

THIRD DIVISION

[G.R. No. 168779, September 14, 2007]

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
RUBEN S. GO AND ANGELITA M. GO, AND THE HONORABLE
COURT OF APPEALS, RESPONDENTS.**

D E C I S I O N

NACHURA, J.:

For this Court's consideration is a Petition for Review on *Certiorari* filed by the Development Bank of the Philippines (DBP) partially assailing the September 23, 2004 Decision^[1] and June 20, 2005 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 63959.

The facts of the case, as found by the CA, are as follows:

On August 4, 1982, [private respondents] entered into a contract of loan with [petitioner] DBP for a sum of P494,000.00.

The contract was evidenced by two (2) promissory notes, one for P194,000.00, payable quarterly for five (5) years, and the other for P300,000.00, payable quarterly for seven (7) years. The above promissory notes were secured by a mortgage contract over both the real and personal properties of [private respondents].

One of the provisions of the contract contained the stipulated interest rate. Another provision of the contract contained a penalty clause. Both promissory notes had a stipulated interest rate of eighteen percent (18%) per annum interest rate (sic) and a penalty charge in case of default of eight percent (8%) per annum.

Another provision of the contract required all mortgagors to insure all real and personal properties mortgaged with the DBP Pool of Accredited Insurance Companies. In this case, [private respondents] were made to insure their real and personal properties with [the] DBP Pool of Accredited Insurance Companies for P709,000.00 — the net replacement cost of the assets mortgaged.

Another provision of the loan contract provided for [the] increase/decrease of interest rates, as follows:

"The DBP further reserves the right to increase, with notice to the mortgagor, the rate of interest on the loan as well as other fees and charges on loans and advances pursuant to such policy as it may adopt from time to time during the period of the loan. Provided, that the rate of interest on the loan shall

be reduced in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board; Provided, further, that the adjustment in the rate of interest shall take effect on or after the effectivity of the increase or decrease in the maximum rate of interest."

[Petitioner] DBP alleged that it was empowered to unilaterally increase or decrease interest rates. In fact, DBP unilaterally increased on August 16, 1984 the interest rate from the original 18% per annum interest rate to 35% per annum, then on September 3, 1984 lowered the 35% per annum interest rate to 29% per annum, and then raised again on August 4, 1985 the 29% per annum interest rate to 30%.

[Petitioner] DBP extra-judicially foreclosed on (sic) the mortgaged properties of [private respondents], claiming that [private respondents] had defaulted on their loan contract and on September 30, 1986, the Sheriff sold [private respondents'] mortgaged properties at [a] public auction sale to DBP, the highest bidder, at ₱181,800.00.

On February 12, 1987, [private respondents] commenced suit with Branch 145, Regional Trial Court of Makati, docketed as Civil Case No. 15998, to nullify the extrajudicial foreclosure and sale at public auction of [private respondents'] mortgaged properties.

The Regional Trial Court of Makati issued a Temporary Restraining Order on February 16, 1987 and granted [private respondents'] application for preliminary prohibitory injunction on March 17, 1987 restraining [petitioner] DBP from consolidating title and the Quezon City Register of Deeds from registering any consolidation of ownership by [the] DBP.^[2]

On April 30, 1999, the RTC rendered its Decision,^[3] the dispositive portion of which reads:

WHEREFORE, the above-premises (sic) considered, this Court enters judgment in favor of the plaintiff spouses Go as against defendant Development Bank of the Philippines, Gil V. Corpus, and Samuel Cleofe[,] as well as those defaulting defendants and declares the following:

1. The interest and penalty charges imposed by defendant DBP on plaintiffs' loan is hereby declared null and void;
2. The promissory notes (Exhs. "A" and "B") [are] hereby declared null and void;
3. The insurance premiums and other charges imposed on plaintiffs [are] null and void for having no legal and evidentiary basis. The insurance premiums[,] as well as other additional charges paid[,] are to be reimbursed to the plaintiffs;
4. The extra-judicial foreclosure of the mortgaged properties of the plaintiffs on September 30, 1986 is hereby declared as null and void;

5. Moral damages in the amount of ₱50,000.00 is hereby awarded to plaintiffs as against defendant DBP. Exemplary damages in the amount of ₱50,000.00 is further awarded in favor of plaintiffs as against defendant DBP;
6. Attorney's fees in the amount of ₱100,000.00 is awarded in favor of the plaintiffs as against defendant DBP;
7. Defendant Samuel Cleofe is ordered to refrain registration (sic) of any document consolidating title by defendant DBP over plaintiffs' properties;
8. Costs against defendant.

SO ORDERED.

The DBP appealed the case to the CA. The CA reversed the decision of the RTC, ruling thus:

WHEREFORE, in view of the foregoing, the instant appeal is hereby **GRANTED**. The April 30, 1999 Decision of the Regional Trial Court of Makati, Branch 145, in Civil Case No. 15998 is hereby **REVERSED** and **SET ASIDE** and a new one is entered as follows:

1. The promissory notes and the real estate mortgage are hereby declared legal and valid;
2. The 8% per annum penalty charge imposed by defendant-appellant DBP on plaintiffs-appellees' loan is hereby declared legal and valid;
3. The insurance premiums and other charges imposed on plaintiffs are hereby declared legal and valid;
4. The increases in interest rate on the loan are hereby declared null and void;
5. The extra-judicial foreclosure of the mortgaged properties and consequent sale at public auction and issuance of Certificate of Sale, are hereby declared premature and therefore null and void;
6. The plaintiffs-appellees are hereby ordered to pay defendant-appellant DBP the ₱494,000.00 principal amount of their loan with 18% interest per annum from the date the loan was granted up to full payment, less payments already made, within ninety (90) days from the finality of this decision, otherwise, the defendant-appellant shall be entitled to foreclose the mortgaged properties and sell the same at public auction to satisfy the loan.
7. The awards of moral damages, exemplary damages and attorney's fees are hereby deleted.
8. No pronouncement as to costs.

SO ORDERED.^[4]

The CA held that the unilateral increases in interest rates were void since these were done without notice and without the corresponding Monetary Board increase in lending rates. The extrajudicial foreclosure was also deemed void because the loan had not yet matured at the time of the foreclosure proceedings.

Conversely, the CA held that the stipulated interest rate of 18% was not usurious because it was clearly below the maximum rate fixed by the Monetary Board at that time. As to the penalty charge, the CA held that it was in the nature of liquidated damages, separate and distinct from interest payments. The penalty charge was deemed valid because the law expressly recognized it as an accessory undertaking of the obligor. The CA also held that the promissory note and the real estate mortgage were valid since the principal obligation can stand even though the stipulation on the interest was void. The insurance over the mortgaged property was also held valid because this constituted an additional condition under the mortgage contract.

The appellate court likewise ruled that the formation of the DBP Pool of Accredited Insurance Companies did not amount to restraint of trade because it does not exclude other insurance companies from being accredited to be part of the pool so long as they meet the requirements for accreditation.

The CA also reversed the RTC's award for damages and attorney's fees finding that there was no basis for such award.

Petitioner DBP filed a Motion for Partial Reconsideration.^[5] It sought the modification of paragraph 6 of the dispositive portion of the CA Decision. Paragraph 6 allegedly failed to take into consideration and/or incorporate the *8% per annum* penalty charge and *insurance premiums and other charges* stated in paragraphs 2 and 3, respectively. Petitioner also argued that the way paragraph 6 is written will convey the idea that private respondents are only liable to pay the principal amount of the loan plus the regular 18% per annum interest. DBP likewise argues that the provision may be interpreted to mean that in the event of private respondents' failure to pay the amount within ninety (90) days from finality of the CA Decision, extrajudicial foreclosure is the only remedy available to it.

Thus, petitioner prayed that said paragraph 6 be amended to read as follows:

6. The plaintiffs-appellees are hereby ordered to pay defendant-appellant DBP the ₱494,000.00 principal amount of their loan with 18% interest per annum from the date the loan was granted up to full payment, (plus 8% per annum penalty charge as provided in paragraph "2," supra,) and the total amount of insurance premiums and other charges (as provided in paragraph "3," supra,) less payments already made, within ninety (90) days from the finality of this decision, otherwise, the defendant-appellant DBP shall be entitled to a writ of execution to finally judicially foreclose the mortgaged properties and sell the same at public auction to satisfy the loan.

The CA denied the Motion for Partial Reconsideration for lack of merit in a Resolution^[6] dated June 20, 2005.

Petitioner DBP now comes to this Court claiming that the CA committed grave abuse of discretion in issuing the assailed Decision.^[7] It proffers the same grounds it raised in its Motion for Partial Reconsideration before the CA and reiterates its prayer for the amendment of paragraph 6 of the assailed Decision to read, thus:

6. The plaintiffs-appellees are hereby ordered to pay defendant-appellant DBP the ₱494,000.00 principal amount of their loan with 18% interest per annum from the date the loan was granted up to full payment, plus 8% per annum penalty charge as provided in paragraph "2," supra, and plus the total amount of insurance premium and other charges as provided in paragraph "3," supra, less payments already made, within ninety (90) days from the finality of this decision, otherwise, the defendant-appellant DBP shall be entitled to a writ of execution to finally judicially foreclose the mortgaged properties and sell the same at public auction to satisfy the loan.^[8]

The petition is partly meritorious.

Initially, we resolve the procedural issues.

The petition is captioned as a petition for review. Under Rule 45 of the Revised Rules of Civil Procedure, a petition for review shall raise only questions of law which must be distinctly set forth.^[9] A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference arises as to the truth or the falsehood of the alleged facts. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.^[10]

Petitioner assails the CA Decision in this wise:

Petitioner DBP filed this instant petition on the ground that the latter part of the dispositive portion of the subject DECISION of the Honorable Court of Appeals is not the logical consequence of the earlier part of the same dispositive portion. In other words, the Honorable Court of Appeals committed grave abuse of discretion as shown by the fact that paragraph "6" of the dispositive portion of its DECISION dated September 23, 2004 failed to take into consideration and/or incorporate the decree stated in paragraphs "2" and "3" of the same dispositive portion of the Decision.^[11]

This issue that petitioner raises before this Court is not a question of law. Petitioner imputes grave abuse of discretion to the CA for its alleged omission in its Decision.

In determining the nature of an action, it is not the caption but the averments of the petition and the character of the relief sought that are controlling.^[12] Considering that petitioner charges the CA with acting in grave abuse of discretion, the petition should properly be treated as a special civil action for *certiorari* under Rule 65 of the Rules of Court.^[13]

However, even if, in the interest of justice, we treat this as a special civil action for *certiorari* under Rule 65,^[14] the petition nevertheless fails to convince us that the