

## FIRST DIVISION

[ G.R. NO. 153134, June 27, 2006 ]

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER,  
VS. ANTONIO G. DIAZ AND ELSIE B. DIAZ, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before the Court is the Petition for Review on *Certiorari* filed by Banco Filipino Savings and Mortgage Bank of the Decision<sup>[1]</sup> dated November 12, 2001 of the Court of Appeals (CA) in CA-G.R. SP No. 64475 allowing respondents spouses Antonio and Elsie Diaz to withdraw their deposit on consignment in the amount of P1,034,600.00<sup>[2]</sup> held by the Regional Trial Court (RTC) of Makati City, Branch 61. The assailed decision reversed and set aside the orders of the said lower court which had denied the respondents' motion to withdraw deposit. Likewise assailed is the Resolution of April 12, 2002 of the appellate court denying the reconsideration of the assailed decision.

The present case is an offshoot of the CA Decision<sup>[3]</sup> of October 31, 1990 in CA-G.R. SP No. 21089 and Decision<sup>[4]</sup> of November 14, 1997 in CA-G.R. CV No. 42899, both of which had already become final and executory. As culled therefrom and from the pleadings filed by the parties in the present case, the factual and procedural antecedents are as follows:

On March 8, 1979, spouses Antonio and Elsie Diaz (the respondents) secured a loan from Banco Filipino Savings and Mortgage Bank (petitioner bank) in the amount of P400,000.00 bearing an interest rate of 16% per annum. In November 1982, the said loan was restructured or consolidated in the increased amount of P3,163,000.00 payable within a period of 20 years at an interest rate of 21% per annum. The obligation was to be paid in equal monthly amortization of P56,227.00, and secured by a real estate mortgage over two commercial lots situated at Bolton and Bonifacio Streets in Davao City. As additional collateral, the respondents assigned the rentals on the mortgaged properties in favor of petitioner bank.

Despite repeated demands made on them, the respondents defaulted in the payment of their obligation beginning October 1986. Before petitioner bank could institute the proceedings to foreclose on the mortgaged properties, the respondents filed with the RTC of Davao City a complaint for "Declaration of Interest Rates and Penalty Charges as Unconscionable and Its Reduction, Reformation of Contract, Annulment of Assignment of Rentals, Damages and Attorney's Fees with Injunction," docketed as Civil Case No. 17840. The RTC of Davao City (Branch 12) denied the application for the issuance of a writ of preliminary injunction. It held that, by respondent Antonio Diaz' own admission, the respondents had been remiss in paying the amortization as agreed upon in the contract; hence, the conditions in the real estate mortgage contract had been violated. As such, petitioner bank could

rightfully foreclose the mortgaged properties. On appeal by the respondent spouses, the CA, in its Decision of October 31, 1990 in CA-G.R. SP No. 21089, affirmed the said Order of the RTC of Davao City.

Thereafter, the respondents filed another complaint with the RTC of Makati City for "Consignation and Declaration of Cancellation of Obligation, with Prayer for Issuance of a Preliminary Injunction and Temporary Restraining Order." The case was docketed as Civil Case No. 91-3090, and raffled to Branch 61 of the said RTC. For failure to file its answer, petitioner bank was declared in default. In addition to the facts established in the previous case, the RTC of Makati City, based on the *ex parte* evidence of the respondents, made the finding that during the period of January 3, 1983 and January 25, 1985, when petitioner bank was ordered closed by the Central Bank, the respondents paid a total amount of P1,311,308.48. Further, as of January 25, 1985, the respondents' total obligation amounted to P3,391,501.99. The respondents made additional payments from February 11, 1985 until September 1991 amounting to P2,356,910.00. If these additional payments were to be applied to the principal, the remaining balance would only be P1,034,600.00 as of September 16, 1991. The respondents tried to settle their account by tendering the sum of P1,034,600.00 as full payment of their loan obligation. However, petitioner bank, through its then Liquidator Ricardo P. Lirio, refused to accept the said amount. According to petitioner bank, the respondents' obligation at that time amounted to P10,160,649.13.

The respondents then deposited by way of consignation with the RTC of Makati City, a manager's check dated December 5, 1991, in the amount of P1,034,600.00 as full payment of their loan obligation. Petitioner bank was duly informed of such consignation.

In its Decision dated March 6, 1992, the RTC of Makati City ruled that the respondents' total obligation to petitioner bank amounted only to P1,034,600.00 exclusive of interests, and the latter could not charge and/or collect any interest during the time that it was closed by the Central Bank as, in fact, banks that were ordered closed by the Central Bank ceased to be liable for the payment of interests on deposits. It also considered the deposited check as consignation of the respondents' entire debt and that there was a valid consignation. Accordingly, the respondents' obligation to petitioner bank was declared as fully paid and/or cancelled.

On appeal by petitioner bank, the CA, in its Decision dated November 14, 1997 in CA-G.R. CV No. 42899, reversed and set aside the decision of the RTC of Makati City. On the procedural aspect, the CA found that the lower court erred in denying petitioner bank's motion to lift order of default. Regarding the substantive issue, the CA held that the lower court likewise erroneously declared that petitioner bank, during the time that it was ordered closed by the Central Bank, could not charge or collect interests on the respondents' loan obligation. Citing the principle of unjust enrichment, the CA posited that it was with more reason that distressed banks, like petitioner bank, should be allowed to collect interests on the loans that they had extended to their borrowers. According to the CA, the fact that distressed banks were freed from the obligation to pay any interest due on deposits when they were closed and ordered to stop operations did not mean that their borrowers were similarly freed from their contractual obligation to pay interests. It distinguished the contracts between the banks and their depositors from those between the banks

and their borrowers.

The CA declared that the deposited amount of P1,034,600.00 failed to effect a valid consignation in law because it did not include all interests due. It ratiocinated that for a valid consignation to exist, the tender of the principal must be accompanied with the tender of interests which had accrued; otherwise, the said tender would not be effective. The CA then reversed and set aside the decision of the RTC of Makati City and entered a new one dismissing Civil Case No. 91-3090.

The subsequent facts pertain to the case now before the Court:

Upon finality of the decision of the CA in CA-G.R. CV No. 42899, declaring that there was no valid consignation and dismissing Civil Case No. 91-3090, the respondents filed with the RTC of Makati City a motion to withdraw deposit. They averred therein that with the finality of the CA decision dismissing their complaint, they are now withdrawing the amount of P1,034,600.00 which they had deposited by way of consignation with the said lower court. In addition, they alleged that their loan obligation was eventually settled with the payment of the amount of P25,000,000.00 through negotiations made with petitioner bank by the brothers James and Francisco Gaisano as attorneys-in-fact of the respondents. Upon such payment, Corazon L. Costan, petitioner bank's 2<sup>nd</sup> Assistant Vice-President and Davao Main Branch Manager, issued on February 10, 1999 the Cancellation of the Real Estate Mortgage over the respondents' commercial lots. According to the respondents, there was no longer any obstacle to the immediate release of their deposit. They prayed that they be allowed to withdraw the money which they deposited on consignation with the said court (RTC of Makati City).

Petitioner bank opposed the respondents' motion. It alleged that as of December 31, 1998, the respondents' loan obligation stood at P28,810,330.51. Petitioner bank asserted that the deposit in question should be released to it as part of the full payment of the respondents' obligation. It maintained that it accepted the said consignation; hence, the respondents could no longer withdraw the said amount.

Petitioner bank refuted the respondents' claim that there was already full payment of their obligation with the payment by the Gaisanos of P25,000,000.00. Petitioner bank stated that it negotiated with the Gaisanos on January 7, 1999 and the sum agreed thereon was allegedly for the payment of the respondents' obligation as of December 31, 1998 which amounted to P28,810,330.51. Petitioner bank added that during this negotiation, it took into account and deducted from the said total obligation the amounts of P1,462,901.00, representing the payments made by the respondents in 1990 and 1991, and P1,034,600.00, representing the deposit made by the respondents with the RTC of Makati City. The net obligation of the respondents after deducting these amounts stood at P26,312,828.52 and it was this amount that petitioner bank agreed to be settled with the payment by the Gaisanos of P25,100,000.00, not P25,000,000.00 as alleged by the respondents.

Petitioner bank accused the respondents of being in bad faith in that while its negotiation with the Gaisanos had not yet been finalized, the respondents sought to withdraw the deposit in question – which was part of the consideration that induced petitioner bank to agree to settle the respondents' obligation with the payment by the Gaisanos of P25,100,000.00. Petitioner bank prayed that the deposit in question be released to it in order that it could be applied to the respondents' total loan

obligation.

After consideration of the parties' respective arguments, the RTC of Makati City issued the Order dated July 31, 2000 stating as follows:

Acting on the Motion to Withdraw Deposit mailed by plaintiff[s], [the respondents herein] on 26 January 1999 in Davao City with Opposition thereto filed by defendant Banco Filipino Savings and Mortgage Bank on 08 February 1999.

It appears on record that the Complaint for Consignation filed by the plaintiff[s] before this Court, dated 13 December 1991 and was dismissed by the Court of Appeals on 14 November 1997 which found that the deposited amount of P1,034,600.00 did not include the interest due and was not in full satisfaction of the defendant's claim and there was no valid tender of payment and consignation.

The dismissal of the complaint for Consignation by the Appellate Court did not absolve the obligation of plaintiff to apply the consignation to the outstanding obligation to the defendant and thus, the deposited amount may still be applied for payment of the obligation after due hearing on the deficiency claim of the defendant against the plaintiff.

WHEREFORE, in view of the foregoing, the MOTION TO WITHDRAW DEPOSIT is hereby DENIED for lack of merit.

SO ORDERED.<sup>[5]</sup>

The respondents sought the reconsideration thereof but the RTC of Makati City denied their motion in its Order dated December 14, 2000. They then filed with the CA a Petition for *Certiorari* alleging grave abuse of discretion on the part of the presiding judge<sup>[6]</sup> of the said lower court in promulgating the orders denying their motion to withdraw deposit.

Acting on the said petition, the CA rendered the Decision dated November 12, 2001 in CA-G.R. SP No. 64475 reversing and setting aside the Orders dated July 31, 2000 and December 14, 2000 of the RTC of Makati City. It declared that the respondents had the statutory unilateral right to withdraw their deposit by way of consignation because there was no acceptance of the same by petitioner bank. On this point, the CA relied on Article 1260 of the Civil Code which provides, in part, that "[b]efore the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or sum deposited, allowing the obligation to remain in force."

The CA stressed that petitioner bank had not "performed any prior unmistakable and deliberate act denominating a preemptive acceptance of the deposit in partial settlement of the loan obligation."<sup>[7]</sup> The claim of "acceptance" was found to be an afterthought on the part of petitioner bank and proffered for the sole purpose of opposing the respondents' motion to withdraw deposit.

Even assuming that there was acceptance by petitioner bank, the CA opined that such acceptance must retroact to December 5, 1991 when the deposit was judicially

made. In such a case, petitioner bank's computation of the respondents' outstanding loan obligation would have to be modified and reduced accordingly because the interest rate of 21% would then have to be applied to the reduced loan balance as of December 5, 1991.

The CA strongly condemned the fact that the respondents' original loan of P400,000.00 in 1972 ballooned to P28,810,330.51 as of December 31, 1998 based on petitioner bank's statement of account. The principal amount plus interests, surcharges, insurance premiums, sheriff's and attorney's fees, notarization fees, etc., all added up to the respondents' outstanding balance. According to the CA, the surcharges for missed monthly payments that petitioner bank charged the respondents amounted to twice as much as the 21% interest rate, resulting in an effective interest rate of more than 60% per annum. Citing *Medel v. Court of Appeals*,<sup>[8]</sup> this rate was characterized by the CA as "excessive, iniquitous, unconscionable and exorbitant" and likened petitioner bank to Shylock, the moneylender in William Shakespeare's *The Merchant of Venice*, who asked for a literal pound of flesh as payment for the money he lent.

The CA found as credible the respondents' claim that, on their behalf, the Gaisanos had secured a compromise agreement with petitioner bank with the payment of P25,100,000.00 and, consequently, the mortgage over the respondents' commercial lots was cancelled. Further, the auction sale of these properties which was scheduled on January 27, 1999 was cancelled by petitioner bank itself in its letter to the Sheriff.

The dispositive portion of the assailed decision of the CA reads:

WHEREFORE, the foregoing premises considered, the petitioners' [the respondents herein] petition for certiorari is GRANTED. The Orders dated July 31, 2000 and December 14, 2000 of the public court in Civil Case No. 91-3090 are REVERSED and SET ASIDE, and another one entered allowing the withdrawal by the petitioners of their deposit of P1,034,600.00 held in *custodia legis* with said court. No costs.

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

Petitioner bank sought the reconsideration of the said decision but the CA, in its Resolution dated April 12, 2002, denied its motion. Hence, petitioner bank's recourse to the Court.

The basic contention of petitioner bank is that the CA erred in reversing the Orders dated July 31, 2000 and December 14, 2000 of the RTC of Makati City which had denied the respondents' motion to withdraw deposit. Petitioner bank posits that the said lower court did not commit grave abuse of discretion in issuing the said orders because, as stated in the CA Decision of November 14, 1997 in CA-G.R. CV No. 42899, there was no valid consignment since the amount tendered (P1,034,600.00) by the respondents did not include the interests that accrued on the principal and, therefore, was not in full settlement of their outstanding obligation. Petitioner bank maintains that the dismissal of the respondents' complaint for consignment in Civil Case No. 91-3090 did not discharge their obligation to petitioner bank. Hence, the deposited amount may still be applied to the payment of such obligation.