

## SECOND DIVISION

[ G.R. No. 228435, June 21, 2017 ]

**KT CONSTRUCTION SUPPLY, INC., REPRESENTED BY WILLIAM GO, PETITIONER, VS. PHILIPPINE SAVINGS BANK, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This petition for review on *certiorari* seeks to reverse and set aside the April 22, 2016 Decision<sup>[1]</sup> and November 23, 2016 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 103037, which affirmed with modification the June 11, 2014 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 133, Makati City (RTC).

On October 12, 2006, petitioner KT Construction Supply, Inc. (*KT Construction*) obtained a loan from respondent Philippine Savings Bank (*PSBank*) in the amount of P2.5 million. The said loan was evidenced by a Promissory Note<sup>[4]</sup> executed on the same date. The said note was signed by William K. Go (*Go*) and Nancy Go-Tan (*Go-Tan*) as Vice-President/General Manager and Secretary/Treasurer of KT Construction, respectively. In addition, both Go and Go-Tan signed the note in their personal capacities.

The promissory note stipulated that the loan was payable within a period of sixty (60) months from November 12, 2006 to October 12, 2011. In addition, the said note provided for the payment of attorney's fees in case of litigation.

On January 3, 2011, PSBank sent a demand letter to KT Construction asking the latter to pay its outstanding obligation in the amount of P725,438.81, excluding interest, penalties, legal fees, and other charges. For its failure to pay despite demand, PSBank filed a complaint for sum of money against KT Construction.

#### *The RTC Ruling*

In its June 11, 2014 Decision, the RTC ruled in favor of PSBank. It opined that the promissory note expressly declared that the entire obligation shall immediately become due and payable upon default in payment of any installment. The trial court, nevertheless, reduced the interest rate and stipulated interest fees for being unconscionable. Thus, it declared KT Construction, Go and Go-Tan solidary liable and it ordered them to pay PSBank the loan in the amount of P725,438.81 subject to twelve percent (12%) interest *per annum* and P50,000.00 as attorney's fees. The *fallo* reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Philippine Savings Bank and against the defendant KT Construction Supply, Inc., represented by William Go and Nancy Go Tan, ordering the

defendant to pay the plaintiff, jointly and severally, the following:

- 1) The amount of Seven Hundred Twenty Five Thousand Four Hundred Thirty Eight Pesos and 81/100 (Php725,438.81) plus twelve percent (12%) interest per annum from January 13, 2011 until fully paid.
- 2) Php50,000.00 as and for attorney's fees.

SO ORDERED.<sup>[5]</sup>

Aggrieved, KT Construction appealed before the CA.

#### *The CA Ruling*

In its April 22, 2016 Decision, the CA affirmed the RTC decision. It explained that due to the acceleration clause, the loan became due and demandable upon KT Construction's failure to pay an installment. In addition, the CA disagreed that the promissory note was a contract of adhesion because KT Construction was not in any way compelled to accept the terms of the promissory note.

The CA held that the trial court rightfully awarded attorney's fees as the same was stipulated in the promissory note. It stated that the award of attorney's fees was in the nature of a penal clause, which was valid and binding between the parties. Likewise, the CA agreed that Go and Go-Tan were solidarity liable with KT Construction for the judgment amount because, when they signed the promissory note in their personal capacities, they became co-makers thereof. It added that the parties themselves stipulated in the promissory note that their liability was solidary. The CA disposed the case in this wise:

WHEREFORE, in view of the foregoing premises, the instant appeal is DENIED. The Decision of Branch 133 of the Regional Trial Court, Makati City, National Capital Judicial Region dated June 11, 2014 in Civil Case No. 11-060, is hereby AFFIRMED with the MODIFICATION that KT Construction, represented by William K. Go and Nancy Go-Tan, is ordered to pay PS Bank the amount equivalent to 6% per annum of the total of the monetary awards from the finality of this Decision until full payment thereof, as legal interest. In addition, the Clerk of Court of Branch 133 of the Regional Trial Court in Makati City, or his duly authorized deputy is DIRECTED to assess and collect the additional docket fees from Philippine Savings Bank as fees in lien in accordance with Section 2, Rule 141 of the Rules of Court.

SO ORDERED.<sup>[6]</sup>

KT Construction moved for reconsideration, but its motion was denied by the CA in its November 23, 2016 resolution.

Hence, this appeal instituted by KT Construction raising the following errors:

### **ISSUES**

**THE COURT OF APPEALS GRAVELY AND PALPABLY ERRED, AS DID THE LOWER COURT, IN HOLDING WILLIAM GO AND NANCY GO TAN JOINTLY AND SEVERALLY LIABLE WITH THE PETITIONER TO THE RESPONDENT BANK;**

**II**

**THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN NOT FINDING THAT THE COMPLAINT IN THIS CASE WAS PREMATURELY FILED;**

**III**

**THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN FAILING TO DECLARE THE PROMISSORY NOTE IN QUESTION AS NULL AND VOID FOR BEING A CONTRACT OF ADHESION; AND**

**IV**

**THE COURT OF APPEALS ERRED, AS DID THE LOWER COURT, IN AWARDING ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT BANK.<sup>[7]</sup>**

KT Construction insists that Go and Go-Tan could not be held solidarity liable for the judgment award because they were neither impleaded nor served with summons. Moreover, they did not voluntarily appear before the court. Thus, the courts never acquired jurisdiction over their persons.

KT Construction further asserts that the complaint was premature because it was not alleged that it had defaulted in paying any of the installments due and that it had received a demand letter from PSBank. It reiterates that the promissory note was null and void for being a contract of adhesion. KT Construction also argues that the award of attorney's fees was improper because it was contrary to the policy that no premium should be placed on the right to litigate.

In its Comment,<sup>[8]</sup> dated March 3, 2017, PSBank countered that Go and Go-Tan were solidarity liable with KT Construction because they signed the promissory note in favor of PSBank as officers of the corporation and in their personal capacities. It averred that the obligation was already due and demandable in view of the acceleration clause in the promissory note. Further, PSBank pointed out that the promissory note was consensual as the parties voluntarily signed the same. Finally, it claimed that attorney's fees were rightfully awarded because the same formed part of the terms and conditions of the loan agreement.

**The Court's Ruling**

The petition is partly meritorious.

It has long been settled that an acceleration clause is valid and produces legal effects.<sup>[9]</sup> In the case at bench, the promissory note explicitly stated that default in