

PHILIPPINE NATIONAL BANK, PETITIONER, VS. THE HON. INTERMEDIATE APPELLATE COURT AND SPOUSES FERMIN MAGLASANG AND ANTONIA SEDIGO, RESPONDENTS.

G.R. NO. 75223. March 14, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition to review on certiorari the decision of the Intermediate Appellate Court*, now Court of Appeals, rendered in AC-G.R. CV No. 07678 modifying the decision of the Regional Trial Court of Ormoc City.

The factual background of this case is as follows:

The petitioner, a government banking institution, extended financial assistance to the private respondents in the form of loans, the total amount of which is P82,682.39 as embodied in the promissory notes that the latter have executed on various dates from February 5, 1976 to May 18, 1979, the payment of which to come from the proceeds of sugar sales of the private respondents. The promissory notes bore 12% interest per annum plus 1% interest as penalty charge in case of default the payments.

On January 16, 1969, the private respondents mortgaged several real estate properties in favor of the petitioner as security of their loans, which mortgage was amended on December 17, 1969, December 22, 1970 and February 12, 1975, as to the consideration thereof.

When the price of sugar went down in 1977, the private respondents incurred deficits in the payment of their loans.

On December 1, 1979, the Monetary Board of the Central Bank, by virtue of Presidential Decree No. 116, issued CB Circular No. 705 increasing the ceiling on the rate of interest on both secured and unsecured loans up to no more than 21% per annum. In view of this development, the PNB Board of Directors revised its lending interest rates on the medium and long-term loans effective June 1, 1980, per PNB board resolution dated May 26, 1980.

When the private respondents defaulted in the payments of their loans, the petitioner demanded not only the settlement of their outstanding obligation but also the payment of the new interest rate of 21% per annum beginning June 1, 1980 per the PNB board resolution.

For failure of the private respondents to settle their obligation, then in the amount of P84,743.34, the petitioner foreclosed the mortgage. Since the proceeds of the auction sale, P63,000.00 was not enough to satisfy private respondents' outstanding obligation, the petitioner filed an action for deficiency judgment with the Court of First Instance of Leyte against the private respondents.

After due trial, the trial court** rendered its judgment on February 20, 1985, in favor of the petitioner and against the private respondents, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiff and against

the defendants:

"1. Ordering the defendants to pay the plaintiff the amount of P21,743.34; said amount shall earn interest at 21% per annum and 3% penalty charge starting November 27, 1981, until the whole obligation is fully paid;

"2. Ordering the defendants to pay the plaintiff attorney's fees in the amount equivalent to 10% of the total amount due as of November 28, 1981;

"3. Ordering the defendants to pay the plaintiff the amount of P700.00 as litigation expenses; and ordering the defendants also to pay the costs of this action.

"SO ORDERED." (Records, p. 235).

The private respondents appealed to the Intermediate Appellate Court, docketed as AC-G.R. CV No. 07678.

On June 30, 1986, the appellate court affirmed the decision of the trial court with modification as follows:

"WHEREFORE, in view of the foregoing consideration, the appealed decision is hereby AFFIRMED with modification as follows:

"1. Ordering the defendants to pay the plaintiff the amount of P12,551.16 which shall earn interest at 12% per annum and 1% penalty charge starting November 27, 1981 until fully paid; and

"2. No other pronouncement as to attorney's fees and costs of suit.

"SO ORDERED." (Rollo, p. 28)

Hence, this petition.

In the resolution of September 14, 1987, the Court gave due course to the petition and required the parties to submit simultaneously their respective memoranda within thirty (30) days from notice (Rollo, p. 80).

The main issue in this case is whether or not the revised rate of interest imposed on the loans of the private respondents is legal.

The petitioner contends that in all the promissory notes executed by the private respondents, it is stipulated that the loans are to be paid together with the interest thereon at the rate of 12% per annum until paid, which interest rate the Bank may, at any time without notice, raise within the limits allowed by law, and also 1% per annum penalty charges by way of liquidated damages should the note be unpaid or is not renewed on due date. Likewise stipulated in the covering Real Estate Mortgage Contracts and the Amendment to Real Estate Mortgage of February 12, 1979 that "this account is also subject to the upward revision of interest rate as may be imposed by the mortgagee PNB." By these explicit contractual clauses, the private respondents fully agreed to an upward revision of interest rates on their accounts depending on the rule, regulation, or policy that the petitioner may adopt. At the time when said promissory notes and Amendment of Real Estate Mortgage were executed by private respondent Fermin Maglasang, Presidential Decree No. 116 (amending further certain sections of Act No. 2655, as amended, otherwise known as the "Usury Law") had long been promulgated on January 29, 1973, and was already in full force and effect in the Philippines.

Pursuant to Presidential Decree No. 116, the Monetary Board issued Central Bank Circular No. 705 on December 1, 1979, prescribing the maximum rate of interest on loan transactions with maturities of more than seven hundred thirty (730) days and shall not exceed twenty-one percent (21%) per annum. Hence, the upward revision of interest rate as stipulated in the Promissory Notes and Amendment of Real Estate Mortgage dated February 12, 1975, is in accordance with Presidential Decree No. 116 promulgated on January 29, 1973 and Central Bank Circular No. 705 issued on December 1, 1979, and the imposition of 21% rate of interest on the loan obligations

of private respondents is within the limits prescribed by law.

On the other hand, the private respondents maintain that the collection of service charge and liquidated damages in excess of the maximum 12% interest originally agreed, are illegal and void for being contrary to or prohibited under Section 2 of Act No. 2655, as amended by Act No. 4070.

The private respondents also insist that the Court of Appeals committed mathematical error in computing the 12% interest due their deficiencies. According to them, their total deficiency is P45,427.02 and the total 12% interest of the said amount is P15,731.08, hence, their total liability is in the amount of P61,158.10. Since the proceeds of the sale of their mortgaged properties are P63,000.00, there is still a residue in the amount of P1,841.90 from the proceeds of the sale which is recoverable or collectible by them.

The petition is without merit.

In *Insular Bank of Asia and America v. Spouses Salazar*, (159 SCRA 133 [1988]), the Court ruled that the Escalation Clause is a valid provision in the loan agreement provided that - (1) the increased rate imposed or charged does not exceed the ceiling fixed by law or the Monetary Board; (2) the increase is made effective not earlier than the effectivity of the law or regulation authorizing such an increase; and (3) the remaining maturities of the loans are more than 730 days as of the effectivity of the law or regulation authorizing such an increase.

Likewise in *Banco Filipino Savings and Mortgage Bank v. Navarro*, (152 SCRA 346 [1987]), the Court said that for an Escalation Clause to be valid, it must include a de-escalation clause. There can be an increase in interest if increased by law or by the Monetary Board; and in order for such stipulation to be valid, it must include a provision for reduction of the stipulated interest "in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board," as provided for in P.D. No. 1684, promulgated on March 17, 1980. There is no question that PNB board resolution dated May 26, 1980 contains such de-escalation clause, under paragraph 8 thereof, to wit:

"(8) To enable us to adjust interest rates in accordance with CB Circular Letter of March 19, 1980, the covering promissory note for all short/medium/long-term loans shall include the following conditions:

"The Bank reserves the right to increase the interest rate within the limits allowed by law or by the Monetary Board, provided, that the interest rate agreed upon shall be reduced in the event that the applicable maximum interest rate is reduced by law or by the Monetary Board: Provided, further, that the adjustment in the interest rate shall take effect on or after the effectivity of the increase or increase in the maximum rate of interest."
(Exhibits, p. 77)

Central Bank Circular No. 705, authorizing the increase from 12% to 21% was issued on December 1, 1979. The promissory notes executed by the private respondents show that they are all payable on demand but the records do not show when payment was demanded. Even granting that it was demanded on the effectivity of the law, it is obvious that the period of 730 days has not yet elapsed at the date the mortgaged properties were sold at public auction on November 27, 1981 (Certificate of Sheriff's Sale, Records of Exhibits, p. 84). Accordingly, as of December 1, 1979, the remaining maturity days of the loans were less than 730 days. Hence, the increased rate imposed or charged is not valid.

The claim of private respondents that the respondent appellate court committed mathematical error in computing the 12% interest due their deficiencies is a factual issue.

Absent the recognized exceptions, finding of facts of the Court of Appeals are conclusive on the parties and Supreme Court on the tenet that this Court decides appeals which only involve questions of law and that it is not the function of the Supreme Court to analyze and to weigh such evidence all over again, its jurisdiction being

limited to reviewing errors of law that might have been committed by the lower court (Philippine National Bank v. Court of Appeals, 159 SCRA 433 [1988]).

PREMISES CONSIDERED, the petition is hereby DENIED for lack of merit, and the assailed decision of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* IAC, Third Civil Cases Division, Justice Jorge R. Coquia penned the decision with the concurrence of Justices Floreliana Castro-Bartolome and Bienvenido Ejercito.

** Judge Francisco C. Pedrosa rendered the decision.

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