

PACIFIC MILLS, INC. AND GEORGE U. LIM, PETITIONERS, VS. THE HON. COURT OF APPEALS AND PHILIPPINE COTTON CORPORATION, RESPONDENTS.

G.R. No. 87182. February 17, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

On various dates during the period from April 1980 to October 1982, petitioner Pacific Mills, Inc. ("Pacific") purchased on credit from respondent Philippine Cotton Corporation ("Philcotton") varying quantities of cottonlint. The parties had agreed that Pacific would issue promissory notes in favor of Philcotton should the former fail to pay the purchase price of the cottonlint within sixty (60) days after delivery thereof. Hence, when Pacific was unable to pay the price of various purchases of cottonlint within the stipulated sixty (60)-day period, Pacific and George U. Lim, Executive Vice-President of Pacific, executed jointly and severally four (4) promissory notes in favor of Philcotton. Two (2) promissory notes were dated 1 April 1982 and 1 October 1982, respectively; the two (2) other promissory notes were both dated 1 December 1982. The promissory notes, which had a total stated value of P16,598,725.84, had identical terms and conditions, save for the amount payable under each:

"For value received, we, jointly and severally, promise to pay the Philippine Cotton, Corporation or order at its office at 31 Shaw Blvd., Pasig, Metro Manila, the sum of x x x with interest rate of twenty one per centum (21%) per annum. We hereby bind ourselves to make payments, per attached Schedule which forms part of this Promissory Note, which shall cover amortizations on the principal and interest at the above-mentioned rate.

We further bind ourselves to pay additional interest and penalty charges on account amortizations or portions thereof in arrears as follows:

a. If in arrears for thirty days or less:

i. additional interest at the basic account interest rate per annum computed on the total amortizations past due irrespective of age.

ii. no penalty charge.

b. If in arrears for more than thirty days:

i. Additional interest as provided above, Plus

ii. Penalty charge of 8% per annum computed on amortizations in arrears for more than thirty days.

In addition to the above, we also bind ourselves to pay for PhilCotton's advances for insurance premiums, taxes, litigation and acquired assets expenses and other out-of-pocket expenses not covered by inspection and processing fees as follows:

a. One time service charge of 2% of amount advanced, same to be included in the receivable account;

- b. Interest at basic account interest rate; and
- c. Penalty charge from date of advance at 8% per annum

PHILCOTTON further reserves the right to increase, with notice to the borrower, the rate of interest on the account as well as all other fees and charges on account and advances pursuant to such policy as it may adopt from time to time during the period of the account; provided, that the rate of interest on the account shall be reduced in the event that the applicable maximum rate of interest is reduced by law; Provided further that the adjustment in the rate of interest shall take effect on or after the effectivity of the increase or decrease in the maximum rate interest.

In case of non-payment of the amount or any portion of it on demand, when due, or any other amount or amounts due on account the entire obligation shall become due and demandable, and if, for the enforcement of the payment thereof, PhilCotton is constrained to entrust the case to its Attorneys, we jointly and severally bind ourselves to pay for attorney's fees, in addition to the legal fees and other incidental expenses.

PACIFIC MILLS, INC.

GEORGE U. LIM (Sgd.)

EVP & General Manager"[1]

On 23 June 1983, Philcotton filed a suit against petitioners for collection of sums of money totalling P7,940,229.39 due under the promissory notes dated 1 April 1982 and 1 October 1982, plus interest, attorneys fees and cost of the suit. A writ of preliminary attachment was prayed for.

On 11 January 1984, Philcotton filed another complaint also against petitioners for collection of sums of money aggregating P8,658,496.45, covered by the other two (2) promissory notes both dated 1 December 1982, plus interest, attorney's fees and expenses for litigation. A second writ of preliminary attachment was sought.

The two (2) actions were consolidated and writs of preliminary attachment were issued. Petitioners sought discharge of those writs, without success. Petitioners went on certiorari before the then Intermediate Appellate Court, contending that the trial court had acted with grave abuse of discretion amounting to lack of jurisdiction in issuing the writs. The appellate court, however, dismissed the petition and affirmed the trial court's orders granting the writs of preliminary attachment.

Subsequently, the parties-litigant submitted to the trial court three (3) joint manifestations and motions to discharge certain properties of petitioners from attachment. In the first joint manifestation and motion executed on 7 January 1985, the parties stated that the total principal obligation of petitioners was P16,598,725.84, excluding interest, charges, penalties and attorney's fees, and that petitioners would deliver to Philcotton postdated checks with a face value of P1,800,000.00 to be applied to the principal of petitioners' obligation. Under the second and the third joint manifestations, petitioners undertook to issue postdated checks with face amounts of P600,000.00 and P200,000.00, respectively. The joint manifestations and motions were approved by the trial court, and petitioners delivered postdated checks to Philcotton with a total face value of P2,600,000.00 which, upon encashment, would reduce petitioners' principal obligation to P13,998,725.84.

On 27 December 1985, after trial, the trial court rendered a decision, the dispositive portion of which read as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff Philippine Cotton Corporation and against defendants Pacific Mills, Inc and George U. Lim who are ordered to pay plaintiff jointly and severally the following:

1. The amount of P13,998,725.84 plus 21% regular interest per annum as indicated in the promissory notes, and 21% additional interest per annum on the total principal and regular interest, also computed from the due date until fully paid;
2. An amount equivalent to 8% of the total principal amount and regular interest representing penalty charges, computed 30 days after the due dates until fully paid;
3. An amount equivalent to 25% of the total amount due as attorney's fees; and
4. The costs of the suit.

SO ORDERED."[2]

On appeal, the Court of Appeals affirmed with modifications the decision of the trial court and ordered petitioners to pay jointly and severally Philcotton:

- “(a) the principal amount of P13,998,725.84 with twenty-one percent (21%) regular interest per annum to be computed starting on 7 January 1985 (the date of the first joint manifestation and motion) until fully paid;
- (b) [an] amount equivalent to fourteen percent (14%) per annum of the principal amount and regular interest, representing penalty charges to be computed thirty (30) days after 7 January 1985 until fully paid; and
- (c) [an] amount equivalent to ten percent (10%) of the principal amount recoverable, by way of attorney's fees.”

In the petition at bar, the principal claims of petitioners are that, firstly, the Court of Appeals erred in not holding that Philcotton, a government-owned or -controlled corporation, is not entitled to an award of attorney's fees; and, secondly, that the Court of Appeals erred in not reducing further the penalty charges to a rate lower than fourteen percent (14%) of the principal amount due plus regular interest thereon.

In their first claim, petitioners contend that the award of attorney's fees (reduced from twenty-five percent [25%] to ten percent [10%] by the Court of Appeals) was unwarranted and contrary to law, considering that Philcotton is a government-owned and -controlled corporation which was represented by the Office of the Government Corporate Counsel in this and other litigations. Petitioner argues that for an award of attorney's fees to be proper, one or more of the special circumstances mentioned in Article 2208 of the Civil Code must exist and that Philcotton must have availed itself lawfully of the services of private counsel.

The Court is not persuaded. R.A. No. 6000, which was enacted on 4 August 1969, and which further amended R.A. No. 2327 creating the Office of the Government Corporate Counsel, expressly contemplates awards of attorney's fees to government-owned or -controlled corporations in judicial proceedings handled for such corporations by the Office of the Government Corporate Counsel:

"Sec. 4. The expenses for the maintenance of the Office of the Government Corporate Counsel, shall be paid from assessments which the President of the Philippines shall determine and make upon government-owned or controlled corporations, or corporations the majority stock of which is owned or controlled by the Government, and instrument-alities of the Government performing proprietary functions, and which assessments shall be paid by said entities to the General Fund within the first quarter of every fiscal year: Provided, That the General Fund shall advance such sums as may be necessary for said maintenance, which is hereby appropriated.

In addition to said assessments, whenever a government-owned and controlled corporation, or corporation the majority stock of which is owned or controlled by the Government, or an instrument-ality of the Government performing proprietary functions, is awarded attorney's fees in a judicial proceeding handled by the Office of the Government Corporate Counsel, one-half of said attorney's fees shall be paid directly to the General Fund."

(Underscoring supplied)

We note that the second paragraph of Section 4 of R.A. No. 6000 has not been repeated in Section 4 of P.D. No. 1415, dated 9 June 1978 which reads as follows:

"Sec. 4. The funds necessary for the operation and maintenance of the Office of the Government Corporate Counsel shall be assessed on its client corporations. The assessments to be determined annually by the Government Corporate Counsel and approved by the Office of the President, upon the recommendation by the Secretary of Justice shall be remitted by said corporations within the first quarter or every calendar year, provided that such sums as may be necessary and required hereunder shall be advanced from the General Fund.

The Government Corporate Counsel is hereby authorized to make special assessment upon government-owned or controlled corporations serviced by his Office, to meet contingencies; obligations and undertakings, necessary to maintain and promote the efficiency and interests of the service."

We do not believe, however, that the second paragraph of Section 4 of R.A. No. 6000 was repealed or deleted by P.D. No. 1415, considering that there appears no necessary and irreconcilable conflict between the two (2) statutes, nor between regular and special assessments by the Office of the Government Corporate Counsel upon the government-owned or -controlled corporations serviced by that Office and the lawfulness and propriety of awarding attorney's fees to government corporations in litigations handled for them by the Office of the Government Corporation Counsel and his staff. This view is strengthened by consideration of the provisions of Section 10, Chapter III of the 1987 Revised Administrative Code which reads as follows:

"The OGCC is authorized to receive the attorney's fees adjudged in favor of their government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations. These attorney's fees shall accrue to a Special Fund of the OGCC, and shall be deposited in an authorized government depository as a trust liability and shall be made available for expenditure without the need for a Cash Disbursement Ceiling, for purposes of upgrading facilities and equipment, granting of employees' incentive pay and other benefits, and defraying such other incentive expenses not provided for in the General Appropriations Act as may be determined by the Government Corporate Counsel." (Underscoring supplied)

Quite apart from the specific statutory provisions quoted above, the Court considers that there is, as a matter of principle, no reason why a government-owned or -controlled corporation, or any other government agency or entity for that matter, which is compelled to bring suit against a private person or entity in order to protect its rights and interests, should not be granted an award of attorney's fees, where such an award would be proper if the suit had been brought by a private entity. While such a corporation, agency or entity may be represented by government lawyers, clearly, costs are incurred either by the plaintiff-corporation or entity directly or by the general tax-paying public indirectly, by reason of the default or other breach of contract or violation of law committed by the defendant. Under Article 2209 of the Civil Code, an award of attorney's fees is proper either because of a contractual stipulation for the payment of attorney's fees or because of the existence of one or more of the circumstances listed in Article 2208. In the instant case, the promissory notes on which Philcotton sued contained, as already noted, a stipulation for payment of attorney's fees in case judicial enforcement thereof became necessary. There can be no dispute that the petitioners' failure to comply with their obligations under the promissory notes compelled Philcotton to resort to enforcement of its rights under those notes through the judicial process. Finally, the reduction by the Court of Appeals of the attorney's fees stipulated under the relevant promissory notes from twenty-five percent (25%) to ten percent (10%) of the principal amount recoverable, appears to the Court to be more than reasonable.

We turn to the second principal claim of petitioners. Petitioners contend that the Court of Appeals should have

reduced further the penalty charges stipulated under the promissory notes because there had been partial compliance by petitioners and because of "equitable considerations" such as good faith on the part of petitioners. Petitioners also suggest that further reduction of the stipulated penalty charge was justified because the loans extended by Philcotton to petitioners came from the Development Bank of the Philippines and were intended to aid or promote the cotton industry.

Once more, the Court is not persuaded. Article 2209 of the Civil Code specifies the appropriate measure of damages where the obligation breached consisted of the payment of sum of money:

"Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent (6%) per annum."

Article 2209 was, in measure, elaborated upon by the Court in *State Investment House, Inc. v. Court of Appeals, et al.*:^[3]

"[T]he appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum of money, is the payment of penalty interest at the rate agreed upon; and in the absence of a stipulation of a particular rate of penalty interest, then the payment of additional interest at a rate equal to the regular monetary interest; and if no regular interest had been agreed upon, then payment of legal interest or six percent (6%) per annum."

In the instant case, the promissory notes, as earlier pointed out, stipulated both for regular or "monetary interest" of twenty-one percent (21%) per annum, and penalty or "compensatory interest"^[4] consisting of (a) additional interest also at the rate of twenty-one percent (21%) per annum; and (b) a penalty charge of eight percent (8%) per annum computed on amortizations in arrears for more than thirty (30) days. The Court of Appeals correctly held that the "additional interest" at the rate of twenty-one percent (21%) per annum was effectively part of the penalty clause of the promissory notes activated by default on the part of the makers of those notes.

The Court of Appeals reduced the penalty charges or compensatory interest from twenty-nine percent (29%) -- twenty-one percent (21%) additional interest plus eight percent (8%) penalty charges -- per annum to fourteen percent (14%) of the principal amount and the regular interest thereon, holding in the process that the aggregate penalty or compensatory interest was "iniquitous and unconscionable" and because there had been partial performance on the part of petitioners Pacific and Lim.

Insofar as the partial performance is concerned, it may be noted that petitioners paid only after suit had commenced and in order to lift preliminary attachment writs on their property P2.6M out of their total obligation of P16,598,725.84 (excluding interest and penalty charges). In determining whether a penalty clause is "iniquitous and unconscionable," a court may very well take into account the actual damages sustained by a creditor who has been compelled to sue the defaulting debtor, which actual damages would include the interest and penalties which the creditor may have had to pay on its own loan from its funding source. In the instant case, it is worth noting that the funds which Philcotton loaned to Pacific had originated from the Development Bank of the Philippines ("DBP") and that Philcotton was obligated to repay those loans to the DBP on the same terms and conditions as those extended by Philcotton to Pacific upon relending them to the latter.^[5] Presumably because Philcotton's counsel had failed to allege or prove the full level of actual damages which Philcotton had sustained, Philcotton has not questioned before this Court the depth of the reduction of the penalty clause effected by the Court of Appeals. At the same time, we do not believe that petitioners' claim for an even deeper reduction of the penalty clause merits serious consideration. Petitioners have not been able to point to any special "equitable consideration" that might justify such further reduction of the stipulated penalty charge.

While we find no merit in the contentions of the petitioners, we must note that the Court of Appeals had fallen into reversible error in holding that the regular interest of twenty-one percent (21%) of the unpaid principal obligation of P13,998,725.84 plus penalty charges of fourteen percent (14%) on that principal amount shall be computed only from 7 January 1985, the date when the parties entered into a joint manifestation. That joint manifestation read as follows:

"COME NOW the parties in the above-entitled case assisted by their respective counsel and unto this Honorable Court respectfully manifest that:

1. Defendants are indebted to the plaintiff in the aggregate amount of Sixteen Million Five Hundred Ninety Eight Thousand Seven Hundred Twenty Five & 84/100 (P16,598,725.84) Pesos, excluding interest, charges, penalties and attorney's fees;

2. Defendant offer and agree to pay plaintiff the amount of One Million Eight Hundred Thousand (P1,800,000.00) Pesos, in the following manner:

- a. the amount of P500,000.00 to be paid by a 30-day postdated check;
- b. the amount of P1,300,000.00 to be paid by a 60-day postdated check;

Said amount shall be applied to the principal of said obligations of the defendants.

3. Plaintiff is willing to release and/or discharge the following properties/merchandise subject of a writ of attachment issued by this Honorable Court, to wit:

- a. 219 boxes = 11,870.02 kgs. of 20 s/2 stretch yarn;
- b. 40 boxes = 2,600 kgs. of 45/1 PR;
- c. 70 boxes = 4,550 kgs. of 36/1 PR;
- d. 69 bales at 200 kgs./bale of Polyester;
- e. 50 bales at 200 kgs./bale of Rayon.

WHEREFORE, it is respectfully prayed that the foregoing agreement of the parties be approved and that an order be issued by this Honorable Court releasing and discharging from attachment the properties/ merchandise mentioned in Paragraph 3 hereof."[6]

In the first place, while the parties to the joint manifestation agreed upon or confirmed the aggregate principal amount of P16,598,725.84 (excluding interest, charges, penalties and attorney's fees) as due from petitioners, there was no agreement of any kind in respect of the date(s) from which monetary interest and penalty charges are to be computed on the principal amount due. The applicable rule is that novation or change of the object, cause or principal terms and conditions of an obligation is never presumed; that novation must be clearly proven.[7] And even if novation were sufficiently shown, the presumptive rule is that conditions attached to the old obligation also attach to the new obligation.[8]

In the second place, insofar as the principal amount of the obligation of petitioners is concerned, the joint manifestation partook of the nature merely of a stipulation of facts. There is no basis for supposing that Philcotton intended to waive interest and penalty charges already accrued under the terms of the several promissory notes on 7 January 1985, and the rule is well-settled that an intent to waive valuable rights cannot be casually presumed.[9]

In the third place, assuming (arguendo merely) that the Court of Appeals had impliedly considered the joint manifestation and motion dated 7 January 1985 as having the effect of liquidating Philcotton's claims for Payment

of sums of money, that assumed view is clearly erroneous. Article 2213 of the Civil Code provides that "interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty." Philcotton's claims, however, were not unliquidated; they were, on the contrary, known and easily determined or determinable by inspection of the terms and conditions of the relevant promissory notes and related documentation. In *Bareng v. Court of Appeals, et al.*,^[10] much the same argument was made by the petitioner. In rejecting this argument, the Court, through Mr. Justice J.B.L. Reyes, said:

"Petitioner also argues that his indebtedness to respondent Alegria was unliquidated until its amount was determined by the Court of Appeals at P3,600.00, and that consequently, he cannot be made answerable for interests on the amount due before judgment in the Court of Appeals. The argument is completely untenable. The price of the equipment in question under petitioner and Alegria's contract of sale was determined and known, hence, liquidated; and the obligation to pay any unpaid balance thereof did not cease to be liquidated and determined simply because vendor and vendee, in the suit for collection, disagreed as to its amount. If petitioner had wanted to free himself from any responsibility for interests on the amount he had always acknowledged he still owed his vendor, he should have deposited the same in Court at the very start of the action."^[11] (Underscoring supplied)

We, therefore, believe and so hold that the interest and penalty charges here due from petitioners under the Decision of the Court of Appeals must be computed from the date or dates specified in the schedules attached to the respective promissory notes, and not from 7 January 1985.

We are aware that the above error into which the Court of Appeals had fallen was not brought out by Philcotton. It is well-settled, however, that the Supreme Court is vested with plenary authority to review matters and resolve issues not assigned as errors in an appeal, if it finds that consideration and resolution thereof are indispensable for arriving at a just decision in a particular case.^[12] That the funds involved here are public funds can only serve to reinforce the applicability of this doctrine in the instant case.

WHEREFORE, the Decision of the Court of Appeals in C.A.-G.R. No. CV 15085, dated 24 November 1988, is hereby MODIFIED. Petitioners Pacific and George U. Lim are hereby ORDERED to pay, jointly and severally, private respondent Philcotton the principal amount of P13,998,725.84 with twenty-one percent (21%) regular interest per annum to be computed thereon from the due dates specified in the relevant promissory notes until fully paid; an amount equivalent to fourteen percent (14%) per annum of the principal amount due and regular interest thereon, representing penalty charges to be computed starting thirty (30) days after the respective due dates under the relevant promissory notes, until fully paid; and an amount equivalent to ten percent (10%) of the principal amount recoverable, as attorney's fees. Costs against petitioners. This Decision is immediately executory.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Gutierrez, Jr., J., (Chairman), see concurring opinion.

[1] Exhibit "C" of Civil Case No. 49881, Records, p. 25.

[2] Rollo, pp. 25-26.

[3] 198 SCRA 390, 398 (1991).

[4] Reinsurance Company of the Orient, Inc. v. Court of Appeals, 198 SCRA 19 (1991).

[5] Exhibit "1" of Civil Case No. 49881, Records, p. 407.

[6] Records of Civil Case No. 49881, p. 392.

[7] Garcia, Jr. v. Court of Appeals, 191 SCRA 493 (1990); Canedo, Jr. v. Court of Appeals, 181 SCRA 762 (1990); Bisaya Land Transportation Co., Inc. v. Sanchez, 153 SCRA 534 (1987); Martinez v. Cavives, 25 Phil. 591 (1913).

[8] See, generally, Article 1299, Civil Code.

[9] Gatchalian v. Delim, G.R. No. 56487, 21 October 1991; Yepes and Susaya v. Samar Express Transit, 17 SCRA 91 (1966); Andres v. Crown Life Insurance Co., 102 Phil. 919 (1958); Lang v. Provincial Sheriff of Surigao, et al., 93 Phil. 661 (1953); Fernandez v. Sebido, 70 Phil. 151 (1940).

[10] 107 Phil. 641 (1960).

[11] 107 Phil. at 644-645.

[12] Kapalaran Bus Line v. Coronado, 176 SCRA 792 (1989); Heirs of Enrique Zambales v. Court of Appeals, 120 SCRA 897 (1983); Miguel v. Court of Appeals, 29 SCRA 760 (1969); Saura Import and Export Co., Inc. v. Philippine International Surety Co., Inc., 8 SCRA 148 (1963).

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CONCURRING OPINION**GUTIERREZ, JR., J.:**

I concur in the decision but would like to add a few observations which might help clarify matters. I agree that the interests and penalties should be computed from the dates they fell due as provided in the various promissory notes. However, some problems may arise in the computations that will follow.

We give the total value of the four promissory notes as P16,598,725.84. If we look at the decision in CC No. 49881, however, we see that it is P3,887,409.09 plus P3,884,800.71 or P7,772,209.80. The two notes in CC No. 50553 total P8,658,496.45. There is already a discrepancy between the total face value of P16,420,706.25 and the P16,598,725.84 earlier stated.

It also seems that there was a payment of P1,124,109.06 on the first note before the cases were filed. There was another P2,600,000.00 paid to Philippine Cotton to lift the writ of attachment. The effect of these payments on the computation of interests and penalties is not reflected in the P16,598,725.84.

We cannot, of course, go into mathematical details in this Court. However when this case is remanded to the trial court, it might be best to avoid subsequent recourse to higher courts if that court looks into -- the effect of the first installment payment on the first promissory note together with the twenty-one (21%) percent interest insofar as the computation of regular interests and penalties are concerned. I believe our decision restored the trial court ruling that the P2,600,000.00 payment should be applied to the first promissory note and should, therefore, affect the computation of interests and penalties. It is also possible that from the time the trial court rendered a decision up to the time we decided this case, some payments were made. These cannot be ignored.

While the penalties in this case appear to be well deserved under the circumstances, I have always been wary of interests and penalties which tremendously increase and sometimes multiply several times the principal amount due over the years that a case is pending in court. It is most unfortunate that many cases cannot be decided expeditiously but this is not the fault of a losing party. The effect on interests and penalties, especially for litigants who, while believing all the time they have a winning case, lose that case in the end, is quite disastrous.

Finally, I wish to point out that nothing in our decision precludes the application of the condonation by the Development Bank of the Philippines of additional interests and charges as stated in the letter of Philippine Cotton to Pacific Mills.

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