

**THE CONSOLIDATED BANK AND TRUST CORPORATION
(SOLIDBANK), PETITIONER, VS. THE HONORABLE COURT OF
APPEALS, GEORGE AND GEORGE TRADE, INC., GEORGE KING TIM
PUA AND PUA KE SENG, RESP...**

G.R. No. 91494. July 14, 1995

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision of the Court of Appeals in CA-G.R. CV No. 00922.

I

The factual antecedents, as found by the trial court and adopted by the Court of Appeals, are as follows:

"On April 22, 1977, defendant George King Tim Pua, in his personal capacity, applied for, and was granted, by plaintiff bank a loan for the sum of P500,000.00 for which he executed a promissory note (Exhibit 1) for the same amount, payable on August 22, 1977.

"On April 29, 1977, defendant George King Tim Pua, in his personal capacity, applied for, and was granted, by the plaintiff bank a loan for the sum of P400,000.00, for which he executed a promissory note (Exhibit 1-A) for the same amount, payable on August 29, 1979.

"On May 6, 1977, defendant George King Tim Pua, in his personal capacity, again secured a loan from the plaintiff for the sum of P400,000.00, for which he executed a promissory note (Exhibit 1-B) for the same amount, payable on September 5, 1977.

"On February 21, 1977, defendant George King Tim Pua, in his personal capacity, applied for, and was granted, by the plaintiff bank three (3) separate loans in the amounts of P220,000.00, P450,000.00 and P65,000.00, for which he executed three separate promissory notes (Exhibits 1-C to 1-E), payable on May 23, 1977.

"On January 23, 1979, defendant George and George Trade Inc., through defendant George King Tim Pua, obtained a loan of P300,000.00 from the plaintiff, for which defendant George King Tim Pua executed a promissory note (Exhibit A) on behalf of defendant corporation, with defendants George King Tim Pua and Pua Se Keng as co-makers, which loan bears an interest of 13.23% per annum and is payable on June 22, 1979.

"On April 19, 1979, defendant George and George Trade Inc., through defendant George King Tim Pua, applied for, and was granted, another loan of P200,000.00 from the plaintiff bank, for which defendant George King Tim Pua executed a promissory note (Exhibit B) on behalf of defendant corporation, with defendants George King Tim Pua and Pua Ke Seng as co-makers, which loan bears an interest of 14% per annum and is payable on May 21, 1979.

"On August 2, 1979, defendant George and George Trade Inc., through defendant George King Tim Pua, once

more secured a loan for P150,000.00, for which defendant George King Tim Pua executed a promissory note (Exhibit C) on behalf of defendant corporation, with defendants George King Tim Pua and Pua Ke Seng as co-makers, which loan bears an interest of 14% per annum and is payable on September 17, 1979.

"The three promissory notes (Exhibits A, B and C) covering loans in the corporate account of defendant George and George Trade Inc. provides (sic) also that in case of default of payment, the defendants agree to pay interest at an increased rate of 14% per annum on the amount due, compounded monthly, until fully paid, as well as an additional sum equivalent to 10% of the total amount due as and for attorney's fees in addition to expenses and costs of suit, such amount to bear interest at the rate of 1% per month until paid.

"Under the two promissory notes (Exhibits B and C), the defendants further bound themselves to pay a penalty at the rate of 3% per annum on the amount due until fully paid.

"In order to secure the payment of defendant George King Tim Pua's obligation with the plaintiff, he assigned unto the latter the proceeds of a fire insurance policy issued by the Kerr Insurance Company in the amount of P2,908,485.00.

"The proceeds of the insurance policy were subsequently paid to the plaintiff which applied the same to the personal account of defendant George King Tim Pua. The personal account of defendant George King Tim Pua was fully satisfied through the remittances of the fire insurance proceeds" (Rollo, pp. 53-55).

According to petitioner bank, after it had deducted from the insurance proceeds the entirety of respondent George King Tim Pua's personal account, there remained of the insurance proceeds the amount of P383,302.42. It then proceeded to apply said amount to the unpaid loans of respondent George and George Trade, Inc. which amounted to P671,772.22 as of September 7, 1979, thus leaving a balance of P288,469.80 of the loans.

Petitioner instituted on April 7, 1980 an action (Civil Case No. 130915) against private respondents before the then Court of First Instance of Manila for the recovery of the unpaid balances on the three promissory notes, including attorney's fees equivalent to 10% of the amount recoverable.

In their Answer with Special and Affirmative Defenses and Counterclaim, private respondents claimed that the loans had been extinguished by way of payment through the assignment by respondent George King Tim Pua of the fire insurance proceeds and that it was in fact petitioner which owed them by reason of its failure to return to the latter the balance of said insurance proceeds.

No amicable settlement having been reached between the parties, trial ensued. On November 4, 1982, the trial court rendered judgment, finding for petitioner. The dispositive portion of the decision reads:

"PREMISES CONSIDERED, judgment is hereby rendered ordering defendants George and George Trade, Inc., George King Tim Pua and Pua Ke Seng, jointly and severally, to pay plaintiff, The Consolidated Bank and Trust Corporation (Solidbank) the sum of P228,469.80, with interest thereon at the legal rate from March 28, 1980, until the same is fully paid, and attorney's fees in the sum of P25,000.00, with costs of suit.

"For lack of merit, the counterclaim filed by the defendants is dismissed" (Rollo, p. 174).

On appeal by private respondents, the Court of Appeals reversed the decision of the trial court, decreeing as follows:

"WHEREFORE, the decision appealed from herein is REVERSED, and plaintiff-appellee Consolidated Bank and Trust Corporation (Solidbank) is instead ordered to pay appellant George King Tim Pua the amount of P466,182.39, with legal interest thereon per annum from September 8, 1979 until said amount is fully paid, plus P10,000.00 attorney's fees and the costs of this suit" (Rollo, p. 14).

Failing to secure a reconsideration of said decision, petitioner is now before the Court on a petition for review on

certiorari.

Simply stated, the issue in this petition is whether private respondents are indebted to petitioners in the amount of P288,469.80 as held by the then Court of First Instance of Manila or whether said private respondents are entitled to a reimbursement from petitioner in the amount of P466,182.39 as decreed by the Court of Appeals?

The issues raised are factual. As a general rule, the findings of the Court of Appeals upon factual questions are conclusive and ought not to be disturbed. There are, however, exceptions to the rule. One of the exceptions is when the findings of fact of the Court of Appeals are contrary to those of the trial court (*Massive Construction, Inc. v. Intermediate Appellate Court*, 223 SCRA 1 [1993]).

In the instant case, the findings of fact of the Court of Appeals are contrary to the findings of the trial court. Under such circumstance, this Court may review the findings of fact of the Court of Appeals and may scrutinize the evidence on record.

The records show that respondent George King Tim Pua had two sets of accounts with petitioner bank: his personal account and his account for George and George Trade, Inc. For his personal account, he obtained from petitioner on different dates six separate loans with different due dates, viz:

Loan I -

April 22, 1977

-

P500,000.00

Payable August 22, 1977

Loan II -

April 29, 1977

-

400,000.00

Payable August 29, 1977

Loan III -

May 6, 1977

-

400,000.00

Payable September 5, 1977

Loan IV -

(a) February 21, 1977

-

220,000.00

(b) -

450,000.00

(c) -

65,000.00

Payable on May 3, 1977

P 735,000.00

TOTAL

P2,035,000.00

All of these loans bore a 14% rate of interest, which was to be compounded monthly, in case of failure on the part of respondent George King Tim Pua to pay on maturity. In which case, he further undertook to pay an additional sum equivalent to 10% of the total amount due but in no case less than P200.00 as attorney's fees. The maturity dates of the loans were extended up to either December 1 or December 5, 1977 and all interests were paid up to March 5, 1978.

Under the account of George and George Trade, Inc., respondent George King Tim Pua, together with his co-maker, respondent Pua Ke Seng, obtained the following loans:

Loan A - January 23, 1979 - P300,000.00

Payable June 22, 1979

Loan B - April 19, 1979 - 200,000.00

Payable May 21, 1979

Loan C - August 2, 1979 - 150,000.00

Payable Sept. 17, 1979 _____

TOTAL P650,000.00

The first loan bore an annual interest of 13.23%, which was to be increased to 14% in case of failure to pay on due date, compounded monthly, until fully paid. An additional amount equivalent to 10% of the total amount but not less than P200.00 was to be imposed in case of failure to pay on due date as attorney's fees. The second and third loans bore an interest rate of 14% per annum and carried a penalty of 3% per annum on the amount due in case of failure to pay on the date of maturity. An additional sum equivalent to 10% of the total amount due, but not less than P200.00, was to be imposed as and for attorney's fees. Interest were paid on the loans up to their date of maturity.

The records further show that payments were made as follows:

September 12, 1978

P 230,000.00

October 28, 1978

149,000.00

November 28, 1978

100,000.00

June 8, 1979

525,000.00

September 6, 1979

2,383,485.00

TOTAL PAYMENTS

P3,387,985.00

=====

Based on the foregoing figures, the accounts of respondents George King Tim Pua and George and George Trade, Inc. with petitioner Bank should stand as of September 6, 1979, thus:

GEORGE KING TIM PUA

Loan I (Promissory Note No. 55658) - 14% interest, compounded monthly Interest paid up to March 5, 1978

P500,000.00

Add: Interest, March 6 to Sept. 12, 1978

37,219.46

Total

P537,219.46

Less: Payment, September 12, 1978

230,000.00

Balance, September 12, 1978

P307,219.46

Add: Interest September 13 to Oct. 28, 1978 14%, compounded monthly

5,492.63

Total

P312,712.09

Less: Payment, October 28, 1978

149,500.00

Balance, October 28, 1978

P163,212.09

Add: Interest October 29 to Nov. 28, 1978 14%, compounded monthly

1,904.68

Total

P 165,116.77

Less: Payment November 28, 1978

100,000.00

Balance, November 28, 1978

65,116.77

Add: Interest November 29, 1978 to June 8, 1979, 14%, compounded monthly

4,962.35

Total

P 70,079.12

Loan II (Promissory Note No. 55828) -

P400,000.00

14% Interest, compounded monthly Interest paid up to March 5, 1978

Add: Interest March 6, 1978 to June 8, 1979

76,587.34

Total

P476,587.34

LOANS I and II, as of June 8, 1979 Loan I P 70,079.12 Loan II 476,587.34

P546,666.46

Less: Payment, June 8, 1979

525,000.00

Balance, June 8, 1979

P 21,666.46

Loan III (Promissory Note No. 55991) -

P400,000.00

14% Interest, compounded monthly Interest paid up to March 7, 1978

Add: Interest March 8, 1978 to Sept. 6, 1979

92,634.60

Total

P492,634.60

Loan IV (Promissory Note No. 54221) - P220,000.00 (Promissory Note No. 54222) - 450,000.00 (Promissory Note No. 54223) - 65,000.00

P735,000.00

14% Interest, compounded monthly Interest paid up to March 7, 1978

Add: Interest March 8, 1978 to Sept. 6, 1979

170,216.17

Total

P905,216.17

LOANS II, III and IV, as of Sept. 6, 1979

Loan II P 21,666.46 Loan III 492,634.60 Loan IV 905,216.17

P1,419,517.23

Less: Payment, September 6, 1979

2,383,485.00

BALANCE OF INSURANCE PROCEEDS

P 963,967.77

GEORGE AND GEORGE TRADE, INC

Loan A (Promissory Note No. 790591) -

P300,000.00

14 % Interest, compounded monthly Interest paid up to June 22, 1979

Add: Interest from June 23, 1979 to Sept. 6, 1979

8,691.63

Total

P308,691.63

Balance of Insurance Proceeds after payment of Loan A

P655,276.14

Loan B (Promissory Note No. 792805) -

P200,000.00

14% Interest per annum Interest paid up to May 21, 1979

Add: Interest from May 22, 1979 to Sept. 6, 1979

8,208.22

Penalty of 3% per annum

1,831.07

Total

P210,039.29

Balance of Insurance Proceeds after payment of Loan B

P445,236.85

Loan C (Promissory Note No. 794730) -

P150,000.00

14% Interest per annum Interest paid up to Sept. 17, 1979

Balance of Insurance Proceeds after payment of all loans

P295,236.85

Less: Trust Receipts Obligations

291,620.00

Amount Refundable to Respondent George King Tim Pua

P 3,616.85

The 14% interest rate charged by petitioner was within the limits set by Section 3 of the Usury Law, as amended.

The charging of compounded interest has been held as proper as long as the payment thereof has been agreed upon by the parties. In *Mambulao Lumber Company v. Philippine National Bank*, 22 SCRA 359 (1968), we ruled that the parties may, by stipulation, capitalize the interest due and unpaid, which as added principal shall earn new interest. In the instant case, private respondents agreed to the payment of 14% interest per annum, compounded monthly, should they fail to pay the principal loan on the date of maturity.

As to handling charges, banks are authorized under Central Bank Circular No. 504 to collect such charges on loans over P500,000.00 with a maturity of 730 days or less at the rate of 2% per annum, on the principal or the outstanding balance thereof, whichever is lower; 1.75% on loans over P500,000.00 but not over P1,000,000.00; 1.50% on loans over P1,000,000.00 but not over 2,000,000.00, etc. Section 7 of the same Circular, however, provides that all banks and non-bank financial intermediaries authorized to engage in quasi-banking functions are required to strictly adhere to the provisions of Republic Act No. 3765 otherwise known as the "Truth in Lending Act" and shall make the true and effective cost of borrowing an integral part of every loan contract. The promissory notes signed by private respondents do not contain any stipulation on the payment of handling charges. Petitioner bank cannot, therefore, charge private respondents such handling charges.

The payment of penalty is sanctioned by law, although the penalty may be reduced by the courts if it is iniquitous or unconscionable (*Equitable Banking Corporation v. Liwanag*, 32 SCRA 293 [1970]). The payment of penalty was provided for under the terms and conditions of the promissory notes for Loans B and C of George and George

Trade, Inc. The penalty actually imposed, being only 3% per annum of the unpaid balance of the principal of said Loan B, is considered reasonable and proper.

The same cannot, however, be said of the payment being insisted upon by petitioner of the attorney's fees stipulated in all the promissory notes, consisting of 10% of the total amount due and payable. A stipulation regarding the payment of attorney's fees is neither illegal nor immoral and is enforceable as the law between the parties as long as such stipulation does not contravene law, good morals, good customs, public order or public policy (*Social Security Commission v. Almeda*, 168 SCRA 474 [1988]; *Reparations Commission v. Visayan Packing Corporation*, 193 SCRA 531 [1991]). As stated in the promissory notes, respondent George King Tim Pua agreed to pay attorney's fees only "in addition to expenses and costs of suit." In other words, petitioner is entitled to collect from respondent George King Tim Pua the attorney's fees agreed upon only in case it was compelled to litigate with third persons or to incur expenses to protect its interest (*China Airlines, Ltd. v. Intermediate Appellate Court*, 169 SCRA 226 [1989]; *Songcuan v. Intermediate Appellate Court*, 191 SCRA 28 [1990]). These conditions are not obtaining in the case at bench. There was no need for petitioner to litigate to protect its interest inasmuch as private respondents had fully paid their obligations months before it filed the complaint for recovery of sum of money. Neither has it been shown by competent proof that petitioner had to engage the services of a lawyer or incur expenses in collecting the fire insurance proceeds from Kerr and Company.

The "Tentative Computation" to which respondent George King Tim Pua allegedly affixed his initials to the item "Attorney's Fees, 10%" cannot be taken as amending the stipulation contained in the promissory notes on the payment of attorney's fees. The failure of said Tentative Computation to express the true intent and agreement of the parties thereto was put in issue in the Amended Answer with Special and Affirmative Defenses and Counterclaim filed by private respondents before the trial court. The corresponding testimony of respondent George King Tim Pua that he did not understand the import of this item in the Tentative Computation remains un rebutted.

The award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case. However, the discretion of the court to award attorney's fees under Article 2208 of the Civil Code of the Philippines demands factual, legal and equitable justification, without which the award is a conclusion without a premise and improperly left to speculation and conjecture. It becomes a violation of the proscription against the imposition of a penalty on the right to litigate (*Universal Shipping Lines, Inc. v. Intermediate Appellate Court*, 188 SCRA 170 [1990]). The reason for the award must be stated in the text of the court's decision. If it is stated only in the dispositive portion of the decision, the same shall be disallowed. As to the award of attorney's fees being an exception rather than the rule, it is necessary for the court to make findings of fact and law that would bring the case within the exception and justify the grant of the award (*Refractories Corporation of the Philippines v. Intermediate Appellate Court*, 176 SCRA 539 [1989]).

In this case, the Court of Appeals strictly followed the above-stated standard set by this Court. The award of P10,000.00 as attorney's fees to private respondents was reasonable and justified as they were compelled to litigate and incur expenses to protect their interest.

WHEREFORE, the Decision of the Court of Appeals is AFFIRMED with the MODIFICATION that the amount which petitioner is ordered to reimburse respondent George King Tim Pua is reduced to THREE THOUSAND SIX HUNDRED SIXTEEN & 65/100 PESOS (P3,616.65), with legal interest thereon from September 8, 1979 until said amount is fully paid. No pronouncement as to costs.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Kapunan, JJ., concur.

Bellosillo, J., on official leave.

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