

THIRD DIVISION

[G.R. No. 129227, May 30, 2000]

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK,
PETITIONERS, VS. THE HON. COURT OF APPEALS, AND CALVIN &
ELSA ARCILLA, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

Before us is a Petition for Review on Certiorari of the Decision of the Court of Appeals^[1] in CA-G.R. CV No. 45891 entitled CALVIN S. ARCILLA and ELSA B. ARCILLA vs. BANCO FILIPINO SAVINGS and MORTGAGE BANK, ET. AL. which affirmed the decision of the Regional Trial Court (RTC), Branch 33, Manila ordering BANCO FILIPINO to pay CALVIN and ELSA ARCILLA the amount of P126,139.00 with interest thereon at 12% per annum from the filing of the complaint.

The undisputed facts as found by the Court of Appeals are as follows:

"Elsa Arcilla and her husband, Calvin Arcilla, the Appellees in the present recourse, secured, on three (3) occasions, loans from the Banco Filipino Savings and Mortgage Bank, the Appellant in the present recourse, in the total amount of P107,946.00 as evidenced by "Promissory Note" executed by the Appellees in favor of the Appellant. To secure the payment of said loans, the Appellees executed "Real Estate Mortgages" in favor of the Appellants over their parcels of land located in BF-Parañaque, covered by Transfer Certificate of Title Nos. 444645, 450406, 450407 and 455410 of the Registry of Deeds of Parañaque (Annexes "B" to "B-2", Amended Complaint). Under said deeds, the Appellant may increase the rate of interest, on said loans, within the limits allowed by law, as Appellant's Board of Directors may prescribe for its borrowers. At that time, under the Usury Law, Act 2655, as amended, the maximum rate of interest for loans secured by real estate mortgages was 12% per annum. On January 10, 1975, the Appellees and the Appellant executed a "Deed of Consolidation and Amendment of Real Estate Mortgage" whereby the aforementioned loans of the Appellees and the "Real Estate Mortgage" executed by them as security for the payment of said loans were consolidated (pages 33-35, Record). Likewise, under said deed, the loan of the Appellees from the Appellant was increased to P188,000.00. The Appellees executed a "Promissory Note", dated January 15, 1975, whereby they bound and obliged themselves, jointly and severally, to pay the Appellant the aforesaid amount of P188,000.00 with interest at the rate of 12% per annum, in nineteen (19) years from date thereof, in stated installments of P2,096.93 a month (page 32, Records).

On January 2, 1976, the Central Bank of the Philippines issued Central Bank Circular No. 494, quoted *infra*, as follows:

'x x x

'3. The maximum rate of interest, including commissions, premiums, fees and other charges on loans with maturity of more than seven hundred thirty (730) days, by banking institutions, including thrift banks, or by financial intermediaries authorized to engage in quasi-banking functions shall be nineteen percent (19%) per annum.

'x x x

'7. Except as provided in this Circular and Circular No. 493, loans or renewals thereof shall continue to be governed by the Usury Law, as amended.' (*idem*, *supra*)

In the meantime, the Skyline Builders, Inc., through its President, Appellee Calvin Arcilla, secured loans from the Bank of the Philippine Islands in the total amount of P450,000.00. To insure payment of the aforesaid loan, the FGU Insurance Corporation, issued PG Bond No. 1003 for the amount of P225,000.00 (pages 434-436, Records) in favor of the Bank of the Philippine Islands. Skyline Buildings, Inc., and the Appellees executed an "Agreement of Counter-Guaranty with Mortgage" in favor of the FGU Insurance Corporation covering the aforesaid parcels of land to assure payment of any amount that the insurance company may pay on account of said loans (pages 429-436, Records). The mortgage was annotated as Entry No. 58009 at the dorsal portion of Appellees' titles.

After October 30, 1978, the Appellant prepared and issued a "Statement of Account" to the Appellees on their loan account to the effect that, as of October 30, 1978, the balance of their loan account, inclusive of interests, computed at 17% per annum, amounted to 284,490.75 (page 555, Records). It turned out that the Appellant unilaterally increased the rate of interest on the loan account of the Appellees from 12% per annum, as covenanted in the "Real Estate Mortgage" and "Deed of Consolidated and Amended Real Estate Mortgage" to 17% per annum on the authority of the aforequoted Central Bank Circular.

The Appellees failed to pay their monthly amortizations to Appellant. The latter forthwith filed, on April 3, 1979, a petition, with the Provincial Sheriff, for the extrajudicial foreclosure of Appellees' "Real Estate Mortgage" in favor of the Appellant for the amount of P342,798.00 inclusive of the 17% per annum which purportedly was the totality of Appellees' account with the Appellant on their loans. The Appellant was the purchaser of the property at public auction for the aforesaid amount of P324,798.00. On May 25, 1979, the Sheriff executed a "Certificate of Sale" over the aforesaid properties in favor of the Appellant for the aforesaid amount (pages 37-38, Records).

The Appellant filed a "Petition for a Writ of Possession" with the Regional

Trial Court entitled "Banco Filipino Savings and Mortgage Bank vs. Elsa Arcilla, et al., LRC Case No. P-7757-P". On February 28, 1980, the Court rendered a Decision granting the Petition of the Appellant. The Appellees appealed to the Court of Appeals but the latter Court, on June 29, 1985, promulgated a Decision affirming the Decision of the Regional Trial Court (pages 190-198, Records).

In the meantime, the FGU Insurance Corporation, Inc., redeemed the aforesaid properties from the Appellant by paying to the latter the amount of P389,289.41 inclusive of interest computed at 17% per annum. The Appellant and FGU Insurance Corp., Inc., executed, on May 27, 1980, a "Deed of Redemption" (pages 126-129, Records).

On September 2, 1985, the Appellees filed a complaint in the Court a quo for the "Annulment of the Loan Contracts, Foreclose Sale with Prohibition and Injunction, Etc." entitled "Calvin Arcilla, et al. vs. Banco Filipino Savings and Mortgage Bank, et al." (pages 1-38, Records).

The Appellees averred, in their complaint, inter alia, that the loan contracts and mortgages between the Appellees and the Appellant were null and void because: (a) the interests, charges, etc., were deducted in advance from the face value of the "Promissory Notes" executed by the Appellees; and (b) the rate of interests charged by the Appellant were usurious. The Appellees prayed that judgment be rendered in their favor as follows:

"x x x

WHEREFORE, it is respectfully prayed –

- a) Pending hearing on the prayer for the issuance of the Writ of Preliminary Injunction, a restraining order be immediately issued against the defendants or anyone acting in their behalf from enforcing the writ of possession issued against the plaintiffs;
- b) After notice and hearing, a writ of preliminary injunction be issued against the defendants, particularly defendants FGU Insurance Corporation and the City Sheriff of Pasay City, MM, or any of his deputies or anyone acting in their behalf from enforcing the writ of possession;
- c) After trial –
 - 1) To make the injunction permanent;
 - 2) Declare the loan contracts null and void;
 - 3) Declare the extrajudicial foreclosure null and void;
 - 4) Ordering the defendants to pay the plaintiffs the sums of P100,000.00 as moral damages; P50,000.00 as attorney fees; and, costs of suit.

PLAINTIFFS further pray for such other reliefs and remedies just and equitable in the premises." (pages 88-89, Records)

In its Answer to the Complaint, the Appellant averred that the interests charged by it on Appellees' loan accounts and that the said loan contracts and mortgages were lawful. The Appellant further averred that the Appellees' action had already prescribed.

In the interim, the Supreme Court promulgated its Decision in the precedent - setting case of "Banco Filipino Savings and Mortgage Bank vs. Hon. Miguel Navarro, et al., 152 SCRA 346" where it declared that Central Bank Circular No. 494 was not the "law" envisaged in the mortgage deeds of borrowers of the Bank; that the escalation clause incorporated in said deeds giving authority to the Appellant to increase the rate of interests without the corresponding deescalation clause should not be given effect because of its one-sidedness in favor of the Appellant; that the aforesaid Central Bank Circular did not apply to loans secured by real estate mortgages, and that, therefore, the Appellant cannot rely said Circular as authority for it to unilaterally increase the rate of interests on loans secured by Real Estate Mortgages.

In the meantime, the FGU Insurance Corp., Inc., filed a "Motion for Substitution" with the Regional Trial Court, in LRC Case No. Pq-7757-P praying that it be substituted as the Petitioner in said case (pages 354-356, Records). The Appellees were served with a copy of said motion and filed their Opposition thereto. However, on November 10, 1987, the Regional Trial Court rendered a Decision granting the motion of FGU Insurance Company (page 369, Records)

On December 3, 1987, the Appellees filed a Motion, with the Court a quo, for leave to file an "Amended Complaint" to implead FGU Insurance Corporation as party defendant (pages 83-129, Records). The Court granted said motion and admitted Appellees' Amended Complaint.

After the requisite pre-trial, the Court a quo issued a Pre-Trial Order which defined, inter alia, Appellees' action against the Appellant, and the latter's defenses, to wit:

"x x x

On the part of the defendants Banco Filipino Savings to simplify the case, it seeks to declare as null and void plaintiff's loan contract with Banco Filipino obtained in May 1974, on the ground that the interest agreed in the contract was usurious. Plaintiffs also seek to declare as null and void the foreclosure of their mortgage by Banco Filipino on the ground that the loan with the said mortgagee foreclosure maybe validly done.

D E F E N S E S

1. Prescription

2. Laches

3. Estoppel" (page 496, Records)

In the meantime, the Appellees and FGU Insurance Corporation entered into and forged a "Compromise Agreement." The Court a quo promulgated a Decision, dated April 3, 1991, based on said "Compromise Agreement." Under the "Compromise Agreement", the Appellees bound and obliged themselves, jointly and severally, to pay to FGU Insurance Corporation the amount of P1,964,117.00 in three (3) equal installments and that:

"x x x

6. Upon faithful compliance by plaintiffs Calvin S. Arcilla and Elsa B. Arcilla with their Agreement, defendant FGU Insurance Corporation shall renounce in their favor all its rights, interests and claims to the four (4) parcels of land mentioned in paragraph No. 4 of this Compromise Agreement, together with all the improvements thereon, and plaintiffs Calvin S. Arcilla and Elsa B. Arcilla shall be subrogated to all such rights, interests and claims. In addition, defendant FGU Insurance Corporation shall execute in favor of plaintiffs Calvin S. Arcilla and Elsa B. Arcilla a deed of cancellation of the real estate mortgage constituted in its favor on the above-mentioned four (4) parcels of land, together with all the improvements thereon. All documentary stamps and expenses for registration of the said deed of cancellation of mortgage shall be for the account of plaintiffs Calvin S. Arcilla and Elsa B. Arcilla.

7. Subject to the provisions of paragraph No. 4 of this Compromise Agreement, the execution of this Compromise Agreement shall be without prejudice to the prosecution of the claims of plaintiffs Calvin S. Arcilla and Elsa B. Arcilla. (pages 543-544, Records)

Thereafter, the Appellees and the Appellant agreed, upon the prodding of the Court a quo, that the only issue to be resolved by the Court a quo was, whether or not the Appellees were entitled to the refund, under the Decision of the Supreme Court in "Banco Filipino Savings and Mortgage Bank vs. Hon. Miguel Navarro, et al.," supra. On November 8, 1991, the Appellees filed a "Motion for Summary Judgment" appending thereto, inter alia, the Affidavit of Appellee Calvin S. Arcilla and the appendages thereof (pages 550-555, Records). Appellant filed its Opposition but did not append any affidavit to said Opposition. On March 26, 1993, the Court a quo promulgated a Decision, the decretal portion of which reads as follows:

'WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendant Banco Filipino ordering defendant Banco Filipino to pay spouses Calvin S. Arcilla and Elsa B. Arcilla the sum of P126,139.00 with interest thereon at 12% per annum reckoned from the filing of the complaint.