

THIRD DIVISION

[G.R. No. 200299, August 17, 2016]

**SPOUSES JUAN CHUY TAN AND MARY TAN (DECEASED)
SUBSTITUTED BY THE SURVIVING HEIRS, JOEL TAN AND ERIC
TAN, PETITIONERS, VS. CHINA BANKING CORPORATION,
RESPONDENT.**

D E C I S I O N

PEREZ, J.:

For resolution of the Court is the instant Petition for Review on *Certiorari*^[1] filed by petitioner Spouses Juan Chuy Tan and Mary Tan (deceased) substituted by the surviving heirs, Joel Tan and Eric Tan, seeking to reverse and set aside the Decision^[2] dated 14 October 2011 and Resolution^[3] dated 24 January 2012 of the Court of Appeals (CA) in CA-G.R. CV. No. 87450. The assailed decision and resolution affirmed with modification the 29 December 2003 Decision^[4] of the Regional Trial Court (RTC) of Makati City, Branch 142 by ordering that the penalty surcharge of 24% per annum as stipulated in the contract of loan is reduced to 12% per annum.

The Facts

Petitioner Lorenze Realty and Development Corporation (Lorenze Realty) is a domestic corporation duly authorized by Philippine laws to engage in real estate business. It is represented in this action by petitioners Joel Tan and Eric Tan as substitutes for their deceased parents, Spouses Juan Chuy Tan and Mary Tan (Spouses Tan).

Respondent China Banking Corporation (China Bank), on the other hand, is a universal banking corporation duly authorized by *Bangko Sentral ng Pilipinas (BSP)* to engage in banking business.

On several occasions in 1997, Lorenze Realty obtained from China Bank various amounts of loans and credit accommodations in the following amounts:

DATE	PROMISSORY NOTE NOS.	PRINCIPAL AMOUNT
27 June 1997	BDC-0345	P1,600,000.00
30 July 1997	BDC-0408	1,000,000.00
13 August 1997	BDC-0422	1,100,000.00
18 August	BDC-0432	1,960.000.00

1997		
21 August 1997	BDC-0438	1,490,000.00
2 September 1997	BDC-0455	2,200,000.00
1 October 1997	BDC-0506	1,700,000.00
20 November 1997	DLS-0316	2,800,000.00
18 June 1997	DLS-0324	5,500,000.00
18 June 1997	DLS-0325	2,675,000.00
04 July 1997	DLS-0360	7,000,000.00
24 July 1997	DLS-0403	4,000,000.00
28 August 1997	BDC-0449	1,550,000.00
20 November 1997	BDC-0340	1,550,000.00
8 September 1997	BDC-0466	1,262,500.00
31 September 1997	BDC-0479	662,500.00
10 July 1997	DLS 0379	33,000,000.00
TOTAL		P71,050,000.00

It is expressly stipulated in the Promissory Notes that Lorenze Realty agreed to pay the additional amount of **1/10 of 1% per day of the total amount of obligation due as penalty** to be computed from the day that the default was incurred up to the time that the loan obligations are fully paid. The debtor also undertook pay **an additional 10% of the total amount due including interests, surcharges and penalties as attorney's fees.**

As a security for the said obligations, Lorenze Realty executed Real Estate Mortgages (REM) over 11 parcels of land covered by Transfer Certificates of Title (TCT) Nos. B-44428, B-44451, B-44452, V-4J275: V-44276, V-44277, V-44278, V-44280, V-44281, V-44283 and V-44284 registered by the Registry of Deeds of Valenzuela City.

Subsequently, Lorenze Realty incurred in default in the payment of its amortization prompting China Bank to cause the extra-judicial foreclosure of the REM constituted

on the securities after the latter failed to heed to its demand to settle the entire obligation.

After the notice and publication requirements were complied with, the mortgaged properties were sold at a public auction wherein China emerged as the highest bidder for the amount of P85,000,000.00 as evidenced by a certificate of sale.

As shown by the Statement of Account dated 10 August 1998, the indebtedness of Lorenze Realty already reached the amount P114,258,179.81, broken down as follows:

Principal Amount	P71,050,000.00
Interest	13,521,939.31
Penalties	19,763,257.50
Registration Expenses	9,542,013.00
Filing Fee	351,300.00
Publication Fee	25,970.00
Sheriffs Fee	2,000.00
Posting Fee	700.00

After deducting from the total amount of loan obligation the P85,000,000.00 proceeds of the public sale, there remains a balance in the amount of P29,258,179.81. In its effort to collect the deficiency obligation, China Bank demanded from Lorenze Realty for the payment of the remaining loan but such demand just went to naught.

Consequently, China Bank initiated an action for the collection of sum of money against the Lorenze Realty and its officers, namely, Lawrence Ong, Victoria Ong, Juan Chuy Tan and Mary Tan before the RTC of Makati City, Branch 142. In its Complaint docketed as Civil Case No. 98-3069, China Bank alleged that it is entitled to deficiency judgment because the purchase price of the securities pledged by the debtor is not sufficient to settle the entire obligation incurred by the latter including the interest, penalties and surcharges that had accrued from the time of default. China Bank thus prayed that defendants be ordered to pay the amount of P29,258,179.81, representing the deficiency in its obligation in accordance with the express terms of the promissory notes.

While conceding that they have voluntarily signed the promissory notes, defendants, for their part, disclaim liability by alleging that the surety agreements did not express the true intention of the parties. The officers of the corporation who represented Lorenze Realty below claimed that they just signed the surety contracts without reading the fine terms stipulated therein because they were made to believe by the bank manager that the collaterals they offered to obtain the loans were already sufficient to cover the entire obligation should they incur in default. The collection suit for the deficiency obligation came as a surprise to them after China Bank managed to successfully foreclose the securities of the obligation and purchased for itself the mortgaged properties at the public sale. In addition, defendants averred that the penalty in the amount of 1/10 of 1% per day of the

total amount due is usurious and shocking to the conscience and should be nullified by the court. Finally, they prayed that the RTC declare Lorenze Realty's obligation fully settled on account of the sale of the securities.

On 29 December 2003, the RTC found in favor of China Bank declaring the defendants jointly and severally liable for the amount of P29,258,179.81 representing the deficiency judgment. It was held by the trial court that Lorenze Realty, "[a]fter having voluntarily signed the surety agreements, cannot be discharged from the consequences of the undertaking because the terms and conditions contained therein is considered to be the law between the parties as long as it is not contrary to law, morals, good customs and public policy. The mistake, misapprehension and ignorance of the defendants as to the legal effects of the obligations are no reason for relieving them of their liabilities." The RTC disposed in this wise:

WHEREFORE, premises considered, judgment is rendered ordering the defendants to pay [China Bank], jointly and severally, the following:

1. [T]he amount of £29,258,179.81 representing the deficiency claim as of August 10, 1998 plus penalties accruing thereafter at the rate of 2% per month until fully paid;
2. 5% of the total amount due as Attorney's [F]ees;
3. Expenses of litigation and cost of suit.

SO ORDERED.^[5]

On appeal, the CA affirmed with modification the judgment of the RTC by reducing the rate of the penalty surcharge from 24% per annum to 12% per annum, and, likewise the award of attorney's fees was reduced from 5% to 2% of the total amount due. The appellate court deemed that the rate of penalty agreed by the parties is unconscionable under the circumstances considering that the obligation was already partially satisfied by the sale of the securities constituted for the loan and resolved to fairly and equitably reduce it to 12% per annum. The decretal portion of the appellate court's decision reads:

WHEREFORE, premises considered, the assailed Decision dated December 29, 2003 of the Regional Trial Court of Makati City, Branch 142 is **AFFIRMED with MODIFICATION** in that the penalty surcharge of 2% per month or 24% per annum is reduced to 12% per annum and, likewise, the award of attorney's fees is reduced from 5% to 2% of the total amount due.

No pronouncement as to costs.

SO ORDERED.

In a Resolution dated 24 January 2012, the CA refused to reconsider its earlier decision by denying the Motion for Reconsideration interposed by Lorenze Realty.

The Issue

Dissatisfied with the disquisition of the Court of Appeals, Lorenze Realty elevated the