

THIRD DIVISION

[G.R. No. 118552, February 05, 1996]

**PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS.
COURT OF APPEALS AND THE SPOUSES ALEJANDRO AND
AMPARO CASAFRANCA, RESPONDENTS.**

D E C I S I O N

DAVIDE, JR., J:

This petition for review on certiorari seeks: (1) a modification of the decision of 29 April 1994 of the Court of Appeals in CA-G.R. CV No. 38332^[1] affirming *in toto* the 20 April 1992 ruling of the Regional Trial Court (RTC) of Cebu, Branch 16, in Civil Case No. CEB-6779;^[2] and (2) a review of the appellate court's resolution of 4 January 1995^[3] denying the petitioner's Motion for Partial reconsideration^[4] of the aforementioned decision.

The sole issue in this case is whether, in the foreclosure of a real estate mortgage, the penalties stipulated in two promissory notes secured by the mortgage may be charged against the mortgagors as part of the sums secured, although the mortgage contract does not mention the said penalties.

The Court of Appeals adopted the trial court's findings of facts, to wit:

The following antecedental facts are supported by the pleadings and evidence on record: Plaintiff spouses Alejandro and Amparo Casafranca, used to be the owners of Lot 802-B-2-B-2-F-1 of the subdivision plan Psd-698545, located in Cebu City and covered by TCT No. 32769 (Exh A). On 3 December 1976 they sold the lot to Carlos Po who paid part of the agreed price. The latter, after securing a title in his name (TCT No. 66446), mortgaged the lot to the Philippine Bank of Communications (PBCom for short) to secure a loan of P330,000 (Exh B). It appears that in a civil action that ensued between them, plaintiff spouses obtained a favorable judgment against Carlos Po (Exh C). Later, in an auction sale to satisfy Carlos Po's judgment obligation, plaintiff spouses acquired the aforesaid lot and a Certificate of Sale was executed in their favor (Exh D).

Meanwhile, under date of 9 September 1980 PBCom applied for extrajudicial foreclosure of the mortgage executed by Carlos Po (Exh E), and in the succeeding auction sale held on 4 November 1980, it acquired the lot at its winning bid of P1,006,540.56. The corresponding Certificate of Sale was then executed in its favor (Exh F). It appears further that sometime in 1981 plaintiff Amparo Casafranca who had stepped into the shoes of mortgagor Carlos Po by virtue of the auction sale in her favor

(Exh D) offered to redeem the property from PBCom by tendering to its manager, Isidore Falek, a check in the amount of P500,000 which, in her estimate, would be sufficient to settle the account of Carlos Po. PBCom did not accept the check as it insisted that any such redemption should be at the price it acquired the lot in the auction sale. In reaction, plaintiffs filed against PBCom Civil Case No. R-21700 in the RTC of Cebu for nullification of the foreclosure and auction sale (Exh M). In a judgment which became final and executory on 17 September 1986 (Exh H) the Court set aside the extrajudicial foreclosure and auction sale and declared that the obligation secured by the mortgage executed by Carlos Po was only P330,000 plus stipulated interest and charges (Exh G). Subsequently, in a letter dated 4 December 1986 PBCom advised plaintiff spouses to pay the sum of P884,281.38 purportedly representing Carlos Po's principal account of P330,000, interest and charges thereon, attorney's fee[s] and realty taxes which it paid for the lot (Exh I). Plaintiffs, however, did not agree with said Statement of Account and since the account remained unpaid, PBCom again applied for extrajudicial foreclosure of mortgage (Exh J), which culminated in an auction sale of the lot on 2 April 1987, during which it was sold to Natalie Limchio for P1,184,000 (Exh L).

On 6 April 1988 plaintiffs commenced the present action to nullify the auction sale in favor of Natalie Limchio. It is alleged in the complaint that the second foreclosure was void as it was based on a bloated account. Plaintiffs further alleged that PBCom refused to turn over the correct amount of residue after paying off the mortgage and costs of the sale. Upon plaintiffs' application, the Court issued on 7 April 1988 a TRO enjoining defendant sheriffs from transferring the title of the lot in favor of defendant Natalie Limchio and the latter, from taking possession of the lot. This was followed by a preliminary injunctive writ which was issued after hearing and upon plaintiffs' filing of a bond. However, before the pre-trial conference could be held, plaintiffs signified their intention to pursue only their alternative demand for the residue or balance of the proceeds of the auction sale less the correct outstanding account which was secured by the mortgage. For this purpose they filed an amended complaint only against PBCom (pp. 296-305, rollo) which was admitted, in which they pray for recovery of the sum of P625,724.90 as residue after paying off the outstanding account [to] the tune of P558,275.80, realty taxes paid by PBCom and costs of the foreclosure proceeding. Hence, what is left for the Court to ascertain is the true or correct account of Carlos Po as of the auction sale on 2 April 1987 after which, the determination of the residue would follow. . . [5]

As to the amounts due the parties, the trial court computed them as follows:

The mortgage contract (Exh B) explicitly provides for interest of "Twelve per cent (12%) per annum or at such higher rate or rates as may be fixed by the MORTGAGEE from time to time, and shall be payable at the end of every month or otherwise, as the MORTGAGEE may elect and, if

not so paid, shall be added to, and become part of, the principal and shall earn interest at the same rate as the principal." It is then evident that the parties agreed to capitalize the interest due and unpaid, which as added principal, shall earn new interest. Herein lies the discrepancy in the computation respectively submitted by plaintiffs (pp. 190-191; 204-209, Rollo) and PBCom (pp. 181-183, Rollo), for while the former assessed only conventional or simple interest, the latter computed compound interest conformable to the mortgage contract. In this connection, the Court finds PBCom's computation of interest to be in accordance with the contractual stipulations of the parties. It may be stressed that the increase in the rate of interest from 12% to 14% as of 1 December 1979 is authorized in the mortgage contract itself as sanctioned by CB Circular No. 705 dated 1 December 1979. PBCom is further entitled to reimbursement for realty taxes it paid for the lot. But of course, penalties and charges are not due for want of stipulation in the mortgage contract.

To recapitulate, the principal loan obtained by Carlos Po (now succeeded by plaintiffs) on 15 December 1976 was P330,000. Interest thereon for the first year at 12% per annum was retained or deducted from the proceeds of the loan. For the next two (2) years or from 25 December 1977 to 30 November 1979, compound interests earned at the same rate reached P77,660. And then from 1 December 1979 to 2 April 1987 (date of auction sale) the rate of interest was raised to 14% per annum, as authorized in the mortgage contract. At such rate, compound interests for said period would be in the sum of P343,805. Adding both interest earnings to the principal obligation, the total account would then be P751,465. Additionally, the mortgage contract provides for attorney's fee[s] equivalent to 10% of the amounts due. Hence, the sum of P75,146.50 in the concept of attorney's fee[s] would raise the account to P826,611.50. Finally, the amount of P83,028.18 representing realty taxes paid by PBCom for the lot, inclusive of interest, which must be reimbursed, will bring the grand total of the account to P909,639.68.

On the other hand, the publication and other expenses incurred in the foreclosure and auction sale [to] the tune of P707 should be deducted from the amount of P1,184,000 which Natalie Limchio paid for the lot, leaving net proceeds of P1,183,293. Subtracting therefrom the total account due to PBCom, the residue would be P273,653.32, which must be delivered to plaintiffs.^[6]

In the light of the above, the trial court thus ruled:

WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of plaintiffs Alejandro and Amparo Casafranca for the sum of P273,653.32 representing the residue or balance of the proceeds of the auction sale conducted on 2 April 1987 after deducting therefrom publication expenses and paying off the total account due to defendant Philippine Bank of Communications, and ordering the latter to pay unto

plaintiffs the aforesaid amount.

SO ORDERED.^[7]

Both parties appealed from the above judgment to the Court of Appeals. The petitioner questioned the lower court's failure to include in its computation the penalty stipulated in the aforementioned promissory notes. On the other hand, the private respondents advanced that: (1) the interest on the sum due to the petitioner should have stopped running on 31 July 1981; (2) the lower court should have allowed twelve percent (12%) interest per annum on the amount awarded to the private respondents from 3 April 1987 until the obligation was fully paid; and (3) the lower court should have awarded the private respondents moral and exemplary damages, attorney's fees, and litigation expenses.

The Court of Appeals affirmed the decision of the trial court in toto and subsequently denied the parties' separate motions for reconsideration.

The petitioner and the private respondents then instituted with this Court separate petitions for certiorari under Rule 45 of the Rules of Court. While that of the petitioner was docketed as G.R. No. 118552 (this case), that of the private respondents was docketed as G.R. No. 118809 and assigned to the Second Division. However, the two actions were not consolidated.

The private respondents in this case filed their Comment^[8] to the petition as required in the resolution of 8 February 1995.^[9]

On 13 March 1995, the Second Division issued a resolution which dismissed G.R. No. 118809, thus:

[F]or failure to persuasively demonstrate any reversible error in the challenged judgment of the Fourth Division of the Court of Appeals promulgated on April 29, 1994 - affirming in toto that of the Regional Trial Court of Cebu rendered by Judge (now Court of Appeals Justice) Godardo A. Jacinto on April 20, 1992 (Civil Case No. CEB-6779) - it appearing on the contrary, that both judgments correctly appreciated the evidence and applied the relevant legal provisions in ruling, essentially, that there had been no valid tender of payment by petitioners of the amount of the mortgage liability burdening the property in question, and that the computation of the amount rightly due said petitioners had been correctly made in accordance with the law applicable to the case (Act No. 3135, as amended). Moreover, the record discloses no important and special reason for the exercise by this Court of its discretionary power of review in this case.^[10]

On 9 May 1995, this Court received the private respondents' Manifestation^[11] drawing our attention to this resolution.

On 23 August 1995, we gave due course to the petition^[12] and required the parties to submit their respective memoranda, which they subsequently did. The private respondents contended that "[a]ctually there are no more issues left for this Honorable Court to decide because all the issues in controversy in this case has [sic] already been decided with finality by the Second Division of the Supreme Court in G.R. No. 118809."^[13] To which, the petitioner replied^[14] that the G.R. No. 118809 resolution dispensed with only those issues raised therein by the private respondents and did not touch on the questions raised in this case.

The petition is not impressed with merit.

The two promissory notes in question, signed by Carlos Po,^[15] are similarly worded and their pertinent provisions read:

For value received, I/we jointly and severally, promise to pay the Philippine Bank of Communications, at its office in the City of Cebu, Philippines the sum of THREE HUNDRED THOUSAND PESOS (P300,000.00), Philippine Currency, together with interest thereon at the rate of TWELVE % per annum until paid, which interest rate the Bank may at any time without notice, raise within the limits allowed by law, and I/we also agree to pay, jointly and solidarily 12% per annum penalty charge, by way of liquidated damages should this note be unpaid or is not renewed on due date.

x x x

Should it become necessary to collect this note through an attorney-at-law, I/we hereby expressly agree to pay, jointly and severally, ten per cent (10%) of the total amount due on this note as attorney's fees which in no case shall be less than P 100.00 exclusive of all costs and fees allowed by law stipulated in the contract of real estate mortgage if any there be.

while the mortgage contract provides in part:^[16]

This mortgage is given as security for the payment to the MORTGAGEE on demand or at maturity, as the case may be, of all promissory notes, letters of credit, trust receipts, bills of exchange, drafts, overdrafts and all other obligations of every kind already incurred or which hereafter may be incurred by the MORTGAGOR(S) and Po's All Electrical Supply either as principal debtor(s) or as surety(ies) or in any other capacity, including discounts of Chinese and other drafts, bills of exchange, promissory notes, even without any further endorsements by the Mortgagor(s), said property or properties to stand security for the payment of the said obligations to the fullest extent and for all that it is (or they are) worth, to the extent of THREE HUNDRED THIRTY