557 Phil. 326

THIRD DIVISION

[G.R. No. 159912, August 17, 2007]

UNITED COCONUT PLANTERS BANK, PETITIONER, VS. SPOUSES SAMUEL AND ODETTE BELUSO, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to annul the Court of Appeals Decision[1] dated 21 January 2003 and its Resolution[2] dated 9 September 2003 in CA-G.R. CV No. 67318. The assailed Court of Appeals Decision and Resolution affirmed in turn the Decision[3] dated 23 March 2000 and Order[4] dated 8 May 2000 of the Regional Trial Court (RTC), Branch 65 of Makati City, in Civil Case No. 99-314, declaring void the interest rate provided in the promissory notes executed by the respondents Spouses Samuel and Odette Beluso (spouses Beluso) in favor of petitioner United Coconut Planters Bank (UCPB).

The procedural and factual antecedents of this case are as follows:

On 16 April 1996, UCPB granted the spouses Beluso a Promissory Notes Line under a Credit Agreement whereby the latter could avail from the former credit of up to a maximum amount of P1.2 Million pesos for a term ending on 30 April 1997. The spouses Beluso constituted, other than their promissory notes, a real estate mortgage over parcels of land in Roxas City, covered by Transfer Certificates of Title No. T-31539 and T-27828, as additional security for the obligation. The Credit Agreement was subsequently amended to increase the amount of the Promissory Notes Line to a maximum of P2.35 Million pesos and to extend the term thereof to 28 February 1998.

The spouses Beluso availed themselves of the credit line under the following Promissory Notes:

PN #	Date of PN	Maturity Date	Amount Secured
8314-96-00083-3	29 April 1996	27 August 1996	P 700,000
8314-96-00085-0	2 May 1996	30 August 1996	P 500,000
8314-96-000292-2	20 November 1996	20 March 1997	P 800,000

The three promissory notes were renewed several times. On 30 April 1997, the payment of the principal and interest of the latter two promissory notes were debited from the spouses Beluso's account with UCPB; yet, a consolidated loan for

P1.3 Million was again released to the spouses Beluso under one promissory note with a due date of 28 February 1998.

To completely avail themselves of the P2.35 Million credit line extended to them by UCPB, the spouses Beluso executed two more promissory notes for a total of P350,000.00:

PN #	Date of PN	Maturity Date	Amount Secured
97-00363-1	11 December 1997	28 February 1998	P 200,000
98-00002-4	2 January 1998	28 February 1998	P 150,000

However, the spouses Beluso alleged that the amounts covered by these last two promissory notes were never released or credited to their account and, thus, claimed that the principal indebtedness was only P2 Million.

In any case, UCPB applied interest rates on the different promissory notes ranging from 18% to 34%. From 1996 to February 1998 the spouses Beluso were able to pay the total sum of P763,692.03.

From 28 February 1998 to 10 June 1998, UCPB continued to charge interest and penalty on the obligations of the spouses Beluso, as follows:

PN #	Amount Secured	Interest	Penalty	Total
97-00363-1	P 200,000	31%	36%	P 225,313.24
97-00366-6	P 700,000	30.17% (7 days)	32.786% (102 days)	P 795,294.72
97-00368-2	P 1,300,000	28% (2 days)	30.41% (102 days)	P 1,462,124.54
98-00002-4	P 150,000	33% (102 days)	36%	P 170,034.71

The spouses Beluso, however, failed to make any payment of the foregoing amounts.

On 2 September 1998, UCPB demanded that the spouses Beluso pay their total obligation of P2,932,543.00 plus 25% attorney's fees, but the spouses Beluso failed to comply therewith. On 28 December 1998, UCPB foreclosed the properties mortgaged by the spouses Beluso to secure their credit line, which, by that time, already ballooned to P3,784,603.00.

On 9 February 1999, the spouses Beluso filed a Petition for Annulment, Accounting and Damages against UCPB with the RTC of Makati City.

On 23 March 2000, the RTC ruled in favor of the spouses Beluso, disposing of the case as follows:

> PREMISES CONSIDERED, judgment is hereby rendered declaring the interest rate used by [UCPB] void and the foreclosure and Sheriff's Certificate of Sale void. [UCPB] is hereby ordered to return to [the spouses Beluso] the properties subject of the foreclosure; to pay [the spouses Beluso] the amount of P50,000.00 by way of attorney's fees; and to pay the costs of suit. [The spouses Beluso] are hereby ordered to pay [UCPB] the sum of P1,560,308.00.[5]

On 8 May 2000, the RTC denied UCPB's Motion for Reconsideration,[6] prompting UCPB to appeal the RTC Decision with the Court of Appeals. The Court of Appeals affirmed the RTC Decision, to wit:

> WHEREFORE, premises considered, the decision dated March 23, 2000 of the Regional Trial Court, Branch 65, Makati City in Civil Case No. 99-314 is hereby AFFIRMED subject to the modification that defendant-appellant UCPB is not liable for attorney's fees or the costs of suit.[7]

On 9 September 2003, the Court of Appeals denied UCPB's Motion for Reconsideration for lack of merit. UCPB thus filed the present petition, submitting the following issues for our resolution:

I

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT WHICH DECLARED VOID THE PROVISION ON INTEREST RATE AGREED UPON BETWEEN PETITIONER AND RESPONDENTS

II

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE COMPUTATION BY THE TRIAL COURT OF RESPONDENTS' INDEBTEDNESS AND ORDERED RESPONDENTS TO PAY PETITIONER THE AMOUNT OF ONLY ONE MILLION FIVE HUNDRED SIXTY THOUSAND THREE HUNDRED EIGHT PESOS (P1,560,308.00)

III

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT WHICH ANNULLED THE FORECLOSURE BY PETITIONER OF THE SUBJECT PROPERTIES DUE TO AN ALLEGED "INCORRECT COMPUTATION" OF RESPONDENTS' INDEBTEDNESS

IV

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION

OF THE TRIAL COURT WHICH FOUND PETITIONER LIABLE FOR VIOLATION OF THE TRUTH IN LENDING ACT

V

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT FAILED TO ORDER THE DISMISSAL OF THE CASE BECAUSE THE RESPONDENTS ARE GUILTY OF FORUM SHOPPING[8]

Validity of the Interest Rates

The Court of Appeals held that the imposition of interest in the following provision found in the promissory notes of the spouses Beluso is void, as the interest rates and the bases therefor were determined solely by petitioner UCPB:

> FOR VALUE RECEIVED, I, and/or We, on or before due date, SPS. SAMUEL AND ODETTE BELUSO (BORROWER), jointly and severally promise to pay to UNITED COCONUT PLANTERS BANK (LENDER) or order at UCPB Bldg., Makati Avenue, Makati City, Philippines, the sum of _____ PESOS, (P_____), Philippine Currency, with interest thereon at the rate indicative of DBD retail rate or as determined by the Branch Head.[9]

UCPB asserts that this is a reversible error, and claims that while the interest rate was not numerically quantified in the face of the promissory notes, it was nonetheless categorically fixed, at the time of execution thereof, at the "rate indicative of the DBD retail rate." UCPB contends that said provision must be read with another stipulation in the promissory notes subjecting to review the interest rate as fixed:

> The interest rate shall be subject to review and may be increased or decreased by the LENDER considering among others the prevailing financial and monetary conditions; or the rate of interest and charges which other banks or financial institutions charge or offer to charge for similar accommodations; and/or the resulting profitability to the LENDER after due consideration of all dealings with the BORROWER.[10]

In this regard, UCPB avers that these are valid reference rates akin to a "prevailing rate" or "prime rate" allowed by this Court in *Polotan v. Court of Appeals*.[11] Furthermore, UCPB argues that even if the proviso "as determined by the branch head" is considered void, such a declaration would not *ipso facto* render the connecting clause "indicative of DBD retail rate" void in view of the separability clause of the Credit Agreement, which reads:

> Section 9.08 Separability Clause. If any one or more of the provisions contained in this AGREEMENT, or documents executed in connection herewith shall be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.[12]

According to UCPB, the imposition of the questioned interest rates did not infringe on the principle of mutuality of contracts, because the spouses Beluso had the

liberty to choose whether or not to renew their credit line at the new interest rates pegged by petitioner.[13] UCPB also claims that assuming there was any defect in the mutuality of the contract at the time of its inception, such defect was cured by the subsequent conduct of the spouses Beluso in availing themselves of the credit line from April 1996 to February 1998 without airing any protest with respect to the interest rates imposed by UCPB. According to UCPB, therefore, the spouses Beluso are in estoppel.[14]

We agree with the Court of Appeals, and find no merit in the contentions of UCPB.

Article 1308 of the Civil Code provides:

> Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

We applied this provision in *Philippine National Bank v. Court of Appeals*,[15] where we held:

> In order that obligations arising from contracts may have the force of law between the parties, there must be mutuality between the parties based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void (Garcia vs. Rita Legarda, Inc., 21 SCRA 555). Hence, even assuming that the P1.8 million loan agreement between the PNB and the private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts. It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative "to take it or leave it" (Qua vs. Law Union & Rock Insurance Co., 95 Phil. 85). Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.

The provision stating that the interest shall be at the "rate indicative of DBD retail rate or as determined by the Branch Head" is indeed dependent solely on the will of petitioner UCPB. Under such provision, petitioner UCPB has two choices on what the interest rate shall be: (1) a rate indicative of the DBD retail rate; or (2) a rate as determined by the Branch Head. As UCPB is given this choice, the rate should be categorically determinable in *both* choices. If either of these two choices presents an opportunity for UCPB to fix the rate at will, the bank can easily choose such an option, thus making the entire interest rate provision violative of the principle of mutuality of contracts.

Not just one, but rather both, of these choices are dependent solely on the will of UCPB. Clearly, a rate "as determined by the Branch Head" gives the latter unfettered discretion on what the rate may be. The Branch Head may choose any rate he or she desires. As regards the rate "indicative of the DBD retail rate," the same cannot be considered as valid for being akin to a "prevailing rate" or "prime rate" allowed by this Court in *Polotan*. The interest rate in *Polotan* reads: