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed. The correct order of proof is as follows: existence, execution, loss, and contents.

In the instant case, the CA correctly ruled that the above requisites are present. Both the CA and the RTC gave credence to the testimony of Peregrino that the original Contract in the possession of Monark has been lost and that diligent efforts were exerted to find the same but to no avail. Such testimony has remained uncontroverted. As has been repeatedly held by this Court, "findings of facts and assessment of credibility of witnesses are matters best left to the trial court."^[12] Hence, the Court will respect the evaluation of the trial court on the credibility of Peregrino.

MCMP, to note, contends that the Contract presented by Monark is not the contract that they entered into. Yet, it has failed to present a copy of the Contract even despite the request of the trial court for it to produce its copy of the Contract.^[13] Normal business practice dictates that MCMP should have asked for and retained a copy of their agreement. Thus, MCMP's failure to present the same and even explain its failure, not only justifies the presentation by Monark of secondary evidence in accordance with Section 6 of Rule 130 of the Rules of Court, but it also gives rise to the disputable presumption adverse to MCMP under Section 3 (e) of Rule 131 of the Rules of Court that "evidence willfully suppressed would be adverse if produced."

Next, MCMP claims that the pieces of equipment were not actually delivered to it by Monark. It bears pointing out, however, that the witnesses of MCMP itself, Jorge Samonte, a Budget Supervisor of MCMP, and Engr. Horacio A. Martinez, Sr., General Manager of MCMP, both acknowledged the delivery of the equipment to the project sites.^[14] Clearly, the contention of MCMP is false.

Evidently, the instant petition must be dismissed.

Nevertheless, the Court takes notice that the trial court imposed upon MCMP a 24% per annum interest on the rental fees as well as a collection fee of 1% per month compounded monthly and a 2% per month penalty charge. In all then, the effective interest rate foisted upon MCMP is 60% per annum. On top of this, MCMP was assessed for attorney's fees at the rate of 25% of the total amount due. These are exorbitant and unconscionable rates and, following jurisprudence, must be equitably reduced.

In *Macalinao v. Bank of the Philippine Islands*,^[15] the Court reduced the interest imposed by the bank of 36% for being excessive and unconscionable:

"x x x Nevertheless, it should be noted that this is not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable. We held in *Chua vs. Timan*:

The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be equitably reduced to 1% per month or 12% per annum. We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law. While C.B. Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting carte blanche authority to lenders to raise interest rates to levels which would either enslave their

borrowers or lead to a hemorrhaging of their assets. (Emphasis supplied.)

Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. Hence, courts may reduce the interest rate as reason and equity demand.

The same is true with respect to the penalty charge. Notably, under the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card, it was also stated therein that respondent BPI shall impose an additional penalty charge of 3% per month. Pertinently, Article 1229 of the Civil Code states:

Art. 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.

In exercising this power to determine what is iniquitous and unconscionable, courts must consider the circumstances of each case since what may be iniquitous and unconscionable in one may be totally just and equitable in another."

In the more recent case of *Pentacapital Investment Corporation v. Mahinay*,^[16] the Court reduced the interest and penalties imposed in a contract as follows:

"Aside from the payment of the principal obligation of P1,936,800.00, the parties agreed that respondent pay interest at the rate of 25% from February 17, 1997 until fully paid. Such rate, however, is excessive and thus, void. Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. To be sure, courts may reduce the interest rate as reason and equity demand. In this case, 12% interest is reasonable.

The promissory notes likewise required the payment of a penalty charge of 3% per month or 36% per annum. We find such rates unconscionable. This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of ensuring the performance thereof by imposing on the debtor a special prestation (generally consisting of the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled. However, a penalty charge of 3% per month is unconscionable; hence, we reduce it to 1% per month or 12% per annum, pursuant to Article 1229 of the Civil Code which states:

Art. 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.

Lastly, respondent promised to pay 25% of his outstanding obligations as attorney's fees in case of non-payment thereof. Attorney's fees here are in the nature of liquidated damages. As long as said stipulation does not contravene law, morals, or public order, it is strictly binding upon respondent. Nonetheless, courts are empowered to reduce such rate if the same is iniquitous or unconscionable pursuant to the above-quoted provision. This sentiment is echoed in Article 2227 of the Civil Code, to wit:

Art. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

Hence, we reduce the stipulated attorney's fees from 25% to 10%."

Following the above principles previously laid down by the Court, the interest and penalty charges imposed upon MCMP must also be considered as iniquitous, unconscionable and, therefore, void. As such, the rates may validly be reduced. Thus, the interest rate of 24% per annum is hereby reduced to 12% per annum. Moreover, the interest shall start to accrue thirty (30) days after receipt of the second set of invoices on January 21, 2001, or March 1, 2001 in accordance with the provisions in the invoices themselves.

Additionally, the penalty and collection charge of 3% per month, or 36% per annum, is also reduced to 6% per annum. And the amount of attorney's fees is reduced from 25% of the total amount due to 5%.

WHEREFORE, premises considered, the instant petition is hereby DENIED for lack of merit with the MODIFICATION that the dispositive portion of the RTC's Decision dated November 20, 2007, as amended in an Order dated April 28, 2008, should read:

WHEREFORE, in view of the foregoing findings and legal premises, judgment is hereby rendered in favor of the plaintiff, and ordering the defendant to pay the former:

- PHP 765,380.33 representing the unpaid rental fees;
- Interest of 12% per annum on the unpaid rental fees to be computed from March 1, 2001^[17] until payment;
- Penalty and collection charge of 6% per annum on the unpaid rental fees to be computed from March 1, 2001;
- Attorney's Fees of five percent (5%) of the total amount to be recovered; and,
- The costs of suit.

SO ORDERED.

Villarama, Jr., Reyes, Perlas-Bernabe,^[*] and Jardeleza, JJ., concur.

November 25, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___November 10, 2014___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 24, 2014 at 2:47 p.m.

Very truly yours,
(SGD)
WILFREDO V. LAPITAN
Division Clerk of Court

[*] Acting Member per Special Order No. 1866 dated November 4, 2014.

[1] Rollo, pp. 8-25.

[2] Penned by Associate Justice Jane Aurora C. Lantion, concurred in by Associate Justices Japar B. Dimaampao (Chairperson, 17th Division) and Ramon A. Cruz; Id. at 50-63

[3] Id. at 65-69.

[4] Penned by Judge Afable E. Cajigal; Id. at 26-40.

[5] Id. at 41-48.

[6] Id. at 28-29.

[7] Id. at 51.

[8] Id. at 9.

[9] Id. at 57-58.

[10] Dated January 29, 2008; Id. at 55.

[11] G.R. No. 165487, July 13, 2011, 653 SCRA 765, 777.

[12] G.R. No. 179497, January 25, 2012.

[13] Rollo, pp. 57-58.

[14] Id. at 15.

[15] G.R. No. 175490, September 17, 2009, 600 SCRA 67, 76-78, citing *Imperial v. Jaucian*, G.R. 149004, April 14, 2004, 427 SCRA 517, *Tongoy v. Court of Appeals*, No. L-45645, June 28, 1983, 123 SCRA 99.

[16] G.R. No. 171736, July 5, 2010, 623 SCRA 284, 305-306.

[17] Thirty (30) days from the date when the second set of invoices were received by MCMP.

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