

FIRST DIVISION

[G.R. No. 148325, September 03, 2007]

REYNALDO P. FLOIRENDO, JR., PETITIONER, VS. METROPOLITAN BANK AND TRUST COMPANY, RESPONDENT.

DECISION

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision^[1] dated February 22, 2001 and Order^[2] dated May 2, 2001 rendered by the Regional Trial Court (RTC), Branch 39, Cagayan de Oro City in Civil Case No. 98-476, entitled, "*REYNALDO P. FLOIRENDO, JR., plaintiff, v. METROPOLITAN BANK AND TRUST COMPANY, ET AL., defendants.*"

Reynaldo P. Floirendo, Jr., petitioner, is the president and chairman of the Board of Directors of Reymill Realty Corporation, a domestic corporation engaged in real estate business. On March 20, 1996, he obtained a loan of P1,000,000.00 from the Metropolitan Bank and Trust Company, Cagayan de Oro City Branch, respondent, to infuse additional working capital for his company. As security for the loan, petitioner executed a real estate mortgage in favor of respondent bank over his four (4) parcels of land, all situated at Barangay Carmen, Cagayan de Oro City.

The loan was renewed for another year secured by the same real estate mortgage. Petitioner signed a promissory note dated March 14, 1997 fixing the rate of interest at "15.446% *per annum* for the first 30 days, subject to upward/downward adjustment every 30 days thereafter"; and a penalty charge of 18% *per annum* "based on any unpaid principal to be computed from date of default until payment of the obligation." The promissory note likewise provides that:

The rate of interest and/or bank charges herein stipulated, during the term of this Promissory Note, its extension, renewals or other modifications, may be increased, decreased, or otherwise changed from time to time by the Bank without advance notice to me/us in the event of changes in the interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines, in the rediscount rate of member banks with the Central Bank of the Philippines, in the interest rates on savings and time deposits, in the interest rates on the bank's borrowings, in the reserve requirements, or in the overall costs of funding or money;

I/We hereby expressly consent to any extension and/or renewal hereof in whole or in part and/or partial payment on account which may be requested by and/or granted to anyone of us for the payment of this note upon payment of the corresponding renewal or extension fee.

On July 11, 1997, respondent bank started imposing higher interest rates on petitioner's loan which varied through the months, in fact, as high as 30.244% in October 1997. As a result, petitioner could no longer pay the high interest rates charged by respondent bank. Thus, he negotiated for the renewal of his loan. Respondent bank agreed provided petitioner would pay the arrears in interest amounting to the total sum of P163,138.33. Despite payment by petitioner, respondent bank, instead of renewing the loan, filed with the Office of the Clerk of Court and Provincial Sheriff, RTC, Cagayan de Oro City a petition for foreclosure of mortgage which was granted. On August 17, 1998, the auction sale was set.

Prior thereto or on August 11, 1998, petitioner filed with the RTC, Branch 39, same city, a complaint for reformation of real estate mortgage contract and promissory note, docketed as Civil Case No. 98-476. Referring to the real estate mortgage and the promissory note as "contracts of adhesion," petitioner alleged that the increased interest rates unilaterally imposed by respondent bank are scandalous, immoral, illegal and unconscionable. He also alleged that the terms and conditions of the real estate mortgage and the promissory note are such that they could be interpreted by respondent bank in whatever manner it wants, leaving petitioner at its mercy. Petitioner thus prayed for reformation of these documents and the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction to enjoin the foreclosure and sale at public auction of his four (4) parcels of land.

On August 14, 1998, the RTC issued a TRO and on September 3, 1998, a writ of preliminary injunction.

In its answer to the complaint, respondent bank asserted that the interest stipulated by the parties in the promissory note is not *per annum* but on a month to month basis. The 15.446% interest appearing therein was good only for the first 30 days of the loan, subject to upward and downward adjustment every 30 days thereafter.

The terms of the real estate mortgage and promissory note voluntarily entered into by petitioner are clear and unequivocal. There is, therefore, no legal and factual basis for an action for reformation of instruments.

On February 22, 2001, the RTC rendered a Judgment (1) dismissing the complaint for reformation of instruments, (2) dissolving the writ of preliminary injunction and (3) directing the sale at public auction of petitioner's mortgaged properties. The RTC ruled:

In order that an action for reformation of an instrument may prosper, the following requisites must occur:

- 1.) There must have been a meeting of the minds upon the contract;
- 2.) The instrument or document evidencing the contract does not express the true agreement between the parties; and
- 3.) The failure of the instrument to express the agreement must be due to mistake, fraud, inequitable conduct or accident. (*National Irrigation Administration v. Gamit*, G.R. No. 85869, November 5, 1992)

A perusal further of the complaint and the evidences submitted by the parties convinced the court that there was certainly a meeting of the minds between the parties. Plaintiff and defendant bank entered into a contract of loan, the terms and conditions of which, especially on the rates of interest, are clearly and unequivocally spelled out in the promissory note. The court believes that there was absolutely no mistake, fraud or anything that could have prevented a meeting of the minds between the parties.

The RTC upheld the validity of the escalation clause, thus:

Escalation clauses are valid stipulations in commercial contract to maintain fiscal stability and to retain the value of money in loan term contracts, (Llorin v. CA, G.R. No. 103592, February 4, 1993).

x x x x x x x x x

x x x the Court has no other alternative to resolve Issue No. 1 that defendant bank is allowed to impose the interest rate questioned by plaintiff considering that Exhibit "B" and "B-1," which is Exhibit "1" and "1-A" of defendant bank is very clear that the rate of interest is 15.446% per annum for the first 30 days subject to upward/downward adjustment every 30 days thereafter.

On the issue of the validity of the foreclosure of the real estate mortgage, the RTC ruled that:

It is a settled rule that in a real estate mortgage when the obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold in view of applying the proceeds to the payment of the obligation (Estate Investment House v. CA, 215 SCRA 734).

On May 2, 2001, petitioner filed a motion for reconsideration but it was denied for lack of merit.

Hence, the instant petition.

The fundamental issue for our resolution is whether the mortgage contract and the promissory note express the true agreement between the parties herein.

Petitioner contends that the "escalation clause" in the promissory note imposing 15.446% interest on the loan "for the first 30 days **subject to upward/downward adjustment every 30 days thereafter**" is illegal, excessive and arbitrary. The determination to increase or decrease such interest rate is primarily left to the discretion of respondent bank.

We agree.

We hold that the increases of interest rate unilaterally imposed by respondent bank