

ANTONIO M. GARCIA, DYNETICS, INC., AND MATRIX MANAGEMENT CORPORATION, PETITIONERS, VS. COURT OF APPEALS AND SECURITY BANK AND TRUST COMPANY, RESPONDENTS.

G.R. Nos. 82282-83. November 24, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In a summary judgment rendered by the Regional Trial Court of Makati in Civil Case No. 10398, the complaint was dismissed for lack of merit and the petitioners were ordered to pay the private respondents the following: (a) the unpaid principal sum of P15 million remaining unpaid out of Chemark's availment of the P20 million credit line, plus 18% interest per annum and 36% as penalty per annum for Promissory Note No. DLS/74/540/83 from March 23, 1984 until fully paid; and plus 24% interest per annum and 36% as penalty per annum for Promissory Note No. DLS/74/1358/83 from August 9, 1983 until fully paid; (b) attorney's fees equivalent to 10% of the total amount of plaintiffs' obligations and (c) costs of suit.

The summary judgment was affirmed by the Court of Appeals. The appellate court's decision and the resolution denying a motion for reconsideration are now challenged by the petitioners in the instant petition.

The antecedent facts relevant to the instant petition are as follows:

On April 23, 1985 petitioners Dynetics, Inc., Matrix Management and Trading Corporation and Antonio M. Garcia filed a complaint for declaratory relief and/or injunction with damages against respondent Security Bank and Trust Company (SBTC). The plaintiffs sought a judicial declaration that they were not liable to the defendant bank under certain Indemnity Agreements they executed in favor of Chemark Electric Motors, Inc. which had been extended a credit accommodation of about P20,000,000.00 by the defendant bank. They also prayed for payment of attorney's fees and costs of suit. Thus, they alleged in their complaint:

x x x x x x x x

"a) There is no valid consideration for the execution of the said instruments;

b) The said instruments had become invalid and ineffective at the time the defendant finally extended the loan accommodation to Chemark and that the parties to the said instruments did not intend the said instruments to cover Chemark's obligations to the defendant which were subsequently granted under separate and independent transactions;

c) Assuming, without conceding, that there is a valid consideration for the execution of the aforesaid instruments and that the said instruments continued to be valid and effective when the defendant extended a credit accommodation to Chemark, said instruments are null and void insofar as Dynetics is concerned as it is ultra vires, being contrary to the purposes of Dynetics, its powers, licenses and franchise;

d) Assuming, without conceding, that the Indemnity Agreement instruments are valid and enforceable, the obligations of the plaintiffs thereunder have been extinguished, either by novation or by the acts and conduct of

the defendant, who, under the circumstances, in refusing the valid and legitimate plea of Chemark for a reasonable restructuring plan of its obligations has practically rendered it impossible for Chemark to pay its obligations to its creditors and to the plaintiffs in the event plaintiffs are legally obligated to pay Chemark's obligations to the defendant;

e) In the light of present economic conditions, in general, and the condition of Chemark in particular, as well as the financial condition of the plaintiffs, the demand of the defendant for the plaintiffs to pay the Chemark obligations would constitute an abuse of right as defined in the New Civil Code;

f) Considering the present adverse economic conditions plaguing the entire country, the terms and conditions of the credit accommodation and the Indemnity Agreement instruments, assuming that the latter are valid and enforceable, have become so manifestly difficult as to be beyond the contemplation of the parties. Under the provisions of Human Relations of the New Civil Code, as well as the general principles of equity, especially the doctrine of the 'rebus sic stantibus' and 'the frustration of the commercial object or frustration of enterprise' and under Article 1267 of the New Civil Code, when the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may be released therefrom;

g) In addition to the reasons stated in paragraphs e and f hereof, Chemark, the principal obligor, is not liable for its obligations under the credit accommodations extended to it by the defendant because it has been prohibited from complying therewith by a lawful authority. Under the law on guaranty and surety, the guarantor or the surety, not being a principal debtor, is not liable for the obligations unless the principal obligor is likewise liable. (Article 2054 of the New Civil Code; *Hospicio De San Jose v. Fidelity and Surety Co.*, 52 Phil. 926; *Uy Isabelo v. Yandoc*, CA-G.R. No. 8801-R, June 20, 1956). The debtor in obligations to do shall also be released when the prestation becomes legally impossible without the fault of the obligor. (Article 1266 of the New Civil Code);

h) Assuming, without conceding, that the plaintiffs are liable under the Indemnity Agreement instruments, they are not liable for the amounts being claimed by the defendant, considering that the said amounts include the payment of exorbitant interests, excessive penalties and amounts imputed to be due which are not, in fact, due." (Rollo, pp. 106-107)

On June 11, 1985 the respondent bank filed its Answer and Counterclaim with prayer for preliminary attachment. The defendant alleged in its counterclaim:

ALLEGATIONS COMMON TO ALL DEFENDANTS

"21. Sometime in August, 1981, Chemark was granted by plaintiff a credit line of P4.0 million consisting of an import LC-TR line of P2.0 million and an export loan line of P2.0 million.

22. Said credit line was increased in February, 1982 from P4.0 million to P20.0 million, to wit:

Export loan line – from P2.0 Million to P15.0 million

Import LC-TR – from P2.0 million to P5.0 million

The terms and conditions of this P20.0 million credit are reflected in the Amended Credit Line Agreement dated February 8, 1982 attached as Annex "1" hereof;

23. Chemark availed of said credit line and as evidence of said availments, Chemark executed several promissory notes covering the following amounts drawn against this credit line, viz;

a) The sum of P6,350,750.00 drawn on March 23, 1983 with interest and penalty at the rate indicated in Promissory Note No. DLS/74/540/83 to mature on June 21, 1983, a copy is attached as Annex "3";

b) The sum of P8,649,250.00 drawn on August 9, 1983 with interest and penalty at the rate indicated in

Promissory Note No. DLS/74/1358/83 to mature on September 8, 1983, a copy of which is hereto attached as Annex “4”.

24. Chemark defaulted in paying its obligations under the aforesaid promissory notes when these became due. Despite repeated demands, Chemark failed and refused to pay its valid and just obligations to the defendant which, as of December 11, 1984, amounted to P13,130,596.93 under Promissory Note No. DLS/74/540/83 and P17,357,117.51 under PN No. DLS/74/1358/83.

CAUSE OF ACTION AGAINST ANTONIO M. GARCIA

25. Plaintiff Garcia personally bound himself jointly and severally with Chemark, to pay defendant upon demand and without benefit of excussion, of whatever amount or amounts Chemark may be indebted to defendant under and by virtue of the aforesaid credit line accommodation, including the substitutions, renewals, extensions, increases and other amendments of the aforesaid credit accommodations, as well as all other obligations that Chemark may owe the defendant.

26. Accordingly, plaintiff Garcia executed two (2) Indemnity Agreements, one dated January 20, 1982, a copy of which is attached hereto and made integral part hereof as Annex “E” and the other, an Indemnity Agreement dated February 8, 1982, as Annex “B” of the complaint;

27. Under the terms of the foregoing Indemnity Agreements executed by plaintiff Garcia, he further bound himself solidarily with Chemark in favor of defendant for the faithful compliance of all the terms and conditions contained in the Amended Credit Line Agreement (Annex “1”).

28. Defendant demanded from plaintiff Garcia the payment of the outstanding obligation of Chemark in a letter dated October 26, 1984, a copy of which is made Annex “5” to form part hereof. Defendant reiterated said demand on April 15, 1985.

29. Notwithstanding said demands, plaintiff Garcia failed and refused, as he still fails and refuses to pay his obligation pursuant to the indemnity agreements he executed.

CAUSES OF ACTION AGAINST MATRIX MANAGEMENT & TRADING CORPORATION

30. Plaintiff Matrix bound itself jointly and severally with Chemark in favor of the defendant for the payment, upon demand and without benefit of excussion, of whatever amount or amounts Chemark may be indebted to defendant under and by virtue of the aforesaid credit line accommodation including the substitutions, renewals, extensions, increases and other amendments of the aforesaid credit accommodations, as well as of the amount of such other obligations that Chemark may owe the defendant.

31. Accordingly, Matrix through its duly authorized officers, executed an Indemnity Agreement dated February 8, 1982, a copy of which is attached hereto as Annex “A” and incorporated herein by reference.

32. Under the terms of the foregoing indemnity agreement executed by Matrix, it further bound itself solidarily with Chemark in favor of defendant for the faithful compliance of all the terms and conditions contained in the Credit Line Agreement (Annex “B”).

33. Defendant demanded from Matrix the payment of the outstanding obligation of Chemark in a letter dated October 26, 1984, a copy of which is made Annex “5” to form part hereof. Defendant reiterated said demand on April 25, 1985.

34. Notwithstanding said demands, Matrix failed and refused, as it still fails and refuses, to pay its obligation pursuant to the indemnity agreement it executed in plaintiff’s favor.

CAUSE OF ACTION AGAINST DYNETICS, INC.

35. Plaintiff Dynetics bound itself jointly and severally with Chemark in favor of the defendant for the payment, upon demand and without benefit of excussion, of whatever amount or amounts Chemark may be indebted to defendant under and by virtue of the aforesaid credit line accommodation including the substitutions, renewals, extensions, increases and other amendments of the aforesaid credit accommodations, as well as of the amount of such obligations that Chemark may owe the defendant.

36. Dynetics executed an indemnity agreement dated February 8, 1982, copy of which is attached as annex "A" of the complaint.

37. Under the terms of the foregoing Indemnity Agreement executed by Dynetics, it further bound itself solidarily with Chemark in favor of defendant for the faithful compliance of all the terms and conditions contained in the Amended Credit Line Agreement (Annex "1").

38. Defendant demanded from Dynetics the payment of the outstanding obligation of Chemark in a letter dated October 26, 1984, a copy of which is made Annex "5", to form part hereof. Defendant reiterated said demand on April 25, 1985.

39. Notwithstanding said demands, Dynetics failed and refused, as it still fails and refuses to pay its obligation pursuant to the indemnity agreement it executed in defendant's favor." (Rollo, pp. 108-111)

On August 21, 1985, the petitioners manifested that "x x x they are adopting all allegations in their Complaint as their answer to the respective counterclaim against each of them." (Original Records, p. 229)

On September 18, 1985, the respondent bank filed a motion for summary judgment on the ground that the answer to the counterclaim "tenders no genuine issue as to any material fact, and consists of mere conclusions of law and fact, and in paragraph 4 thereof, plaintiffs expressly acknowledged their obligation to defendant and indemnity agreements dated February 8, 1982 when they admitted "under said instruments, it was basically provided that for and in consideration of the credit accommodation in the total amount of Twenty Million (20,000,000.00) Pesos, granted by defendant in favor of Chemark Electric Motors, Inc., a corporation duly organized and existing under the laws of the Philippines, plaintiffs agreed to indemnify defendant in the event Chemark should fail to comply with its obligations.'" (Original Records, p. 248) In support of the motion, the respondent bank attached the affidavit dated September 17, 1985 of Ms. Charis Marquez, Senior Assistant Manager, corporate banking group, SBTC including its annexes.

The petitioners filed an opposition to the motion for summary judgment but to no avail. The lower court rendered a decision granting the motion for summary judgment. The petitioners' complaint was dismissed and they were ordered to pay the respondent bank under the indemnity agreements.

The petitioners then filed with the Court of Appeals: 1) an appeal from the summary judgment and 2) a special civil action for certiorari and prohibition with prayer for preliminary injunction to annul the orders of the lower court granting motion for summary judgment and granting motion for execution pending appeal. The two cases were consolidated.

The appellate court sustained the summary judgment. Both petitions were dismissed with costs against the petitioners. A motion for reconsideration thereto was denied.

Hence, this petition.

On March 30, 1988, we issued a temporary restraining order to enjoin the enforcement of the questioned decision of the appellate court. In a Resolution dated June 6, 1988, we gave due course to the petition.

The issue raised in the petition is whether or not the appellate court committed reversible error when it sustained the trial court's summary judgment.

The petitioners submit that the appellate court committed such an error, to wit:

"a. The rendition of Judge Mendoza's Summary Judgment was improper because petitioners' Complaint and SBTC's Answer with Counterclaim raise triable issues of fact. The Court of Appeals, therefore, erred when it sustained Judge Mendoza's Summary Judgment.

b. Assuming (the untrue) that there were no 'genuine issues as to any material fact,' the awards set out in Judge Mendoza's Summary Judgment were rendered in violation of rules of evidence and laws and jurisprudence on interest, penalties and attorney's fees. The appellate court, therefore, committed the same violation when it upheld Judge Mendoza's Summary Judgment." (Rollo, p. 325).

A Summary Judgment may be rendered by a court upon motion of a party before trial and after submission of pleadings, admissions, documents and/or affidavits and counter affidavits when it is clear that "except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Rule 34, Rules of Court). By genuine issue is meant an issue of fact which calls for the presentation of evidence (*Cadirao v. Estenzo*, 132 SCRA 93) as distinguished from an issue which is sham, fictitious, contrived, set up in bad faith, or patently unsubstantial as not to constitute a genuine issue for trial. (*Vergara, Sr. v. Suelto, et al.*, G.R. No. 74766 December 21, 1987, *Cadirao v. Estenzo supra*; *Mercado, et al. v. Court of Appeals*, G.R. No. L-44001 June 10, 1988) This can be determined by the court on the basis of the pleadings, admissions, documents, affidavits and/or counter-affidavits submitted by the parties to the court. (Section 3, Rule 34, Revised Rules of Court; *Vergara v. Suelto supra*; *Cadirao v. Estenzo supra*).

The pleadings, admission and affidavits submitted in court in this case reveal the following facts:

In August 1981, Chemark was granted by respondent bank a credit line of 4.0 million which was increased in February 1982 to P20.0 million, to wit; Export loan line-from P2.0 million to P15.0 million; Import LC/TR-from P2.0 million to P5.0 million. The terms and conditions of this P20 million credit are stated in the Credit Line Agreement dated February 8, 1982 (p. 254, Records). On this same day, February 8, 1982 the petitioners executed separate, but with similar terms, indemnity agreements whereby they bound themselves jointly and severally with Chemark to pay respondent bank upon demand and without excussion of whatever amount Chemark may be indebted to said bank by virtue of said credit line accommodation including the substitution, renewals, extensions, increases and other amendments thereof; and that upon default of Chemark, proper demands to pay were made on the petitioners to comply with their obligations. The three indemnity agreements binding each of the petitioners contain the following provisions:

"INDEMNITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS: That —

"DYNETICS, INC., a corporation duly organized and existing under and by virtue of the laws of the Philippines, with offices at the FTI Complex, Taguig, Metro Manila — for and in consideration of the credit accommodation in the total amount of TWENTY MILLION (P20,000,000.00) PESOS granted by the SECURITY BANK & TRUST COMPANY, a commercial banking corporation duly organized and existing under and by virtue of the laws of the Philippines, with offices at 6778 Ayala Avenue, Makati, Metro Manila, hereinafter referred to as the BANK, in favor of CHEMARK ELECTRIC MOTORS, INC., xxx a corporation duly organized and existing under and by virtue of the laws of the Philippines, with offices at the 2nd Floor, Princess Building, Esteban Street, Legaspi Village, Makati, Metro Manila, hereinafter referred to as the CLIENT, with the stipulated interests and charges thereon, evidenced by that/those certain AMENDED

CREDIT LINE AGREEMENT made and executed by and between the CLIENT and the BANK on even date—hereby bind(s) himself/themselves jointly and severally with the CLIENT in favor of the BANK for the payment, upon demand and without benefit of excussion, of whatever amount or amounts the CLIENT may be indebted to the BANK under and by virtue of aforesaid credit accommodation(s) including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of the aforesaid credit accommodation(s), as well as of the amount or amounts of such other obligations that the CLIENT may owe the BANK, whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the BANK, plus interest and expenses arising from any agreement or agreements that may have heretofore been made, or may hereafter be executed by and between the parties thereto, including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of the aforesaid credit accommodation(s), and further bind(s) himself/themselves with the CLIENT in favor of the BANK for the faithful compliance of all the aforesaid credit accommodation(s), all of which are incorporated herein and made part hereof by reference.

IN WITNESS WHEREOF, these presents are signed at Makati, Metro Manila on this 8[th] day of February, 1982.

xxx and/or its trust accounts funding this loan —

DYNETICS, INC.

(SGD.) ANTONIO M. GARCIA

(SGD.) DOMINADOR GAMEZ

Signed in the Presence of:

(SGD.) JONA C. CAJUYONG

(SGD.) TERESITA A. DE GUZMAN”

(Original Records, pp. 306-307)

Both Dynetics and Matrix were authorized by their respective board of directors to execute the indemnity agreements. In the case of Dynetics, Corporate Secretary Antonio Pastelero certified that during a meeting of the Board of Directors held on December 29, 1981 at its office address, it was unanimously adopted that the

corporation “x x x undertake to jointly and severally guarantee the credit line of CHEMARK ELECTRIC MOTORS, INC. in favor of the SECURITY BANK & TRUST COMPANY, in an amount not to exceed TWENTY MILLION (20,000,000.00) PESOS” (p. 264, Original Records). In the case of MATRIX, Corporate Secretary Rene J. Katigbak certified that at the meeting of the Board of Directors held on December 28, 1981, a resolution was unanimously adopted to have the corporation “x x x jointly and severally guarantee the credit line of CHEMARK ELECTRIC MOTORS, INC. in favor of the SECURITY BANK & TRUST COMPANY, IN AN AMOUNT NOT TO EXCEED TWENTY MILLION (P20,000,000.00) PESOS.” (Original Records, p. 262)

Chemark then availed of the P20.0 million credit line and executed two (2) promissory notes covering the following amounts drawn against the Export Loan Line, to wit:

“a) The sum of P6,350,750.00 drawn on March 23, 1983 with interest and penalty at the rate indicated in Promissory Note No. DLS/74/540/83 to mature on June 21, 1983” (p. 255, Original Records)

“b) The sum of P8,649,250.00 drawn on August 9, 1983 with interest and penalty at the rate indicated in Promissory Note No. DLS/74/1358/83 to mature on September 8, 1983” (p. 256, Original Records)

These obligations were not paid by Chemark when they became due. Hence, the respondent bank demanded from the petitioners under the indemnity agreements the payment of the outstanding obligations of Chemark.

Undoubtedly, the obligations of the petitioners to the respondents are clearly defined in the pleadings, admissions and the unrebutted affidavit of Ms. Marquez who handles the Chemark account.

Nevertheless, the petitioners insist that their complaint for declaratory relief tenders genuine issues which should be threshed out in a full-blown trial, to wit:

x x x

x x x

x x x

“11.1 First Defense: that the principal obligation has not yet matured because SBTC, agreed to allow Chemark a grace period within which to recover its liquidity and pay the debt.

11.1A This defense is pleaded in the following allegations of the Complaint:

“ ‘6. In the aftermath of the assassination of Senator Benigno S. Aquino, Jr., on August 21, 1983, the Philippine economy was plunged into a deep crisis. There was a massive flight of capital; the country’s balance of payments deteriorated; business and industry practically stood still; and the foreign debts of the country could not be serviced; banks collapsed, the exchange rate between the Philippine Peso and US Dollar tripled and there was practically no foreign exchange available in the country. The resultant extremely adverse economic conditions were not foreseen or contemplated by persons or entities who became parties to a contract. None of the parties to a contract expected nor did they intend that the terms and conditions they agreed upon would operate under extreme adverse economic conditions.

‘7. Because of the recent economic developments here and abroad, the failure of one of the stockholders of Chemark to comply with its commitments and Chemark’s inability to collect substantial receivables from its marketing representatives in the United States, Chemark started to suffer liquidity problems. As a consequence, it was unable to pay its creditors, among whom is the defendant. However, Chemark had more than sufficient assets to pay all its obligations including its obligations to the defendant, except that its liquidity problems prevented it from paying its creditors.

‘8. Chemark started negotiating with the defendant for the restructuring of its obligations to the latter. For this purpose, it submitted several proposed courses of action to the defendant whereby in time all of its obligations to the defendant would be paid.

‘9. In the meantime, the defendant demanded payment from the plaintiffs of the obligations of Chemark. Although plaintiffs are not legally liable for the payment of such obligations, they nonetheless, proposed to the defendant that the latter allow Chemark to recover its liquidity until such time that it shall have recovered its ability to pay its obligations. An agreement in principle was reached on this proposal and the defendant committed itself to allow Chemark to recover from its liquidity problems and to refrain from demanding payment of the loans of Chemark from the plaintiffs. (Italics supplied).” (Rollo, pp. 328-329).

X X X

X X X

X X X

“11.2 Second Defense: that SBTC and the petitioners did not intend to use petitioners’ Indemnity Agreements as collateral security for Chemark’s loan and that SBTC extended the loan solely on Chemark’s viability as a business enterprise.

“11.2A The Complaint pleads this defense in the following paragraphs:

‘5. *** when the defendant finally extended the loan to Chemark, it did so not because of the aforesaid instruments (referring to the Indemnity Agreements) previously executed by the (petitioners) which, in the meantime, were no longer valid and effective and intended by the parties as collateral security for future Chemark loans, but because of defendant’s assessment of the viability of Chemark’s business operations and interest income expected to be generated from the loans to Chemark.’ (Italics supplied) (Rollo, pp. 329-330)

X X X

X X X

X X X

“11.3 Third Defense: that Dynetic’s execution of the Indemnity Agreement is contrary to its purposes and is therefore ultra vires and unenforceable against it.

11.3A This defense is pleaded in the Complaint as follows:

’13. Plaintiffs are not liable to the defendant under the Indemnity Agreement instruments xxx for the following reasons:

X X X

X X X

X X X

(c) Assuming, without, conceding, that there is a valid consideration for the execution of the aforesaid instruments and that said instruments continued to be valid and effective when the defendant extended a credit accommodation to Chemark, said instruments are null and void insofar as Dynetics is concerned as it is ultra vires, being contrary to the purpose of Dynetics, its powers, licenses and franchise: (Italics supplied)” (Rollo, pp. 332-333)

We find no material questions of facts tendered by these defenses as to the main issues on whether or not the petitioners can be held liable to the respondent bank under their indemnity agreements.

The issue tendered in the first defense is “sham and fictitious” in the light of the terms of the indemnity agreements. Thus, under the indemnity agreements, the petitioners bound themselves jointly and severally with Chemark in favor of the respondent bank for the payment, upon demand and without benefit of excussion, of whatever amount or amounts Chemark may be indebted to the respondent bank under and by virtue of the credit accommodations. (Italics supplied) The economic conditions of the country are immaterial to the issue on the liability of the petitioners under their indemnity agreements.

The issue raised in the second defense, on whether or not the indemnity agreements were intended as collaterals for future Chemark loans is likewise sham and fictitious. Under the indemnity agreements, the petitioners bound themselves to pay whatever amount Chemark may be indebted to the bank “under and by virtue of aforesaid credit accommodation(s) including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of the aforesaid credit accommodation(s) x x x.” (Italics supplied)

The argument as to whether or not Dynetics’ execution of the indemnity agreement is contrary to its purposes and therefore ultra vires and unenforceable against it does not tender a genuine issue. The record shows that Dynetics was authorized to execute the indemnity agreements evidenced by the Corporate Secretary’s certificate (p. 38, 264 Original Records). This was not rebutted.

Indeed, we find no genuine issues raised in the complaint which can not be resolved by the pleadings, admissions and the affidavit of Charis Marquez submitted to the court. As the appellate court said:

“Dynetics, Garcia and Matrix attempted to avoid liability by trying hard to create factual issues fit for trial. The attempt is but a hodgepodge of legal arguments and conclusions which can be resolved without the rituals of trial. Thus, Dynetics urges that there is need for trial to determine whether it can be compelled to pay considering that SEC by its Order of September 27, 1984 has prohibited Chemark from paying its creditors. The issue is strictly legal and can be decided by determining the character of liability of Dynetics as joint and solidary debtor. Dynetics also argues that it raised the issue of lack of consideration which must be tried on the merits. The issue deserves scant consideration for the parties’ Indemnity Agreement specifies the consideration to be the grant of credit accommodation to Chemark in the sum of P20 M. Also what is posed is a legal issue resolvable in light of the character of Dynetics as a joint and solidary debtor. Dynetics also asseverates that it did not intend its Indemnity Agreement as collaterals for future Chemark loans. This is a clear pretense considering that again under its Indemnity Agreement, Dynetics clearly bound itself to pay whatever amount Chemark may be indebted to Security Bank ‘under and by virtue of the aforesaid credit accommodation(s) including the substitutions, renewals, extensions, increases, amendments, conversions and revivals of aforesaid credit accommodation(s.)’ There is nothing on record to substantiate the pretense of mistake of Dynetics.” (Rollo, p. 121)

x x x

x x x

x x x

“Then Dynetics argues that it has raised the issue of novation in light of the new loan contracts between Security Bank and Chemark. Again, the alleged new contracts are established facts and need not be the subject of trial. Upon their basis, the court can conclude whether there is novation of contract.” (Rollo, p. 125)

The petitioners also assail the awards of penalty charges at 36% per annum and interest at 18% and 24% per annum respectively on the loans. They contend that the interests are excessive and are not sustained by the evidence because the rate of interest stipulated in the promissory notes is only 11% per annum.

The lower courts based the computation of interests and penalty charges on the affidavit of Charis Marquez, Assistant Manager of the Corporate Banking Group of Security Bank & Trust Co. Marquez was the account officer who handled the account of Chemark. The pertinent portions of the affidavit read as follows:

“22. As per statements of Accounts dated June 15, 1985, under the said promissory notes (Annexes ‘2’ and ‘3’ hereof) covered by the subject Indemnity Agreements (Annexes ‘4’ ‘7’ and ‘8’ hereof), the total outstanding obligation of Dynetics, inc., Matrix Management & Trading Corporation and Antonio M. Garcia to Security Bank & Trust Co. was P38,189,038.27, including interest and charges. Attached hereto as Annexes ‘9’ and ‘10’ are copies of said Statements of Accounts dated June 15, 1985;

23. In the said Statements of Accounts dated June 15, 1985, we charged 18% and 25% per annum, respectively, because the subject loans (Annexes ‘2’ and ‘3’ hereof) were intended to be rediscounted at the Central Bank at 11% per annum. However, when Chemark Electric Motors, Inc. failed to give us the required letter of credit which was a requirement of the Central Bank, we charged them 18% and 24% instead of 11% interest per annum. These higher interest charges were based on and authorized under our Credit Proposal, copies of which are hereto attached as Annexes ‘11’ to ‘11-B’.” (Original Records, p. 252)

The increased interest rates are expressly provided for in the amended credit line agreement and in the two promissory notes executed by Chemark in favor of Security Bank & Trust Co. We find no reversible error in the award of interest.

The penalty of 36% per annum is provided in the promissory notes (Annexes “3”, “4” Affidavit), as follows:

“If this note is not fully paid when due, the undersigned shall pay, in addition to the stipulated interest, a penalty of 3% per month on the total outstanding principal and interest due and unpaid. x x x” (Original Records, p. 256)

The affidavit and supporting documents were attached to the respondent bank’s motion for summary judgment. The petitioners failed to oppose Marquez’ affidavit in their “Oppositions” to the motion for summary judgment. Neither did they submit counter-affidavits, as was their right, to oppose these amounts due from them including the increased interests and penalty charges. Under these circumstances, the respondent bank was entitled to summary judgment (*Philippine National Bank v. Phil. Leather Co., Inc.*, et al. 105 Phil. 400; See also *Mercado, et al. v. Court of Appeals* supra). As earlier stated, the lower court committed no reversible error in awarding the questioned interests. We cannot, however, agree with the appellate court as regards the award of penalty charges at 36% per annum.

Penalty interests are in the nature of liquidated damages (*Cumagun v. Philippine American Insurance Co., Inc.*, et al. G.R. No. 81453 August 15, 1988; *Lambert v. Fox*, 26 Phil. 588) and may be equitably reduced by the courts if they are iniquitous or unconscionable. (See Articles 1229, 2227, New Civil Code).

The records show that on the first loan, the principal of which is P6,350,750.00, the penalty charges as of June 15, 1985 are already equivalent to P6,774,378.06 (p. 265, Original Records) and that on the second loan, the principal

of which is P8,649,250.00 the penalty charges as of June 15, 1985 are equivalent to P8,662,008.53. (p. 266, Original Records) The P6,774,378.06 penalty charges in the first loan would have been earned by the private respondent after only 725 days (1 year and 360 days) of delay in the payment of the loan while the P8,662,008.53 penalty charges would have been earned by the private respondent after only 646 days (1 year and 281 days) of delay in the payment of the loan. The figures from 1985 to 1988 would amount to several times the principal loans.

We agree with the petitioner that the penalty charges are excessive and unconscionable. The interest charges are enough punishment for the petitioners' failure to comply with their obligation.

Finally, the petitioners question the amount for attorney's fees equivalent to 10% of their obligations.

Again, Chemark's promissory notes provide for the award of attorney's fees in case of default to pay the loans, to wit:

x x x

x x x

x x x

"If this note is not fully paid when due, the undersigned shall pay, in addition to the stipulated interest, a penalty of 3% per month on the total outstanding principal and interest due and unpaid. The undersigned shall also pay, as and for attorney's fee, a sum equivalent to 20% of the total amount due under this note plus expenses and costs of collection, in case this note is placed in the hands of an attorney for collection." (See Annexes '2', '3', Affidavit of Charis Marquez) (Original Records, p. 255)

The award for attorney's fees is justified and, in fact, is even lower than that agreed upon the parties.

WHEREFORE, the instant petition is DISMISSED. The questioned decision and resolution of the Court of Appeals are AFFIRMED except for the award of penalty charges which is stricken from the judgment. The Temporary Restraining Order issued on March 30, 1988 is LIFTED. Costs against the petitioners.

SO ORDERED.

Fernan, C.J., Bidin, and Cortes, JJ., concur.

Feliciano, J., no part. Petitioners are represented by formers' firm.

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