

L.M. HANDICRAFT MANUFACTURING CORPORATION, LEOVIGILDO M. DIAPO, JR., VIRGILITA M. DIAPO AND LEONORA Q. MABASA, PETITIONERS, VS. HON. COURT OF APPEALS AND ALLIED BANKING CORPORAT...

G.R. No. 90047. June 18, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

These two petitions originated from an action to collect sums of money with damages filed by Allied Banking Corporation against L.M. Handicraft Manufacturing Corporation, Leovigildo M. Diapo, Jr., Virgilita M. Diapo and Leonora Q. Mabasa. The complaint filed by the said bank is based on 20 promissory notes executed by L.M. Handicraft Manufacturing Corporation and guaranteed by the three above-named persons which were either not paid or not fully paid despite formal demands.

After due trial, the lower court rendered a Decision favorable to the Allied Banking Corporation dated January 4, 1988 with the following dispositive portion:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff and against the defendants, ordering them to pay plaintiff jointly and severally the following amounts, with interests, plus stipulated service charges of 2% per month and penalty charges of 1% per month from the date of the filing of this complaint January 15, 1982, until fully paid, pursuant to the causes of action:

I. First cause of action

9% p/a

P 91,000.00

Second cause of action

9% p/a

P 32,000.00

Third cause of action

9% p/a

P 70,000.00

Fourth cause of action

9% p/a

P 75,000.00

Fifth cause of action

9% p/a

P 58,000.00

Sixth cause of action

9% p/a

P 96,800.00

Seventh cause of action

14% p/a

P196,000.00

Eighth cause of action

14% p/a

P 70,200.00

Ninth cause of action

14% p/a

P140,200.00

Tenth cause of action

14% p/a

P 50,000.00

Eleventh cause of action

13.38% p/a

P 61,000.00

Twelfth cause of action

14% p/a

P 74,000.00

Thirteenth cause of action

16% p/a

P462,100.00

Fourteenth cause of action

16% p/a

P 60,000.00

Fifteenth cause of action

16% p/a

P151,600.00

Sixteenth cause of action

16% p/a

P 87,000.00

Seventeenth cause of action

16% p/a

P 49,040.00

Eighteenth cause of action

16% p/a

P 48,000.00

Nineteenth cause of action

16% p/a

P387,000.00

Twentieth cause of action

16% p/a

P141,000.00

II. P5,000.00 as reasonable attorney's fees.

III. Costs of suit.

SO ORDERED."[1]

Not satisfied with the Decision of the trial court, L.M. Handicraft Manufacturing Corporation, Leovigildo M. Diapo, Jr., Virgilita M. Diapo and Leonora Q. Mabasa appealed the case to the Court of Appeals.

On August 31, 1989, the appellate court rendered its Decision which affirmed the Decision of the lower court with the modification that the stipulated service charge of 2% per month and penalty charges of 1% per month should be deleted.[2]

Both parties are now questioning the aforementioned Decision of the Court of Appeals.

In G.R. No. 90425, petitioner Allied Banking Corporation alleges that the Decision of the Court of Appeals should be modified by ordering the private respondents to pay petitioner, jointly and severally, in addition to the amounts stated in the Decision of the trial court, the stipulated service charges of two percent (2%) per annum and penalty charges of one percent (1%) per month from the date of filing of the complaint on January 15, 1982, until full payment thereof and attorney's fees equal to twenty-five percent (25%) of the total amount due and outstanding.

On the other hand, petitioners in G.R. No. 90047, namely, L.M. Handicraft Manufacturing Co., Leovigildo M. Diapo, Jr., Virgilita M. Diapo and Leonora Q. Mabasa argue that the Decision of the Court of Appeals should be

reversed and set aside on the ground that the public respondent did not declare the transactions sued upon as null and void for being contrary to law and for being usurious in character and that the Court of Appeals should have declared that there was bad faith, fraud, undue influence and breach of trust on the part of the Allied Banking Corporation. The three petitioners therein also do not accept their liabilities on the personal guaranties as found by the trial court.

The petition in G.R. No. 90047 is devoid of merit. The promissory notes executed by the parties are all valid and enforceable and must be paid in accordance with the agreement. The guaranty agreements which secured the payment of the obligations were freely and intelligently signed by Leovigildo M. Diapo, Jr., Virgilita M. Diapo and Leonora Q. Mabasa. The allegations of fraud and bad faith on the part of the Allied Banking Corporation were not substantiated. Petitioners' defense that the promissory notes and bank documents that they signed were in blank is far from credible. Furthermore, petitioner Leovigildo M. Diapo, Jr. himself, in his letter dated October 21, 1981 offering a settlement of the accountabilities amounting to P2,498,940.00 thereby effectively made an admission of their outstanding obligation to the Allied Banking Corporation. Clearly then, petitioners in G.R. No. 90047 have no valid ground to disavow their solidary liability on the unpaid promissory notes and the continuing guaranty agreements.

Turning Our attention to G.R. No. 90425, We find the petition of Allied Banking Corporation partly meritorious. We agree with petitioner Bank that the Court of Appeals erred in deleting the payment to it of service and penalty charges as ordered by the trial court in the dispositive portion of its Decision, to wit:

"WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff and against the defendants, ordering them to pay plaintiff jointly and severally the following amounts, with interests, plus stipulated service charges of 2% per month and penalty charges of 1% per month from the date of the filing of this complaint January 15, 1982, until fully paid, pursuant to the causes of action." [3] (Emphasis supplied.)

Petitioner Allied Banking Corporation is entitled to the 1% penalty charge as agreed upon by the parties herein. Paragraph 2 of the promissory notes explicitly states that respondents (in G.R. No. 90425) agree to pay jointly and severally a penalty equivalent to 1% of the amounts due for every month that the loan remains unpaid from maturity date. This provision in the promissory notes is valid under the rules and regulations of the Central Bank and is intended to protect the bank from borrowers who fail to comply with their obligation to pay on the due date.

However, the bank is entitled to a 2% per annum service charge only and not to a 2% per month service charge as ordered by the trial court. As in the payment of penalty charges, respondents in G.R. No. 90425 also agreed to the deduction of customary service charges recited in the second paragraph of the promissory notes. Under Central Bank Circular No. 504, commercial banks, specialized banking institutions, and non-bank financial intermediaries authorized to engage in quasi-banking functions are allowed to collect a maximum 2% service charge for amounts not over P500,000.00 on a per annum basis on the loan principal or the outstanding balance thereof. Hence, the 2% per month service charge stated in the dispositive portion of the trial court must be modified to 2% per annum.

The losses suffered by private respondents in G.R. No. 90425 do not justify the deletion of the penalty and service charges. Said charges were clearly stated in writing in the contract which private respondents acknowledged and signed. The bank cannot be said to have withheld the information regarding these charges as the same were specified in the promissory notes. Having been agreed upon, said charges must be paid.

Regarding the prayer of petitioner Allied Banking Corporation that attorney's fees in the sum equivalent to 25% of the total amount due and outstanding be awarded to it. We deem it just and reasonable under the circumstances to award the amount of P5,000.00, only as ordered by both the trial court and the Court of Appeals.

WHEREFORE, and by reason of the foregoing, the petition in G.R. No. 90047 is dismissed for lack of merit. The

questioned Decision of the Court of Appeals in CA-G.R. CV No. 17501 dated August 31, 1989 is affirmed, with the modification that respondents are ordered to pay jointly and severally petitioner Allied Banking Corporation service charges in the amount of 2% per annum as well as penalty charges of 1% per month computed from the date of the filing of the complaint until full payment pursuant to the causes of action as enumerated in the dispositive portion of the Decision of the trial court. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Medialdea, JJ., concur.
Griño-Aquino, J., on leave.

[1] Pages 30-31, Rollo (G.R. No. 90425).

[2] Page 43, Rollo (G.R. No. 90425). The case was docketed as Case No. CA - G.R. CV - No. 17501.

[3] Page 30, Rollo (G.R. No. 90425).

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