

PRIVATE DEVELOPMENT CORPORATION OF THE PHILIPPINES, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND ERNESTO C. DEL ROSARIO, RESPONDENTS.

G.R. No. 73198. September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

Before Us is an appeal from the decision[1] of the then Intermediate Appellate Court which overruled the trial's court Decision[2] in Civil Case No. 82-8088.

The undisputed facts of the case are as follows:

On May 21, 1974, Davao Timber Corporation, DATICOR for brevity, and the Private Development Corporation (PDCP) entered into a loan agreement[3] whereby PDCP extended to DATICOR a loan in foreign currency equivalent to US\$ 265,000.00 and another in the amount of P2,500,000.00 for the purpose of establishing a kiln drying and woodworking plant in Mati, Davao Oriental.

It was stipulated in the loan agreement, that the foreign currency loan was to be paid with an interest rate of eleven and three fourths (11-3/4%) per cent per annum on the disbursed amount of the foreign currency; and the peso loan at the rate of twelve (12%) per cent per annum on the disbursed amount of the peso loan outstanding, commencing on the several dates on which disbursements of the proceeds of the loans were made.[4]

The loans were originally secured by a first mortgage[5] executed by Ernesto del Rosario, President of DATICOR, in his personal capacity, and his sister, Lourdes C. Cuerva, as third party mortgagors on a parcel of land which they owned in common. On December 28, 1976, the third party mortgagors, Del Rosario and Cuerva partitioned this mortgaged property which they owned in common, such that said parcel was re-surveyed and two certificates of titles were issued, each with an area of 3,854 square meters, one in the name of Del Rosario and the other in the name of Cuerva.

Thereafter, PDCP executed a partial release of mortgage[6] on the parcel of land owned by Cuerva, on the condition that in lieu thereof, DATICOR was to mortgage an additional five (5) parcels of land consisting of prime industrial lands with buildings thereon. As a consequence, DATICOR executed an Addendum to Mortgage[7] in favor of PDCP.

DATICOR likewise executed a Deed of Chattel Mortgage[8] on the machineries and equipments attached to the land in Davao Oriental as added security for said loans.

The approved value of the parcel of land of Del Rosario, including the building thereon, was P12,000,000.00 while the appraised value of the DATICOR properties consisting of the five parcels of land in Davao Oriental, including the buildings and structure thereon and the machineries and equipments, is at least P15,000,000.00 or a total of P27,000,000.00 for the loan of about P4.4 million pesos.

PDCP asked DATICOR to pay a service fee of one (1%) per cent per annum on the outstanding balance of the peso loan to cover the cost of administering DATICOR's account and supervision of the project.[9] This service fee was subsequently increased to six (6%) per cent per annum in addition to the twelve (12%) per cent per annum interest on the peso loan.[10] Furthermore, DATICOR was asked to pay penalty charges at the rate of two (2%) per cent per month.[11]

A total of P3,000,000.00 was already paid by Del Rosario to PDCP and which the latter applied to interests, service fees and penalty charges; such that according to PDCP, DATICOR still has an outstanding balance on the principal loan of P10,887,856.99 as of May 15, 1983.

By virtue of which, PDCP initiated extra-judicial foreclosure proceedings[12] against the parcel of land owned by Del Rosario in Manila and the five (5) parcels of land owned by DATICOR in Davao Oriental.

Del Rosario and Cuerva then filed a complaint[13] on March 31, 1982 against the PDCP in the Court of First Instance of Manila in Civil Case No. 82-8088 for violation of the Usury Law, annulment of contract and damages with prayer for the issuance of a writ of preliminary injunction. On April 13, 1982, a restraining order[14] was issued by the Court of First Instance of Manila.

DATICOR filed another case on April 1, 1982 in the Court of First Instance of Davao Oriental seeking a writ of injunction to prevent PDCP from foreclosing its properties in Davao, and likewise praying for the annulment of the loan contract as it is in violation of the Usury Law and damages.[15]

On January 25, 1983, the Court of First Instance of Manila rendered a decision[16] dismissing Del Rosario's petition. A motion for reconsideration was filed and was still pending when the PDCP filed another petition for extra-judicial foreclosure of the real properties of Del Rosario in Manila and anchored on the same grounds, requesting the Sheriff to conduct the same. The Sheriff had thus posted and caused publication of the public auction sale scheduled on July 27, 1983.

Del Rosario and Cuerva therefore sought a restraining order from another branch of the Regional Trial Court in Manila as their right to appeal would be rendered meaningless if the foreclosure proceedings were conducted in the meantime that their motion for reconsideration with Judge Ejercito in Civil Case No. 82-8088 was still pending resolution.

On August 3, 1983, herein respondents received a copy of the order in Civil Case No. 82-8088 denying their motion for reconsideration for lack of merit. On that same day, they appealed to the then Intermediate Appellate Court seeking an injunction to issue against the sheriff of Manila from proceeding with the auction sale and likewise appealing the dismissal of their complaint in Civil Case No. 82-8088 for violation of the Usury Law, annulment of contract and damages.

The then Intermediate Appellate Court rendered its decision,[17] the dispositive portion of which reads:

"WHEREFORE, the decision appealed from is hereby set aside and another one is rendered declaring void and of no effect the stipulations of interest in the loan agreement (Annex "A") between DATICOR and PDCP, as if the loan agreement is without stipulation as to payment of interest."

Hence, this appeal.

We find no merit in the instant petition.

Inasmuch as the loan agreement herein was entered into on May 21, 1974, the prevailing law applicable is Act No. 2655, otherwise known as the Usury Law, as amended by P.D. No. 116, which took effect on January 29, 1974.

Section 2 of Act No. 2655 provides:

"No person or corporation shall directly or indirectly take or receive money or other property, real or personal, or choses in action, a higher rate of interest or greater sum of value including commission premiums, fines and penalties for the loan or renewal thereof or forbearance of money, goods or credit, where such loan or renewal or forbearance is secured in whole or in part by a mortgage upon real estate, the title to which is duly registered or by a document conveying such real estate at an interest, than twelve percent per annum."

The usury law therefore, as amended by Presidential Decree 116 fixed all interest rates for all loans with maturity of more than 360 days at twelve (12%) per cent per annum including premiums, fines and penalties.

It is to be noted that PDCP was charging penalties at the rate of two (2%) per cent per month or an effective rate of twenty four (24%) per cent per annum on the peso loan and one-half (1/2%) per cent per month or an effective six (6%) per cent per annum on the foreign currency loan. It is therefore very clear that PDCP has been charging and imposing interests in violation of the prevailing usury laws.

In the beginning, PDCP was charging a total of nineteen (19%) per cent interest per annum on the peso loan and eighteen and three fourths (18-3/4%) per cent on the foreign currency loan. Since the penalty charges was increased to two (2%) per cent per month with regard to the peso loan, PDCP began charging a total of forty two (42%) per cent per annum on the peso loan, clearly in violation of the usury law.

DATICOR obtained a loan of P4.4 million pesos and has paid a total of about P3 million pesos, the remaining balance on the principal debt left unpaid is about P1.4 million pesos, to which respondents must still pay the petitioner.

The law should not be interpreted to mean forfeiture of the principal loan as that would be unjustly enriching the borrower. The unpaid principal debt still stands and remains valid but the stipulation as to the usurious interest is void, consequently, the debt is to be considered without stipulation as to the interest.

As, held in *Angel Jose Warehousing Co., Inc. vs. Chelda Enterprises, et. al.*:^[18]

"In, simple loan with stipulation of usurious interest, the prestation of the debtor to pay the principal debt, which is the cause of the contract (Article 1350, Civil Code), is not illegal. The illegality lies only as to the prestation to pay the stipulated interest; hence, being separable, the latter only should be deemed void, since it is only one that is illegal."

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"The foregoing interpretation is reached with the philosophy of usury legislation in mind; to discourage stipulations on usurious interest, said stipulations are treated as wholly void, so that the loan becomes one without stipulation as to the payment of interest. It should not, however, be interpreted to mean forfeiture even of the principal, for this would unjustly enrich the borrower at the expense of the lender. Furthermore, penal sanctions are available against a usurious lender, as a further deterrence to usury.

"The principal debt remaining without stipulation for payment of interest can thus be recovered by judicial action."

Petitioner contends that petitioner Del Rosario is not a party-in-interest in the case.

We do not agree.

Del Rosario mortgaged his properties in his personal capacity to secure the debt of DATICOR. As, such, the creditor, PDCP, may proceed against Del Rosario or DATICOR or both of them simultaneously for the payment of the loan or for the performance of the obligation. In fact, PDCP filed for the foreclosure of the real properties

belonging to Del Rosario.

Petitioner further contends that the cause of action of Ernesto del Rosario in Civil Case No. 82-8088 is barred by prescription and that there is a pending case before the Court of First Instance of Mati, Davao with the same cause of action.

With regard to the first contention, Article 1957 of the Civil Code provides:

“x x x contracts and stipulations, under any cloak or device whatever, intended to circumvent the law against usury shall be void.”

Furthermore, Article 1410 provides:

“The action or defense for the declaration of the inexistence of a contract does not prescribe.”

The aforesaid articles therefore state that all usurious stipulations are void and as such, an action to annul such usurious stipulations does not prescribe.

As to the issue of *litis pendencia*, such principle is not applicable to the case at bar. Records show and as admitted by petitioner, the action filed in the Court of First Instance of Manila in Civil Case No. 82-8088 was against Del Rosario while the case filed in the Court of First Instance of Mati, Davao Oriental in Civil Case No. 998 was against DATICOR. The first case against a natural person, while the second, against a juridical person. Clearly, there is no identity of parties, hence, *litis pendencia* cannot apply.

WHEREFORE, finding no reversible error in the decision appealed herefrom, the same is hereby **AFFIRMED** in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Melo, J., no part.

[1] Rollo, pp. 34-40.

[2] Records, p. 409.

[3] Records, pp. 25-38.

[4] Id., at p. 27.

[5] Records, pp. 38-44.

[6] Records, p. 216.

[7] Records, p. 45.

[8] Records, pp. 50-57.

[9] Records, p. 65.

[10] Records, p. 393.

[11] Id. at p. 394.

[12] Records, p. 73.

[13] Records, p. 3.

[14] Records, p. 109.

[15] Records, p. 286.

[16] Records, p. 409.

[17] Penned by Justice Ramon G. Gaviola, Jr., concurred by Justice Eduardo P. Caguioa, Justice Ma. Rosario Quetulio-Losa and Justice Leonor Ines Luciano, Rollo, p. 40.

[18] No. L-25704, 23 SCRA 119 (1968); Briones vs. Camayo, No. L-23559, 41 SCRA 404, (1971).

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