THIRTEENTH DIVISION

[CA-G.R. CV No. 96073, January 05, 2015]

TML GASKET INDUSTRIES, INC., PLAINTIFF-APPELLANT, VS. BPI FAMILY SAVINGS BANK, INC., DBS BANK PHILS., INC., ATTY. CLEMENTE BOLOY, CLERK OF COURT VI AND EX-OFFICIO SHERIFF AND PERICLES U. TELAN, DEPUTY SHERIFF-IN-CHARGE OF THE REGIONAL TRIAL COURT OF PARANAQUE CITY, DEFENDANTS-APPELLEES.

DECISION

SADANG, J.:

Assailed in this appeal is the January 4, 2010 Decision[1] of the Regional Trial Court (RTC) of Paranaque City, Branch 194 in CV Case No. 02-0504 dismissing plaintiff-appellant's Complaint, and the Order dated May 21, 2010 denying the Motion for Reconsideration.

Records show that plaintiff-appellant TML Gasket Industries, Inc. (hereafter, TML) filed with the RTC on November 21, 2002 a Complaint[2] for declaratory relief, accounting, declaration of nullity of notice of extra-judicial sale, increase in interest rates, and penalty charges, plus damages, with prayer for temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) against BPI Family Savings Bank, Inc. (BPI, for brevity), DBS Bank Phils., Inc. (DBS, for brevity), and Clerk of Court VI/Ex-Officio Sheriff Clemente Boloy and Deputy Sheriff-In-Charge Pericles Telan of the Regional Trial Court of Paranaque City.

TML alleged that: in September 1996, it obtained a credit line from DBS, formerly Bank of Southeast Asia, Inc. (BSAI), in the amount of P85,000,000.00 covered by promissory notes (PNs) and secured by a real estate mortgage (REM) over two parcels of land along Dr. A. Santos Avenue, Paranaque City, with an aggregate area of 2,638 square meters, and covered by Transfer Certificate of Title (TCT) Nos. 81278 and 81303 of the Registry of Deeds of Parañaque City; the parties agreed that in the event that TML is not able to settle its obligation, it would turn over the mortgaged properties to DBS by way of *dacion en pago*; the subject PNs stipulated, among others, that if changes in the conditions occur which will increase the overall cost of money to DBS, the latter may, at its sole option, correspondingly adjust the interest rate on all outstanding loan(s) and the adjustment shall take effect three days after receipt by TML of notice thereof; when TML asked DBS for clarification of said stipulation, the latter gave the assurance that it will subject TML's loan to an interest rate of 16% per annum; thereafter, DBS unilaterally imposed an interest rate of 33% and a penalty of 36% on allegedly past due interest and principal without the required written notice; TML had no choice but to pay at the increased interest rate and subject to the penalty unilaterally imposed because DBS threatened to declare the loan as immediately due and payable if TML disagrees; thereafter, TML failed to settle its obligation and DBS raised the interest rate to 34%

without the consent of TML; TML's silence on the increase should not be construed as an acceptance; unstipulated and excessive interests and penalty charges are null and void under Articles 19, 1956, 1960, 1226, 1229, 1308, 1318, and 1319 of the Civil Code; the subject REM has no stipulation anent the 36% penalty charge, hence, it should not be allowed; the REM is a contract of adhesion which was unilaterally prepared by DBS, therefore, any ambiguity or doubt in its provisions should be construed against DBS; TML demanded an accounting of its loan accounts with DBS but the demand was unheeded; when TML did not accede to DBS's computation of interest and penalty charges, DBS decided to extra-judicially foreclose the mortgage and the foreclosure was set on November 27, 2002; TML could not be considered to have defaulted in its obligation in view of the unascertained sums allegedly due to DBS, thus, DBS had no right to foreclose; there was no compliance with Section 3 of Act No. 3135 as to the posting of the notice of the auction sale; even if the notice was posted, it was not done 20 days before the supposed sale and it was allegedly published in *Philippine Weekly,* which is not a newpaper of general circulation; in October 2002, TML offered to cede to BPI, DBS's successor-in-interest, the mortgaged lots by way of *dacion en pago* but BPI did not accept the offer.

In support of its application for TRO and/or a writ of preliminary injunction, TML repleaded its foregoing allegations and further averred that: BPI misrepresented to Clerk of Court/Ex-Officio Sheriff Boloy that TML's debt to BPI, as of June 25, 2002, was P71,877,930.56, exclusive of interests and penalty charges; and unless enjoined, BPI would proceed with the auction sale, to the damage of TML because it is using the mortgaged lots as its office and factory.

On November 27, 2002, the trial court issued an Order[3] granting TML's application for issuance of a TRO.

In its Answer (With Compulsory Counterclaim and Opposition to the Prayer for the Issuance of Writ of Preliminary Injunction),[4] BPI averred that: it is the successor-in-interest of DBS; the P85M credit line granted to TML in 1996 was renewed in 1997 with the availments thereunder being secured by a REM over the same properties, including the improvements thereon; the PNs attached to the Complaint are no longer outstanding; the loans still unsettled are those covered by the PNs issued on July 31, 1997 and March 27, 1997; the interest rates charged on TML's loan accounts were mutually and voluntarily agreed upon by the parties; as stated in the PNs executed in 1996 and in 1997, interest rates are subject to adjustment and review after the lapse of a certain period and there was no agreement that they would be fixed at a certain rate; TML's allegation that it paid unconscionable rates of interest shows that it was duly notified of the changes in the interest rates and written notice of said changes was not even required; TML did not notify DBS, BPI, or BSAI in writing of its disagreement with the interest rate set as stipulated in the outstanding PNs; the statements of account attached to the complaint show that the interest rates not only increased but also decreased when the banking industry rates went down; had TML promptly paid its loan, penalty charges would not have been imposed; payment of penalty charges is likewise secured by the REM, it being an obligation under the PN; by signing the REM and the PNs, TML manifested its conformity to the terms and conditions thereof and it cannot escape from its obligation to pay the interest and penalty charge at the stipulated rate because obligations arising from contract have the force of law between the parties and

should be complied with in good faith; TML is the one guilty of violating the principle of mutuality of contracts because the interest rates and penalty charge being imposed by BPI are in accordance with the stipulations of the subject loan documents, hence, TML cannot renounce its obligations without the consent of the bank; TML should not complain of the interest and penalty charge because BPI reduced the rates thereof for the unpaid amounts to 13% and 12% per annum, respectively; TML did not demand an explanation or accounting of its loan accounts and there is no need therefor because it failed to show that the statements of account did not reflect its accurate or correct obligation; TML is guilty of estoppel by laches as it should have asserted its claims before the foreclosure proceedings; it complied with the requisites of a valid extra-judicial foreclosure, including publication and posting; because the value of the mortgaged properties is much lower than TML's outstanding obligation BPI cannot be forced to accept a *dacion en pago*; TML has neither shown a clear right that warrants an injunctive writ nor irreparable injury because it can redeem the lots.

On June 20, 2003, the RTC issued an Order[5] denying TML's plea for a WPI. TML filed a Motion for Reconsideration[6] to which BPI filed its Opposition.[7]

On August 22, 2003 the RTC issued an Order[8] granting the issuance of a WPI.

BPI filed a Motion for Reconsideration[9] to which TML filed an Opposition.[10] After BPI filed a Reply[11] to the Opposition, the RTC issued, on November 27, 2003, an Order[12] denying BPI's motion.

Thereafter, BPI filed a petition for certiorari[13] before the Court of Appeals (CA) seeking to reverse and set aside the August 22, 2003 and November 27, 2003 Orders of the RTC. On August 19, 2008, the CA (Third Division) rendered a Decision[14] setting aside the aforesaid Orders and lifting the WPI issued by the RTC. TML filed a Motion for Reconsideration but it was denied in a Resolution dated July 14, 2009.[15] TML appealed the August 19, 2008 CA decision to the Supreme Court by way of a petition for review on certiorari under Rule 45 of the Rules of Court.[16]

On November 5, 2008, BPI filed an Amended Petition[17] for extra-judicial foreclosure of REM under Act No. 3135 stating, among others, that by the terms of the REM and the PNs, as of June 25, 2002, TML's indebtedness was P138,165,220.03, inclusive of interest, penalties, and other charges.

On January 4, 2010, the RTC rendered a Decision, the decretal part of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING this case for lack of cause of action.
>
> Plaintiff is directed to pay the defendant the amount of Fifty Thousand Pesos (Php50,000.00) as attorney's fees.
>
> SO ORDERED.[18]

TML's Motion for Reconsideration[19] was denied by the RTC in an Order[20] dated May 21, 2010; hence, TML filed a Notice of Appeal[21] which was approved by the RTC in the Order of August 27, 2010.[22]

TML raises the following:

ASSIGNMENT OF ERRORS

I. THE LOWER COURT PRESIDED BY ACTING PRESIDING JUDGE, HONORABLE GINA BIBAT PALAMOS WHO DID NOT ACTUALLY CONDUCTED (sic) THE PROCEEDINGS OF THE CASE BELOW ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE COMPLAINT FOR ALLEGED LACK OF CAUSE OF ACTION.

II. THE LOWER COURT PRESIDED BY ACTING PRESIDING JUDGE, HONORABLE GINA BIBAT PALAMOS WHO DID NOT ACTUALLY CONDUCTED (sic) THE PROCEEDINGS OF THE CASE BELOW ERRED AND/OR COMMITTED GRAVE ABSUE [sic] OF DISCRETION IN DENYING PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION.[23]

RULING

TML contends that the RTC erred in dismissing its complaint for lack of cause of action. It argues that its complaint states a cause of action because it alleged that BPI unilaterally and arbitrarily adjusted interest rates and penalty charges without giving notice to TML and that BPI acted in bad faith when it attempted to foreclose the mortgage in spite of the agreement that TML could settle its obligation through dacion en pago.

Obviously, TML confuses failure to state a cause of action with lack of cause of action. Failure to state a cause of action refers to the insufficiency of the pleading and is a ground for dismissal under Rule 16 of the Rules of Court. Lack of cause of action refers to a situation where the evidence does not prove the cause of action alleged in the pleading.[24] Here, the RTC did not dismiss the complaint for failure to state a cause of action but for lack of cause of action.

Citing Articles 1956, 1319, 1308, 19, 1960 and 1229 of the Civil Code and *Philippine National Bank v. Court of Appeals, et al.,*[25] TML contends that the unilateral increase of interest rate and exorbitant penalty charges by BPI without its consent is illegal and immoral and should be reduced by the court. TML points out that in the notice of extra-judicial sale, the balance was P71,877,930.56 but due to the unconscionable interest rate, its debt ballooned to P138,165,220.03.

On the other hand, BPI contends that: the interest rates were mutually and voluntarily agreed upon; TML was notified of the changes in interest rates, otherwise, it would not have alleged that they are unconscionable; TML admitted receipt of the statements of account which show that interest rates went up or down per industry rates but TML remained silent for more than four years after said receipt, hence, estoppel *en pais* applies; and the indebtedness increased because

when the petition for foreclosure was filed only two PNs were included.

We find for TML.

The binding effect of any agreement between parties to a contract is premised on two settled principles: 1) any obligation arising from contracts has the force of law between the parties;[26] and 2) there must be mutuality between the parties based on their essential equality. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties is void.[27]

The vortex of the controversy is the provision in the promissory notes subject of this case that reads thus:

> x x x Interest for the succeeding period shall be set by the Lender. If the Borrower is not agreeable to the interest rate set by the Lender, the Borrower shall promptly notify the Lender of his/its disagreement in writing. If the parties fail to agree on the interest rate before the next interest setting date, this Note shall automatically become due and payable on the 30th day following the last interest setting and shall bear interest at the same rate prior to the last interest setting.[28] (Underscoring supplied)

The aforequoted provision is what is known as an escalation clause. Although the provision does not expressly mention increases in interest rates, nevertheless, it is clear that BPI could effect such increase by virtue thereof. Escalation clauses were discussed in *Spouses Juico v. China Banking Corporation,*[29] thus:

> Escalation clauses refer to stipulations allowing an increase in the interest rate agreed upon by the contracting parties. This Court has long recognized that there is nothing inherently wrong with escalation clauses which are valid stipulations in commercial contracts to maintain fiscal stability and to retain the value of money in long term contracts. Hence, such stipulations are not void *per se.*
>
> Nevertheless, an escalation clause "which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. A stipulation of such nature violates the principle of mutuality of contracts. Thus, this Court has previously nullified the unilateral determination and imposition by creditor banks of increases in the rate of interest provided in loan contracts. (Underscoring supplied)

We find that there was no mutuality between the parties. Under the escalation clause, if TML does not express its disagreement to an increase of interest rate and the parties cannot agree on a new rate, the indebtedness is accelerated, meaning, that the entire debt *automatically* becomes due and demandable on the 30th day following the last interest setting. Under this provision, TML was not free to disagree to the increase. If it agrees to the increase, even if unconscionable, it puts its business in serious jeopardy because it would then deal with increased interest payments that it did not take into account when it secured the loan. But if it does not agree to the increase, it would face a much harsher, if not fatal, consequence. In