

## SPECIAL FIFTH DIVISION

[ CA-G.R. CV NO. 95707, March 30, 2015 ]

**MANUEL A. TAN, PLAINTIFF-APPELLEE, VS. TED SY CO,  
DEFENDANT-APPELLANT.**

### DECISION

**GARCIA-FERNANDEZ, J.:**

This is an appeal interposed by defendant-appellant Ted Sy Co from the order issued by the Regional Trial Court of Manila Br. 11 (RTC) dated January 6, 2010<sup>[1]</sup> in Civil Case No. 08-119955. The dispositive portion of the appealed order reads:

"WHEREFORE, the foregoing premises considered, the motion for Summary Judgment is **GRANTED**. Summary judgment is rendered in favor of the plaintiff to the effect that: 1) the Promissory Note executed between plaintiff and defendant is declared **NULL** and **VOID**; 2) the Extrajudicial Foreclosure of the Real Estate Mortgage is likewise declared **NULL** and **VOID**; 3) defendant pay the plaintiff **Php3,362,037.50** as grossly excessive, highly outrageous and iniquitous interest, plus interest computed from the date thereof; and 4) to pay plaintiff **Php250,000.00** as attorney's fees.

SO ORDERED."

The facts based on the record are as follows:

On September 8, 2008, plaintiff-appellee Manuel A. Tan filed a complaint<sup>[2]</sup> with application for preliminary attachment with the RTC alleging that sometime in September 2003, he and his sister availed a loan with defendant-appellant Ted Sy Co in the amount of One Million Two Hundred Thousand (Php1,200,000.00) Pesos with three percent (3%) interest and seven percent (7%) penalty, to be paid from December 1, 2003 to June 1, 2004; that the loan was evidenced by a promissory note<sup>[3]</sup> and secured by a real estate mortgage<sup>[4]</sup> over a parcel of land registered under Transfer Certificate of Title No. 167707; that the terms and conditions in the real estate mortgage are different from the terms in the promissory note; that while defendant-appellant promised that the promissory note and real estate mortgage will not be registered with the Register of Deeds and will not be foreclosed, defendant-appellant caused the documents to be notarized and registered with the Register of Deeds; that plaintiff-appellee was shocked when defendant-appellant filed a petition for extrajudicial foreclosure of real estate mortgage; and that plaintiff-appellee received a notice of extrajudicial sale<sup>[5]</sup> stating that the bid price is Four Million Four Hundred Thousand Nine Hundred Thirty-Seven Pesos and 50/100 (Php4,490,937.50), which includes the 3% monthly interest rate and 7% penalty charge. Defendant-appellant acquired the property during the public auction, as evidenced by the certificate of sale<sup>[6]</sup> dated December 21, 2005 and when TCT No.

167707 was cancelled, TCT No. 277233<sup>[7]</sup> was issued in the name of defendant-appellant.

Plaintiff-Appellee claimed that the 3% monthly interest rate and 7% monthly penalty charge, or a total of 120% per annum, which are stated in the promissory note and real estate mortgage are null and void because the same is grossly outrageous, highly excessive, and iniquitous. Plaintiff-appellee sought to declare the interest null and void; and to hold defendant-appellant liable to former in the amount of Php3,362,037.50, representing the excessive interest, and attorney's fees in the amount of Php250,000.00.

Meanwhile, the RTC issued an order on September 10, 2008<sup>[8]</sup> granting the application for preliminary attachment and directing the issuance of a writ of preliminary attachment against the properties of defendant-appellant. Defendant-appellant moved for the discharge of the notice of garnishment by offering to substitute a parcel of land covered by Transfer of Certificate No. 277233 which is allegedly more valuable than the garnished property. In its order dated November 28, 2008<sup>[9]</sup>, the RTC granted the motion to discharge the notice of garnishment and ordered defendant-appellant to turnover the original of TCT No. 277233 for proper disposition.

In his answer<sup>[10]</sup>, defendant-appellant admitted the terms of the promissory note and real estate mortgage and stated that they are the same; that the stipulated interest is lawful because the usury law was suspended and plaintiff-appellee failed to prove fraud, undue influence, or any vice of consent; that the monthly interest and penalty charge are not excessive or unconscionable considering that it is lower than the interest being charged by banks and other financial institutions; that plaintiff-appellee is estopped from assailing the interest because he had agreed to the terms of the agreement; and that defendant-appellant is well within his rights to foreclose the property because plaintiff-appellee did not pay his loan. Defendant-appellant also alleged that plaintiff-appellee is guilty of forum shopping because the latter previously filed an action for annulment of foreclosure and sale under Civil Case No. 07116503 with the Regional Trial Court of Manila, Br. 173, where one of the issues raised pertained to the excessive interest of the loan. By way of counterclaim, defendant-appellant contended that plaintiff-appellee should pay him at least Php100,000.00 for attorney's fees and litigation fees, as well as Php100,000.00 as exemplary damages.

During pre-trial, plaintiff-appellee submitted the following issues for resolution: 1) Whether the interest imposed by defendant-appellant as stated in the promissory note and in the real estate mortgage is exorbitant and therefore, null and void; 2) Whether the provisions on the interest on the loan obtained by plaintiff-appellee from defendant-appellant is exorbitant and the foreclosure of the real estate mortgage on the payment of the exorbitant interest is null and void; 3) Whether defendant-appellant is liable to plaintiff-appellee in the amount of Php3,362,937.55, representing the grossly excessive and highly outrageous payment and iniquitous interest; and 4) Whether defendant-appellant is liable to the plaintiff-appellee for attorney's fees and litigation expenses in the amount of Php250,000.00. Defendant-appellant raised the issue of whether the real estate mortgage is valid.<sup>[11]</sup>

On September 2, 2009, plaintiff-appellee filed a motion for summary judgment<sup>[12]</sup>

with the RTC, arguing that there are no questions of facts involved in the case considering that defendant-appellant already admitted during pre-trial that the promissory note and real estate mortgage stated that the 36% per annum interest rate (3% per month) and 84% per annum penalty charge (7% per month) shall be imposed; that defendant-appellant stated in his answer that the terms stated in the promissory note and deed of real estate mortgage are the same; that both parties adopted as common documentary evidence the deed of real estate mortgage and promissory note; and that the parties stipulated during pre-trial that the winning bid of P4,500,000.00 in the public auction included the interest rate of 36% per annum and penalty charge of 84% per annum.

The RTC issued the order dated January 6, 2010<sup>[13]</sup> granting the motion for summary judgment and explained that:

"Defendant in his Answer and also during the pre-trial conference admitted that the interest rate stipulated in the real estate mortgage and in the promissory note was 35% per annum and the penalty imposed for the delay or non-payment of monthly amortization is 84% per annum. At the pre-trial conference proper, both parties adopted as common documentary exhibit the real estate mortgage (Exhibit "C" and Exhibit "1") and the promissory note (Exhibit "B" and Exhibit "2"). There appears therefore to be no questions or issues of fact as the defendant's answer do not raise the same. Summary judgment can therefore be granted.

As correctly pointed out by plaintiff, a court may indeed nullify a contract with stipulations on excessive and exorbitant interest. Usually, a party who enters into a real estate mortgage urgently need a financial boost. And furthermore, said party is always compelled to hesitantly affix their signature and agree to the terms of the said contract due to the said dire need. This situation appears to prevail in this case.

It would thus be a travesty of justice, if the Court would not grant the annulment of the promissory note and invalidate the extrajudicial foreclosure of the real estate mortgage. For this would violate the basic tenet that no person should unjustly enrich himself at the expense of another. *Nemo ex alterius incommode debet lecupletari* (no man ought to be made rich out another's injury). The said tenet and law were formulated as basic principles to be observed for the rightful relationship between human beings and for the stability of the social order. It was designed further to indicate certain norms that spring from the fountain of good conscience. It was also intended to guide human conduct to run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice.

Attorney's fees are granted only under the specific provisions of Article 2208 of the Civil Code. Defendant's inclusion of the astronomic interest rate, has forced the plaintiff to litigate and incur expenses to protect his interest. Ergo, plaintiff is entitled to attorney's fees." [Citations omitted.]

Defendant-appellant moved<sup>[14]</sup> to reconsider the order dated January 6, 2010. Plaintiff-appellee moved ex-parte to strike the motion for reconsideration.<sup>[15]</sup> In the order dated February 15, 2010<sup>[16]</sup>, the RTC denied the motion to strike and ordered

the plaintiff-appellee to file his comment on the motion for reconsideration. Plaintiff-appellee filed a motion for reconsideration from the order dated February 15, 2010<sup>[17]</sup>.

Meanwhile, defendant-appellant moved for the inhibition of the Judge of the RTC Br. 11 on March 17, 2010, contending that the judge failed to observe the cold neutrality of an impartial judge in deciding the case. The Judge of the RTC granted the motion for inhibition in the order dated March 17, 2010.<sup>[18]</sup> The case was re-raffled to the Regional Trial Court (RTC) of Manila Br. 50 (RTC Manila Br. 50).

In the order dated June 15, 2010<sup>[19]</sup>, the RTC Manila Br. 50 denied both defendant-appellant's motion for reconsideration from the order dated January 6, 2010 and plaintiff-appellee's motion for reconsideration from the order dated February 15, 2010. The RTC Manila Br. 50 affirmed the findings of the RTC Manila Br. 11 saying:

" xxx As correctly pointed out by the said branch, herein defendant in his answer and also during the pre-trial conference of this case had already admitted that the interest rate stipulated by the parties in the real estate mortgage and in the promissory note was thirty five percent (35%) per annum and the penalty imposed for the delay of non-payment of monthly amortization is eight four percent (84%) per annum. To the mind of this Court, these interest rates are clearly exorbitant and excessive. Thus, this Court re-affirms the findings of the Regional Trial Court, Branch 11, Manila, for the nullification of the subject promissory note between herein plaintiff and defendant and eventually the nullification of the extra-judicial foreclosure sale of the subject property. The issue therefore on whether or not the instant case is ripe for summary judgment must be resolved in the affirmative. xxx"

Hence, this appeal. Defendant-appellant submits the following issues in this appeal:

1. WHETHER OR NOT DEFENDANT-APPELLANT IS LIABLE TO PAY PLAINTIFF-APPELLEE THE AMOUNT OF PHP3,362,037.50 AS GROSSLY EXCESSIVE, HIGHLY OUTRAGEOUS AND INIQUITOUS INTEREST;
2. WHETHER SUMMARY JUDGMENT IS PROPER IN THE INSTANT CASE;
3. WHETHER OR NOT THE PROMISSORY NOTE AND THE EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE ARE NULL AND VOID.

A summary judgment is apt when the essential facts of the case are uncontested or the parties do not raise any genuine issue of fact. In *Bank of the Philippine Islands vs. Spouses Yu*<sup>[20]</sup>, the Supreme Court stated that to resolve the issue of the excessive charges allegedly incorporated into the auction bid price, the court simply had to look at a) the pleadings of the parties; b) the loan agreements, the promissory note, and the real estate mortgages between them; c) the foreclosure and bidding documents; and d) the admissions and other disclosures between the parties during pre-trial. Considering that the parties admitted not only the existence, authenticity, and genuine execution of these documents but also what they stated, the RTC did not need to hold a trial for the reception of evidence of the parties. Considering that the same circumstances are present in this case, this Court holds that the summary judgment was proper.