

## THIRD DIVISION

[ G.R. No. 165116, August 04, 2009 ]

**MARIA SOLEDAD TOMIMBANG, PETITIONER, VS. ATTY. JOSE TOMIMBANG, RESPONDENT.**

### DECISION

**PERALTA, J.:**

This resolves the petition for review on *certiorari* under Rule 45 of the Rules of Court, praying that the Decision<sup>[1]</sup> dated July 1, 2004 and Resolution<sup>[2]</sup> dated August 31, 2004 promulgated by the Court of Appeals (CA), be reversed and set aside.

The antecedent facts are as follows.

Petitioner and respondent are siblings. Their parents donated to petitioner an eight-door apartment located at 149 Santolan Road, Murphy, Quezon City, with the condition that during the parents' lifetime, they shall retain control over the property and petitioner shall be the administrator thereof.

In 1995, petitioner applied for a loan from PAG-IBIG Fund to finance the renovations on Unit H, of said apartment which she intended to use as her residence. Petitioner failed to obtain a loan from PAG-IBIG Fund, hence, respondent offered to extend a credit line to petitioner on the following conditions: (1) petitioner shall keep a record of all the advances; (2) petitioner shall start paying the loan upon the completion of the renovation; (3) upon completion of the renovation, a loan and mortgage agreement based on the amount of the advances made shall be executed by petitioner and respondent; and (4) the loan agreement shall contain comfortable terms and conditions which petitioner could have obtained from PAG-IBIG.<sup>[3]</sup>

Petitioner accepted respondent's offer of a credit line and work on the apartment units began. Renovations on Units B to G were completed, and the work has just started on Unit A when an altercation broke out between herein parties. In view of said conflict, respondent and petitioner, along with some family members, held a meeting in the house of their brother Genaro sometime in the second quarter of 1997. Respondent and petitioner entered into a new agreement whereby petitioner was to start making monthly payments on her loan. Upon respondent's demand, petitioner turned over to respondent all the records of the cash advances for the renovations. Subsequently, or from June to October of 1997, petitioner made monthly payments of P18,700.00, or a total of P93,500.00. Petitioner never denied the fact that she started making such monthly payments.

In October of 1997, a quarrel also occurred between respondent and another sister, Maricion, who was then defending the actions of petitioner. Because of said incident, they had a hearing at the *Barangay*. At said hearing, respondent had the occasion to

remind petitioner of her monthly payment. Petitioner allegedly answered, "*Kalimutan mo na ang pera mo wala tayong pinirmahan. Hindi ako natatakot sa 'yo!*" Thereafter, petitioner left Unit H and could no longer be found. Petitioner being the owner of the apartments, renovations on Unit A were discontinued when her whereabouts could not be located. She also stopped making monthly payments and ignored the demand letter dated December 2, 1997 sent by respondent's counsel.

On February 2, 1998, respondent filed a Complaint against petitioner, demanding the latter to pay the former the net amount of P3,989,802.25 plus interest of 12% per annum from date of default.

At the pre-trial conference, the issues were narrowed down as follows:

1. Whether or not a loan was duly constituted between the plaintiff and the defendant in connection with the improvements or renovations on apartment units A-H, which is in the name of the defendant [herein petitioner];
2. Assuming that such a loan was duly constituted in favor of plaintiff [herein respondent], whether or not the same is already due and payable;
3. Assuming that said loan is already due and demandable, whether or not it is to be paid out of the rental proceeds from the apartment units mentioned, presuming that such issue was raised in the Answer of the Defendant;
4. Assuming that the said loan was duly constituted in favor of plaintiff [herein respondent], whether or not it is in the amount of P3,909,802.20 and whether or not it will earn legal interest at the rate of 12% per annum, compounded, as provided in Article 2212 of the Civil Code of the Philippines, from the date of the extrajudicial demand; and
5. Whether or not the plaintiff [herein respondent] is entitled to the reliefs prayed for in his Complaint or whether or not it is the defendant [herein petitioner] who is entitled to the reliefs prayed for in her Answer with Counterclaim.<sup>[4]</sup>

On November 15, 2002, the Regional Trial Court (RTC) of Quezon City, Branch 82, rendered a Decision,<sup>[5]</sup> the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to pay the former the following:

1. The sum of P3,989,802.25 with interest thereon at the legal rate of 12% per annum computed from the date of default until the whole

obligation is fully paid;

2. The sum of P50,000.00 as and by way of attorney's fees; and
3. The cost of suit.

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

Petitioner appealed the foregoing RTC Decision to the CA, but on July 1, 2004, the Court of Appeals promulgated its Decision affirming *in toto* said RTC judgment. A motion for reconsideration of the CA Decision was denied per Resolution dated August 31, 2004.

Hence, this petition where petitioner alleges that:

I.

THE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE SUPREME COURT WHEN IT AFFIRMED THE LOWER COURT'S FINDING THAT THE LOAN BETWEEN PETITIONER AND RESPONDENT IS ALREADY DUE AND DEMANDABLE.

II.

THE COURT OF APPEALS ERRED BY DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS - OF AFFIRMING THE DUE AND DEMANDABILITY OF THE LOAN CONTRARY TO THE EVIDENCE PRESENTED IN THE LOWER COURT - AND SANCTIONING SUCH DEPARTURE BY THE LOWER COURT IN THE INSTANT CASE.

III.

THE COURT OF APPEALS ERRED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS - OF AFFIRMING THE AWARD OF ATTORNEY'S FEES TO THE RESPONDENT WITHOUT ANY BASIS - AND SANCTIONING SUCH DEPARTURE BY THE LOWER COURT IN THE INSTANT CASE.<sup>[7]</sup>

The main issues in this case boil down to (1) whether petitioner's obligation is due and demandable; (2) whether respondent is entitled to attorney's fees; and (3) whether interest should be imposed on petitioner's indebtedness and, if in the affirmative, at what rate.

Petitioner does not deny that she obtained a loan from respondent. She, however, contends that the loan is not yet due and demandable because the suspensive condition - the completion of the renovation of the apartment units - has not yet

been fulfilled. She also assails the award of attorney's fees to respondent as baseless.

For his part, respondent admits that initially, they agreed that payment of the loan shall be made upon completion of the renovations. However, respondent claims that during their meeting with some family members in the house of their brother Genaro sometime in the second quarter of 1997, he and petitioner entered into a new agreement whereby petitioner was to start making monthly payments on her loan, which she did from June to October of 1997. In respondent's view, there was a novation of the original agreement, and under the terms of their new agreement, petitioner's obligation was already due and demandable.

Respondent also maintains that when petitioner disappeared from the family compound without leaving information as to where she could be found, making it impossible to continue the renovations, petitioner thereby prevented the fulfillment of said condition. He claims that Article 1186 of the Civil Code, which provides that "the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment," is applicable to this case.

In his Comment to the present petition, respondent raised for the first time, the issue that the loan contract between him and petitioner is actually one with a period, not one with a suspensive condition. In his view, when petitioner began to make partial payments on the loan, the latter waived the benefit of the term, making the loan immediately demandable.

Respondent also believes that he is entitled to attorney's fees, as petitioner allegedly showed bad faith by absconding and compelling him to litigate.

The Court finds the petition unmeritorious.

It is undisputed that herein parties entered into a valid loan contract. The only question is, has petitioner's obligation become due and demandable? The Court resolves the question in the affirmative.

The evidence on record clearly shows that after renovation of seven out of the eight apartment units had been completed, petitioner and respondent agreed that the former shall already start making monthly payments on the loan even if renovation on the last unit (Unit A) was still pending. Genaro Tomimbang, the younger brother of herein parties, testified that a meeting was held among petitioner, respondent, himself and their eldest sister Maricion, sometime during the first or second quarter of 1997, wherein respondent demanded payment of the loan, and petitioner agreed to pay. Indeed, petitioner began to make monthly payments from June to October of 1997 totalling P93,500.00.<sup>[8]</sup> In fact, petitioner even admitted in her Answer with Counterclaim that she had **"started to make payments to plaintiff [herein respondent] as the same was in accord with her commitment to pay whenever she was able; x x x ."**<sup>[9]</sup>

Evidently, by virtue of the subsequent agreement, the parties mutually dispensed with the condition that petitioner shall only begin paying after the completion of all renovations. There was, in effect, a modificatory or partial novation, of petitioner's