

SECOND DIVISION

[G.R. No. 171925, July 23, 2010]

SOLIDBANK CORPORATION, (NOW METROPOLITAN BANK AND TRUST COMPANY), PETITIONER, VS. PERMANENT HOMES, INCORPORATED, RESPONDENT.

DECISION

CARPIO, J.:

G.R. No. 171925 is a petition for review^[1] assailing the Decision^[2] promulgated on 29 June 2005 by the Court of Appeals (appellate court) as well as the Resolution^[3] promulgated on 14 March 2006 in CA-G.R. CV No. 75926. The appellate court granted the petition filed by Permanent Homes, Incorporated (Permanent) and reversed the decision of the Regional Trial Court of Makati City, Branch 58 (trial court) dated 5 July 2002 in Civil Case No. 98-654. The appellate court ordered Solidbank Corporation (Solidbank) and Permanent to enter into an express agreement about the applicable interest rates on Permanent's loan. Solidbank was also ordered to render an accounting of Permanent's payments, not to impose interest on interest upon Permanent's loans, and to release the remaining amount available under Permanent's omnibus credit line.

The Facts

The appellate court narrated the facts as follows:

The records disclose that PERMANENT HOMES is a real estate development company, and to finance its housing project known as the "Buena Vida Townhomes" located within Merville Subdivision, Paraxiaque City, it applied and was subsequently granted by SOLIDBANK with an "Omnibus Line" credit facility in the total amount of SIXTY MILLION PESOS. Of the entire loan, FIFTY NINE MILLION as ^[sic] time loan for a term of up to three hundred sixty (360) days, with interest thereon at prevailing market rates, and subject to monthly repricing. The remaining ONE MILLION was available for domestic bills purchase.

To secure the aforesaid loan, PERMANENT HOMES initially mortgaged three (3) townhouse units within the Buena Vida project in Paraxiaque. At the time, however, the instant complaint was filed against SOLIDBANK, a total of thirty six (36) townhouse units were mortgaged with said bank.

Of the 60 million available to PERMANENT HOMES, it availed of a total of 41.5 million pesos, covered by three (3) promissory notes, which contain

the following provisions, thus:

"xxx

5. We/I irrevocably authorize Solidbank to increase or decrease at any time the interest rate agreed in this Note or Loan on the basis of, among others, prevailing rates in the local or international capital markets. For this purpose, We/I authorize Solidbank to debit any deposit or placement account with Solidbank belonging to any one of us. The adjustment of the interest rate shall be effective from the date indicated in the written notice sent to us by the bank, or if no date is indicated, from the time the notice was sent.

6. Should We/I disagree to the interest rate adjustment, We/I shall prepay all amounts due under this Note or Loan within thirty (30) days from the receipt by anyone of us of the written notice. Otherwise, We/I shall be deemed to have given our consent to the interest rate adjustment."

Contrary, however, to the specific provisions as afore-quoted, there was a standing agreement by the parties that any increase or decrease in interest rates shall be subject to the mutual agreement of the parties.

For the first loan availment of PERMANENT HOMES on March 20, 1997, in the amount of 19.6 MILLION, from the initial interest rate of **14.25%** per annum (p.a.), the same was increased **15%** p.a. effective May 19, 1997; it was again increased to **26% p.a.** effective July 18, 1997. It was thereafter reduced to **20% p.a.** effective August 18, 1997, and then increased to **24% p.a.** effective September 17, 1997. The rate was increased further to **30% p.a.** effective October 17, 1997, then decreased to **27% p.a.** on November 17, 1997, and again increased to **34% p.a.** effective December 17, 1997. The rate then decreased to **30% p.a.** on January 16, 1998.

For the second loan availment in the amount of 18 million, the rate was initially pegged at **15.75% p.a.** on June 24, 1997. A month later, the rate increased to **23.5% p.a.** It thereafter decreased to **20% p.a.** effective August 24, 1997, but again increased to **22.5% p.a.** effective September 24, 1997. For the next month, the rate surged to **30% p.a.**, and decreased to **27% p.a.** for the month of November. The rate again surged to **34% p.a.** for the month of December, and was decreased to **30% p.a.** from January 22, 1998 to February 20, 1998.

For the third loan availment on July 15, 1997, in the amount of 3.9 million, the interest rate was initially pegged at **35% p.a.**, but this was decreased to **21% p.a.** from August 14 until September 11, 1997. The rate increased slightly to **23% p.a.** on September 12, 1997, and surged to **27% p.a.** on October 13, 1997. The rate went down slightly to **27% p.a.** for the month of November, and to **26% p.a.** for the month of

December. The rate, however, again surged to **30% p.a.** on January 12, 1998 before settling at **29% p.a.** for the month of February.

It is [Permanent's] stand that SOLIDBANK unilaterally and arbitrarily accelerated the interest rates without any declared basis of such increases, of which PERMANENT HOMES had not agreed to, or at the very least, been informed of. This is contrary to their earlier agreement that any interest rate changes will be subject to mutual agreement of the parties. PERMANENT HOMES further admits that it was not able to protest such arbitrary increases at the time they were imposed by SOLIDBANK, for fear that SOLIDBANK might cut off the credit facility it extended to PERMANENT HOMES. Permanent was then in the midst of the construction of its project in Merville, Paraxiaque City, and SOLIDBANK knew that it was relying substantially on the credit facility the latter extended to it.

[Permanent] thus filed a case before the trial court seeking the following: (1) the annulment of the increases in interest rates on the loans it obtained from SOLIDBANK, on the ground that it was violative of the principle of mutuality of agreement of the parties, as enunciated in Article 1409 of the New Civil Code, (2) the fixing of the interest rates at the applicable interest rate, and (3) for the trial court to order SOLIDBANK to make an accounting of the payments it made, so as to determine the amount of refund PERMANENT is entitled to, as well as to order SOLIDBANK to release the remaining available balance of the loan it extended to PERMANENT. In addition, [Permanent] prays for the payment of compensatory, moral and exemplary damages.

SOLIDBANK, on the other hand, avers that PERMANENT HOMES has no cause of action against it, in view of the pertinent provisions of the Omnibus Credit Line and the promissory notes agreed to and signed by PERMANENT HOMES. Thus, in accordance with said provisions, SOLIDBANK was authorized to, upon due notice, periodically adjust the interest rates on PERMANENT HOMES' loan availments during the monthly interest repricing dates, depending on the changes in prevailing interest rates in the local and international capital markets. In fact, SOLIDBANK avers that four (4) days before July 15, 1997, the Bangko Sentral ng Pilipinas (BSP) declared that it could no longer support the Philippine currency from external speculative forces, hence, the local currency was allowed to seek its own exchange rate level. As a result of the volatile exchange rate ratio, banks were then hesitant to extend loans, and in some instances that it granted loans, they had to ensure that they will not be at the losing end of the deal, so to speak, by the repricing of the interest rates every month. SOLIDBANK insists that PERMANENT HOMES should not be allowed to renege on its contractual obligations, as it freely and voluntarily bound itself to the provisions of the Omnibus Credit Line and the promissory notes.

PERMANENT HOMES presented as witnesses Jacqueline S. Lim, its Vice President and Chief Financial Officer, Engr. Rey A. Romasanta, its Executive Vice President and Chief Operating Officer, and Martha Julia Flores, its Treasury Officer.

On March 24, 1998, the trial court issued a temporary restraining order (TRO), after a summary hearing, which enjoined SOLIDBANK from implementing and collecting the increases in interest rates and from initiating any action, including the foreclosure of the mortgaged properties.

Ms. Lim's testimony centered on PERMANENT HOMES' allegations that the repricing of the interest rates was done by SOLIDBANK without any written agreement entered into between the parties. In fact, Ms. Lim accounted that SOLIDBANK will merely advise them of the interest rate for the period, after said period had already commenced, and at times very late in the period, by fax messages. When PERMANENT HOMES called SOLIDBANK's attention to the seemingly surging rates it imposed on its loan, SOLIDBANK will merely answer that it was the bank's policy, without offering any basis for such increase. Furthermore, Ms. Lim also mentioned SOLIDBANK's alleged practice of imposing interest on unpaid interest, at the highest rate of 30% p.a.. Ms. Lim also presented a tabulation, which presents the number of days their billing statements were sent late, from the time the interest period started. It is PERMANENT HOMES' stand that since the purpose of the billing statements was to inform them **beforehand** of the applicable interest rate for the period, the late billings will clearly show SOLIDBANK's arbitrary imposition of the repriced interest rates, as well as its indifference to PERMANENT HOMES' plight.

To illustrate, for the first loan availment in the amount of P19.6 million, the billing statements which should have notified PERMANENT HOMES of the repriced interest rates were faxed to PERMANENT HOMES between eighteen (18) to thirty-three (33) days late. For the second loan availment in the amount of P18 million, the faxed billings were late between six (6) to twenty-one (21) days, and one instance where PERMANENT HOMES received no billing at all. For the third loan availment in the amount of P3.9 million, the faxed billings were late between seven (7) to twenty-nine (29) days, and also an instance where PERMANENT HOMES received no billing at all.

This practice, according to Ms. Lim, clearly affected its operations, as the completion of its construction project was unnecessarily delayed, to its prejudice and its buyers. This was the import of the testimony of PERMANENT HOMES' second witness, Engr. Rey A. Romasanta. According to Engr. Rey, the target date of completion was August 1997, but in view of the shortage of funds by reason of SOLIDBANK's refusal for PERMANENT HOMES to make further availments on its omnibus credit line, the project was completed only on February 1998.

PERMANENT HOMES' third and final witness was Martha Julia Flores, its Treasury Officer, who explained that as such, it was her who received the late billings from SOLIDBANK. She would also call up SOLIDBANK to ask what the repriced interest rate for the coming interest period, to no avail, as SOLIDBANK will merely fax its billings almost always, as abovementioned, late in the period. Ms. Flores admitted that she

prepared the tabulation presented before the court, which showed how late SOLIDBANK's billings were sent to PERMANENT HOMES, as well as the computation of interest rates that SOLIDBANK had allegedly overcharged on its loan, vis-a-vis the average of the high and the low published lending rates of SOLIDBANK.

SOLIDBANK, to establish its defense, presented its lone witness, Mr. Cesar Lugtu, who testified to the effect that, contrary to PERMANENT HOMES' assertions that it was not promptly informed of the repriced interest rates, SOLIDBANK's officers **verbally advised** PERMANENT HOMES of the repriced rates at the start of the period, and even added that their transaction[s] were based on trust. Aside from these allegations, however, no written memorandum or note was presented by SOLIDBANK to support their assertion that PERMANENT HOMES was timely advised of the repriced interests.^[4]

The Trial Court's Ruling

On 5 July 2002, the trial court promulgated its Decision in favor of Solidbank. The trial court ratiocinated and ruled thus:

It becomes crystal clear that there is sufficient proof to show that the instant case was instituted by [Permanent] as an after-thought and as an obvious subterfuge intended to completely lay on the defendant the blame for the debacle of its Buena Vida project. An afterthought because the records of the case show that the complaint was filed in March 16, 1998, already after it was having difficulty making the amortization payments, the last of which being in February 1998. A subterfuge because plaintiff, instead of blaming itself and its own business judgment that went sour, would rather put the blame on [Solidbank], taking advantage of every conceivable gray area of its contract with [Solidbank] to avoid its own liabilities. In fact, this complaint was made the very basis for [Permanent] to altogether stop the payment of its loan from [Solidbank] including the interest payment (*TSN, May 07, 1998, p. 60*).

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WHEREFORE, finding the complaint not impressed with merit, judgment is hereby rendered dismissing the said complaint. The Counterclaim is likewise dismissed for lack of evidence to support the same.

SO ORDERED.^[5]

Permanent filed an appeal before the appellate court.

The Appellate Court's Ruling

The appellate court granted Permanent's appeal, and set aside the trial court's ruling. The appellate court not only recognized the validity of escalation clauses, but also underscored the necessity of a basis for the increase in interest rates and of the