

MILAGROS LLAMANZARES, PETITIONER, VS. THE HON. COURT OF APPEALS, ASSISTANT CITY FISCAL OF QUEZON CITY, ALFREDO ENRIQUEZ AND ELOISA ORTEGA, RESPONDENTS.

G.R. No. 93109. June 25, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal by certiorari under Rule 45 of the Revised Rules of Court from the decision of the Court of Appeals in CA-G.R. CV No. 09146 entitled "Milagros Llamanzares, v. Hon. Alfredo Enriquez et. al.", affirming with modification the decision in Civil Case No. Q-34948 of the Regional Trial Court, Branch LXXXIX, Quezon City.

In Civil Case No. Q-34948, plaintiff Milagros Llamanzares sought to enjoin defendant Alfredo Enriquez, an Assistant City Fiscal of Quezon City, from proceeding with the preliminary investigation of the complaint in I.S. No. 82-5244 for violation of the Bouncing Check Law filed by defendant Eloisa Ortega against plaintiff; and to have the agreement between Ortega and her declared null and void with respect to the payment of usurious interest.

After trial, the trial court dismissed the complaint and ordered plaintiff to pay private defendant the sum of P151,620.00 on the counterclaim with "money market" interest thereon at the rate of 45% per annum from judicial demand on May 18, 1982 until fully paid; and the amount of P25,000.00 as attorney's fees and costs.

Plaintiff appealed to the Court of Appeals, which affirmed the decision of the trial court after deleting the "money market" interest on the principal sum of P151,620.00.

In this petition for certiorari, petitioner (plaintiff-appellant in CA-G.R. CV No. 09145) claims that the Court of Appeals erred in not: (1) ordering the refund of the usurious interest paid by her to Eloisa Ortega, the collection of which was prohibited by Section 3 of Act No. 2655 as amended by PD Nos. 116, 585 and 1684; (2) ordering the charging of the legal rate of interest of 12% per annum on the usurious interest to be refunded to her; (3) deleting the sum of P25,000.00 as attorney's fees ordered to be paid by her; and (4) ordering Eloisa Ortega to pay her the sum of P25,000.00 as attorney's fees (Petition, p. 6; Rollo, p. 10).

The Court of Appeals adopted in toto the findings of fact of the trial court, which are reproduced as follows:

"Between the period from January 5, and September 10, 1981, the plaintiff borrowed from the private defendant various loans totalling P880,000.00 (Exhs. B, C, D, E, F, G, H, I, J, K, L, M and N), subject to the condition that they will be repaid by the plaintiff to the private defendant by depositing with the bank equal daily payments for the account of the private defendant, within a period of 100 days, the last three installments of which were to be deducted and retained by the plaintiff for the salary of her collectors.

"This loan was paid in full by the plaintiff.

"Subsequently, within the period from September 24, 1981 to December 14, 1981, the private defendant

extended nine (9) other loans to the plaintiff totalling P560,000.00, also for a period of 100 days every loan, with interest of 20% each loan for the said period, to be paid by the plaintiff by depositing with the Pacific Banking Corporation, for the account of the private defendant, the amount of P600.00 daily until fully paid.

"Out of the nine (9) loans amounting to P560,000.00, plus interest, the plaintiff made certain payments, but left a balance of P381,360.00, still unpaid (Exh. QQ).

"The plaintiff acknowledges an unpaid indebtedness to the private defendant only in the amount of P151,620.00.

"It is the submission of the private defendant that the real balance of plaintiff's unpaid indebtedness to her is P185,300.00 since the interest payments made by the plaintiff to her is only P142,620.00 not the amount of P176,300.00 claimed by the plaintiff, corresponding to only 97 - day installments, out of the 100 days payment agreed upon. For, it was clear in their agreement that the three-(3)-day installments are to be deducted as commissions for plaintiff's "collectors, such that the amount of P33,680.00 corresponding to these deductions shall be added to the admitted balance of P151,620.00 which will total P185,300.00.

"It is also the claim of the private defendant that had the plaintiff paid fully this amount of P185,300.00, she could have placed the amount on money market at a competitive rate of 45% and she could have earned from December, 1981 to July 31, 1985 the sum of P491,283.23.

"On the otherhand, the plaintiff acknowledges an outstanding indebtedness to the private defendant in the amount of P151,620.00, only, since, according to her, she is entitled to a return of all the interest payments she had made to the private defendant, considering that the agreed interest of 20%, each loan, for 100 days, is usurious.

"This court is in agreement with the position taken by the plaintiff that she is entitled to a return of all interests paid by her which are usurious (Angel Jose, etc. vs. Chelda Enterprises, et. al., 23 SCRA 119).

"This is so, since at the time, the nine (9) loans amounting to P560,000.00 were contracted by the plaintiff between the period from September 24, 1981 to December 14, 1981, the interest rate for unsecured loans had a ceiling of 14% per annum (Section 3, The Usury Law, Act No. 2655, as amended by PD Nos. 116, 585 and 1684), the ceiling on said loans or forbearances, of any money, goods or credits, having been rendered by the Central Bank of the Philippines only on January 1, 1983, under its Circular No. 905 Series of 1982.

"For this reason, there is consequently no valid basis for the claim of the private defendant that the amount of P33,680.00, corresponding to the three (3) days deduction from the 100 day daily installments for collector's salary, shall be added to the amount of P151,620.00, acknowledged by the plaintiff as her unpaid balance obligation, since, even if the private defendant is correct in her claim that there is a deficiency in the interest payments of the plaintiff, she is not entitled to the payment of this P33,680.00, as it constitutes a part of the usurious interest of which the plaintiff is entitled to a return.

"The actual balance of plaintiff's indebtedness to the private defendant is, therefore, only P151,620.00, as acknowledged by the plaintiff" (Rollo, pp. 19-22).

There is no question that both the Court of Appeals and the Regional Trial Court found for petitioner: (1) that the allowable interest rate, which private respondent could collect on the unsecured loans of petitioner for the period from September 24, 1981 to December 14, 1981, was only 14% per annum; and (2) that petitioner was entitled to a return of all the usurious interests paid by her.

Petitioner now claims that both courts should have ordered private respondent to refund to her the amount of P33,600.00 representing the amount paid by her in excess of the 14% interest allowed by the Usury Law for unsecured loans.

The threshold issues to be resolved are whether petitioner actually paid the amount of P33,680.00 to private respondent and, if so, whether the said amount was deducted from the amount of P151,620.00, which petitioner admitted and the Court of Appeals found to be the unpaid balance of her indebtedness.

Petitioner contended before the trial court that she paid as interest the amount of P176,300.00, which included the amount of P33,680.00 usurious interest she now seeks to recover. She also claimed that her remaining indebtedness was only P151,620.00 after taking into consideration that she had paid P176,300.00 as interest.

Private respondent, however, claimed that petitioner only paid P142,620.00 inasmuch as the latter had deducted P33,680.00, which, as agreed by them, was set aside to pay petitioner's collectors. She asked that the said amount be added to P151,620.00, it being a part of the stipulated interest of 20%. According to the computation of private respondent, the remaining indebtedness of petitioner was P185,300.00.

Both the Court of Appeals and the trial court held that the sum of P33,680.00 represented usurious interest which could not be collected by private respondent; therefore, it could not be added to the amount of P176,300.00, which petitioner acknowledged as the amount still owed by her.

On the other hand, the two courts found as a fact that petitioner had not paid the said amount of P33,680.00. This finding of fact will not be disturbed (*Universal Motors Corp. v. Court of Appeals*, 205 SCRA 448 [1992]; *Gacos v. Court of Appeals*, 212 SCRA 8 [1992]).

Petitioner does not deny that she had an agreement with private petitioner that the amount of P33,680.00, corresponding to three-day installments of the interest payments, should be paid to the collectors instead of to private respondent.

We sustain petitioner's claim that private respondent is not entitled to an award of P25,000.00 as attorney's fees on her counterclaim. As found by the Court of Appeals and the trial court, private respondent violated the Usury Law by charging usurious interest. On the other hand, petitioner is likewise not entitled to an award of attorney's fees even after the findings of the Court of Appeals and the trial court that the usurious interest were demanded by the contract. In the first place, the usurious interests were not paid to the lender. In the second place, what prompted private respondent to file a criminal complaint against petitioner, which in turn forced petitioner to file the special civil action to enjoin the preliminary investigation against her, was the issuance by petitioner of the bouncing checks.

WHEREFORE, the decision of the Court of Appeals appealed from is **AFFIRMED** with the **MODIFICATION** that the award of attorney's fees in favor of private respondent on her counterclaim be eliminated.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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