

NICEFORO S. AGATON, PETITIONER, VS. THE HON. COURT OF APPEALS, HON. JOSE C. DE GUZMAN (RTC JUDGE, BR. 93, Q.C.) AND THE CONSOLIDATED BANK & TRUST CO. (SOLIDBANK), RESPONDENTS.

G.R. No. 93941. June 26, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This petition for review seeks to set aside the decision of the respondent Court of Appeals dated April 25, 1990 in CA-G.R. SP No. 10739, dismissing the appeal on certiorari from the judgment of the Regional Trial Court of Quezon City, Branch C (100) denying the petitioner's post-judgment claim for contingent fees.

On September 21, 1981, the Insular Bank of Asia and America (IBAA) and the Consolidated Bank & Trust Company (Solidbank) jointly extended to Hitachi-Union, Inc. (HITACHI) a five-year credit accommodation for thirteen million pesos (P13,000,000) with IBAA as lead creditor (its exposure being 53.31% compared to Solidbank's 46.69%). The loan was secured by a real estate mortgage on HITACHI's machineries and inventory, and the surety undertaking of Leonardo Ty, principal stockholder of HITACHI.

The total outstanding obligations of HITACHI to IBAA amounted to more than P17 million, and to Solidbank more than P14 million. Due to failure of negotiations for loan restructuring, IBAA, as lead creditor, filed an application for extrajudicial foreclosure of mortgage with the sheriff of Quezon City, who scheduled the corresponding foreclosure sale on April 1, 1985.

On March 29, 1985, HITACHI filed a complaint for injunction (Civil Case No. Q-44439-RTC-QC Br. 100) against IBAA and Solidbank, impleading with them the sheriff and deputy sheriff of Quezon City. There arose a need to choose a common counsel to file the answers of both banks and to handle the case for them. The lead bank suggested that petitioner, Attorney Niceforo S. Agaton, be retained as their common counsel to undertake their joint defense. On April 19, 1985, the petitioner sent a letter-proposal for his professional fees which partly reads:

"Let me take this opportunity of submitting the following proposals for attorney's fees payable to the undersigned for handling the defense and claims of SOLIDBANK on the Hitachi-Union account:

"1. The compensation shall consist of two parts: fixed and contingent. The fixed fee shall be paid whether or not we succeed in collecting SOLIDBANK's claim. The contingent portion shall only be paid in the event that SOLIDBANK succeeds in foreclosing the real estate mortgage and registers the certificate of Sheriff's sale issued upon foreclosure. The foreclosure of the chattel mortgage and payments by the surety Leonardo K. Ty would not be necessary for the fulfillment of this condition.

"2. The fixed fee portion shall be P150,000.00 while the contingent fee portion shall be P550,000.00. The fixed fee shall be paid in the following manner:

“a) P30,000.00 upon the filing of the answer which will have to be cleared by your in-house lawyer and the balance to be the subject of progress billings during the pre-trial, trial, and memorandum stage when the case is submitted for decision.

“b) If, for one reason or another, the case is terminated earlier at the instance of this lawyer, a termination of the case, not a dismissal without prejudice but one that would constitute an adjudication on the merits, then the entire fee shall be due and demandable and it goes without saying that since there would be no impediment to the foreclosure of the real estate mortgage, the contingent fee shall be payable upon foreclosure.

“xxx xxx xxx.

“If the foregoing proposals would meet your favorable consideration, please signify your confirmity thereto by signing on the space hereinbelow indicated.

“Trusting that you will give these proposals your most favorable consideration, I beg to remain x x x.” (pp. 34-35, Rollo.)

Instead of giving its conformity to the above proposals, Solidbank sent the following counter-proposal (Solidbank’s reply dated February 23, 1985 to the petitioner’s proposals) which reads:

“This will confirm the bank’s negotiation with you for the payment of your attorney’s fees in connection with the captioned case, as follows:

“1. Fixed fee - for P100,000.00 shall cover your services as our counsel of record in the above-entitled case and in the event the case is elevated to the appellate court, payable as follows:

P30,000.00 - upon filing of the answer;

P20,000.00 - after we have rested our case;

P20,000.00 - after the case is submitted for decision;

P30,000.00 - if no appeal is filed, after the decision becomes final and executory. If the case is appealed to the higher courts, after the case on appeal is submitted for resolution.

“2. Contingent fee - for P250,000.00 shall be paid only in the event Sandbank succeeds in the foreclosure of the real estate mortgage and registers the Sheriff’s Certificate of Sale.” (pp. 35-36, Rollo.)

Petitioner accepted the reply-letter containing Solidbank’s counter-proposals as the working retainer-agreement without any objection on his part.

In the course of the proceedings in Civil Case No. Q-44439, petitioner, as counsel for the banks, moved that summons be issued upon Leonardo Ty to answer, as surety, the compulsory counterclaim set up by each of the defendants in their respective answers. After having been impleaded in the case, Leonardo Ty negotiated a settlement which eventually resulted in a compromise agreement, which became the basis for a Judgment by Compromise rendered by the trial court on January 6, 1986.

On May 20, 1986, the petitioner filed an ancillary post-judgment claim against Solidbank for the contingent portion of his attorney’s fees, admitting that the fixed portion of his fees had already been fully paid. Solidbank opposed the claim.

On July 7, 1986, the trial court issued an order granting the petitioner’s claim for a contingent fee of P250,000.00. The petitioner filed a motion for execution pending appeal. Solidbank filed an Omnibus Motion praying for reconsideration of the award and for deferment of execution. It also filed a Motion to Inhibit the presiding judge

from further hearing Civil Case No. Q-44439 because of Attorney Agaton's admitted special relation with the judge.

Acting on the bank's motion, Judge Macli-ing issued on August 1, 1986 an order inhibiting himself from acting further in Civil Case No. Q-44439 which, in time, was assigned and transferred to Judge Jose C. De Guzman of Branch 93.

On October 27, 1986, Judge De Guzman resolved Solidbank's Omnibus Motion by: (1) granting the motion for reconsideration of the July 7, 1986 order; and (2) denying the petitioner's motion for execution pending appeal. After the petitioner's motion for reconsideration was denied by Judge De Guzman on November 14, 1986, the petitioner filed a petition for certiorari in the Court of Appeals (CA-G.R. SP No. 10739) challenging the denial of his post-judgment claim for contingent fees as a grave abuse of discretion on the part of respondent Judge. The thrust of his argument is that "the nature of contingent fees, particularly in collection suits, is dependent upon the success of collection, that cash collection is certainly to be preferred to foreclosure of mortgage," (p. 38, Rollo) and that his contingent fee of P250,000 represents barely 2% of the sum of P9,338,000 in cash which Solidbank realized as a result of the litigation.

Solidbank contended that since the contingency agreed upon – foreclosure of the real estate mortgage – whose occurrence would entitle petitioner to his contingent fee, never occurred, then nothing by way of contingent fee is due him.

On April 25, 1990, the Court of Appeals dismissed the petition, finding that respondent Judge committed no error or grave abuse of discretion in denying the petitioner's claim for contingent fees. Petitioner's motion for reconsideration of the appellate court's decision was denied. Hence, this petition for review.

The petition is bereft of merit.

We agree with the appellate court's finding that Solidbank's counter-proposal had the legal effect of totally supplanting the petitioner's initial proposal; that his tacit acceptance of Solidbank's counter-proposal of February 23, 1985 effectively converted it, by implied consent, into the sole written repository of the parties' negotiated contract, the pertinent part of which reads:

"2. Contingent fee – for P250,000.00 shall be paid only in the event Solidbank succeeds in the foreclosure of the real estate mortgage and registers the Sheriff's Certificate of Sale." (p. 36, Rollo.)

The terms are unmistakably clear and suffer no infirmities requiring judicial construction. Therefore, the stipulation should be interpreted by its own terms, without need for any evidence aliunde.

Nothing is more settled than the rule that the terms of a written contract are binding on the parties thereto. In the interpretation of the provisions of a written contract, the courts should follow the literal meaning of the stipulations (Art. 1370, Civil Code; *Spouses Fermin vs. CA*, 196 SCRA 723; *Young vs. CA*, 196 SCRA 795; *Papa vs. Alonzo*, 198 SCRA 564). In this case, there is nothing in the stipulation on the contingent fee to suggest that any other form of settlement of the case (other than the foreclosure of the real estate mortgage) would also result in petitioner's entitlement to the contingent fee. No other interpretation is sanctioned by the letter and spirit of the stipulation than that the bank's success in foreclosing the real estate mortgage and in registering the Sheriff's Certificate of Sale was the sole contingency upon which the petitioner's claim for the stipulated contingent fee would rest.

WHEREFORE, the petition for review is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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