

## SECOND DIVISION

[ G.R. No. 215954, August 01, 2016 ]

**SPOUSES JOVEN SY AND CORAZON QUE SY, PETITIONERS, VS.  
CHINA BANKING CORPORATION, RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court,<sup>[1]</sup> filed by Spouses Joven Sy and Corazon Que Sy (*petitioners*), assails the December 15, 2014 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 97482, which affirmed the May 21, 2010 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 139, Makati City (RTC), in Civil Case No. 04-1215, ordering petitioners to pay respondent China Banking Corporation (*China Bank*) the deficiency balance of their loan obligation.

#### Factual Antecedents

Three promissory notes (PN)<sup>[4]</sup> were executed by petitioners in favor of China Bank. The first amounted to P8,800,000.00, designated as PN No. 5070016047; the second covering P5,200,000.00, designated as PN No. 5070016030; and the third involving P5,900,000.00, designated as PN No. 5070014942. Under PN Nos. 5070016047 and 5070016030, petitioners promised to pay China Bank the due amounts within a period of 351 days on or before June 14, 2002 with interest payable in advance for 15 days from June 28, 2001 to July 13, 2001 at 16% per annum, with the succeeding interest payable starting July 13, 2001 and every month thereafter until fully paid at the prevailing rate as determined on the date of interest payment. In PN No. 5070014942, petitioners promised to pay the principal amount at the rate of P100, 000.00 monthly for a period of 59 months with interest payable monthly at prevailing rates, initially at 23.5%. Part of the terms of the PNs was an agreement for petitioners to pay jointly and severally penalty charges equivalent to 1/10 of 1% per day of the total amount due should they default, payable and due from the date of default until fully paid. Petitioners also agreed to pay 10% of the total amount due as attorney's fees. The said PNs were also secured by a real estate mortgage<sup>[5]</sup> over petitioners' property covered by TCT No. N-155159.

Petitioners, however, failed to comply with their obligation which eventually amounted to a total of P28,438,791.69. This forced China Bank to foreclose the mortgaged property on February 26, 2004. The foreclosure sale yielded P14,500,000.00 only. There being a deficiency, China Bank demanded in a letter,<sup>[6]</sup> dated April 19, 2004, that petitioners settle the balance in the amount of P13,938,791.69, but to no avail.

China Bank then filed its complaint for sum of money before the RTC praying that

judgment be rendered ordering petitioners to pay, jointly and severally, the amount of P13,938,791.69 representing the amount of deficiency, plus interest at the legal rate, from February 26, 2004 until fully paid; an additional amount equivalent to 1/10 of 1% per day of the total amount, until fully paid, as penalty; an amount equivalent to 10% of the said amounts as attorney's fees and expenses of litigation; and costs of suit.

During the trial, petitioners failed to appear despite notice for the initial presentation of defendants' evidence. Thus, in its Order,<sup>[7]</sup> dated February 16, 2010, the RTC considered the case submitted for decision on the basis of the evidence presented by China Bank.

#### *Ruling of the RTC*

In its May 21, 2010 Decision, the RTC ruled in favor of China Bank, recognizing the latter's right to the deficiency balance in the amount of P13,938,971.69, as per the computations adduced by China Bank.

It, however, held as unconscionable the penalty charges stipulated in the PNs amounting to 1/10 of 1% per day or 3% per month, compounded. Anchoring on its authority under Art. 1229<sup>[8]</sup> of the Civil Code, the RTC reduced the penalty charges to only 1% on the principal loan for every month of default. It also sustained the payment of attorney's fees but modified the amount for being unreasonable to only P100,000.00 instead of the 10% of the total amount due. Thus, it disposed:

**WHEREFORE, premises considered**, judgment is hereby rendered in favor of plaintiff China Banking Corporation and against the defendant spouses Joven Sy and Corazon Que Sy ordering the latter to jointly and severally pay the former the following:

- (a) The deficiency balance of P13,938,791.69 plus interest thereon at the rate of 12% per annum from the date of extrajudicial demand on 19 April 2004;
- (b) A 1% penalty on the said deficiency balance for every month of default;
- (c) The amount of P100,000.00 as and by way of attorney's fees; and
- (d) Costs of suit.

Furnish copies of this Decision to the parties and their respective counsels.

**SO ORDERED.**<sup>[9]</sup>

Petitioners moved for reconsideration, but their motion was denied by the RTC in its June 7, 2011 Order.<sup>[10]</sup> Petitioners then appealed the case before the CA.

#### *Ruling of the CA*

On December 15, 2014, the CA affirmed the ruling of the RTC explaining that China Bank was able to preponderantly support its claims; that petitioners should indeed pay the balance plus 12% legal interest there being no agreement as to the rate; and that the penalty charges of 1% for every month of default modified by the RTC

was proper because the agreed rate was iniquitous and unconscionable.<sup>[11]</sup>

Petitioners did not move for reconsideration, but instead filed this petition before this Court, with the following

### **ASSIGNMENT OF ERRORS**

1. The Honorable Court of Appeals in affirming the Decision of the Honorable Lower Court, failed to appreciate the fact that after finding that the imposition by the Respondent of compounded penalty of 3% monthly on the loan as unconscionable and reduced the same to 1% per month, overlooked the fact that on Exhibit E, for the Respondent to arrive at the amount of their claim P28,438,791.69 as of February 26, 2004 they have imposed compounded penalties of 3% monthly. If the proper imposition of 1% monthly be made then the deficiency balance should be much lower if not nil;
2. The Honorable Court of Appeals failed to appreciate the fact that after finding that the imposition of attorney's fees of 10% on the total obligation have overlooked the fact that on exhibit E, for the Respondent to arrive at the amount of their claim P28,438,791.69 as of February 26, 2004 they have imposed P2,585,344.70!!!! as attorney's fees, the fee which the Honorable Court of Appeals have substantially reduced to P100,000.00 only;
3. If the penalties imposed by the Promissory Note and the Real Estate Mortgage as well as attorney's fees were struck down as unconscionable, then the terms and conditions of the Promissory Note is null and void and the very obligation must be recomputed at legal interest of 12% only;
4. The case must therefore be remanded back for the computation of the proper amount of the obligation and as to the deficiency.<sup>[12]</sup>

Petitioners ascribe as error, on the part of the CA, its computation of the penalty charges because the basis for arriving at the deficiency balance was still the agreed rate of 1/10 of 1% per day instead of the 1% per month of default imposed by the RTC. They also argue that the attorney's fees should have been computed on the basis of the modified amount and that because the penalties were struck down as unconscionable, then the terms and conditions of the PNs should have been declared null and void as a whole.

China Bank counters that petitioners violated the basic rules of fair play and justice as the issues raised were made only on appeal; that such issues, being factual in nature, were beyond the province of this Court because only questions purely of law may be raised at this stage; and that the RTC and the CA did not misappreciate the evidence, law and jurisprudence as their conclusions were supported by substantial evidence and jurisprudential rulings. China Bank, thus, prays for the denial of the petition claiming lack of merit.<sup>[13]</sup>

### **The Court's Ruling**

A reading of the positions of the parties reveal that the issue at hand centers on the mathematical correctness of the computations in determining the amount of petitioners' deficiency balance. Stated another way, the issue is simply whether the CA erred in finding no reversible error on the part of the RTC in affirming the computed amount of petitioners' liability as stated in the dispositive portion of the RTC decision. Stripped of non-essentials, petitioners question why the dispositive portion of the RTC ruling, which was affirmed by the CA, declared that the amount due remained at P13,938,791.69, computed net of the foreclosure earnings, considering that before arriving at that figure, the penalty charges on each PN were based on the agreed 1/10 of 1% rate per day instead of the 1% rate per month as reduced by the RTC as well as the fact that attorney's fees were computed at 10% of the total amount due instead of the reduced amount of P100,000.00. To petitioners, the CA should have noticed the inconsistency and corrected the same in reviewing the case. For all these reasons, petitioners now seek the remand of the case to the RTC for re-computation.

The petition is partly meritorious.

Mathematical computations are painted in jurisprudence as factual determinations<sup>[14]</sup> and, thus, generally beyond the province of this Court as it is not a trier of facts.<sup>[15]</sup> Thus, when supported by substantial evidence, the mathematical computations of the appellate court and the lower court are conclusive and binding on the parties and are not reviewable by this Court. The Court, however, has the option to decide the case in the exercise of its sound discretion and despite having to deal with factual issues in an appeal by *certiorari*, taking into account the attendant circumstances,<sup>[16]</sup> particularly if the following conditions exist:

- 1. When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;**
- 2. When the inference made is manifestly mistaken, absurd or impossible;**
3. Where there is a grave abuse of discretion;
- 4. When the judgment is based on a misapprehension of facts;**
- 5. When the findings of fact are conflicting;**
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
7. When the findings are contrary to those of the trial court;
8. When the findings of fact are conclusions without citation of specific evidence on which they are based;
9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>[17]</sup>

Hence, if the lower court committed palpable error or gravely misappreciated facts in arriving at a conclusion, this Court has the full authority to pass upon issues despite being factual in character. In this case, petitioners request that this Court do the same arguing that the RTC and the CA misappreciated the facts and committed a blatant error in coming up with the amounts they should be held liable to China Bank.

The Court agrees in part.

Undisputed is the fact that China Bank only sought the collection of the deficiency balance from petitioners to cover the amounts petitioners promised to pay as evinced by three PNs. In other words, China Bank was no longer collecting under the terms of the three PNs issued by petitioners, but was anchoring all its claims on its right to the deficiency balance owed by petitioners after failing to recover the full amount due from the foreclosure sale of the mortgaged property.

It finds similarity in the case of *BPI Family Savings Bank, Inc. v. Spouses Avenido*,<sup>[18]</sup> where the petitioner therein sought to collect from the respondents the deficiency balance after also failing to recover in a foreclosure sale the full amount of the obligations due. There, two figures were found to be material by the Court. *First* was the amount of the outstanding obligation, inclusive of interests, penalty and charges. *Second* was the value to be attributed to the foreclosed property, which would be applied against the outstanding loan obligation of the respondents to the petitioner. The only perceptible difference is that the issue there centered on the value of the foreclosed property to be imputed against the outstanding loan, while here, the questioned value is the outstanding obligation itself.

In its submission to the RTC, China Bank stated that petitioners' deficiency balance as of February 26, 2004, the date of the foreclosure sale, amounted to P13,938,791.69. The RTC later ruled in China Bank's favor and declared petitioners liable for that amount plus interest thereon at the rate of 12% *per annum* from the date of the extrajudicial demand on April 19, 2004.

Apparently, the said amount was arrived at after the computation of the component penalty charges due at the agreed rate of 1/10 of 1% per day of default, plus the principal amount and then added thereto the attorney's fees at the agreed rate of 10% of the total obligation, and the subtraction from the computed amount of the net proceeds realized from the foreclosure. Obvious also is the fact that the interest charges forming part of the deficiency balance were computed at the prevailing interest rate on a daily basis using 360 days as divisor per China Bank's computation. All these were blatantly erroneous computations for the following reasons:

*First* on the penalty charges, it is clear that the computation should be at the rate of 1% per month as held by the RTC instead of 1/10 of 1% per day or 3% per month compounded as agreed upon by the parties. The RTC explicitly declared such agreed rate as unconscionable. It wrote: