

TWELFTH DIVISION

[CA-G.R. CV. No. 95604, May 20, 2014]

CECIL P. FLORESCA, PLAINTIFF-APPELLANT, VS. LIBERTY T. IGNACIO, DEFENDANT-APPELLEE.

D E C I S I O N

ELBINIAS, J.:

Subject for disposition is an Appeal^[1] filed under Rule 41 of the Rules of Court. The Appeal assails the Decision^[2] dated November 16, 2009 of the Regional Trial Court, Branch 33 of Bauang, La Union ("lower court" for brevity) in Civil Case No. 1626-BG for "DECLARATORY RELIEF."^[3]

The pertinent facts are those as found in the lower court's Decision^[4] dated November 16, 2009, to wit:

"Petitioner (*plaintiff-appellant here*) is an American citizen residing at Central West, Bauang, La Union while defendant (*defendant-appellee here*) is residing at No. 664 Waling-waling St., Pangarap Village, Brgy. 181, Kalookan City.

In 1999, petitioner (*plaintiff-appellant here*) borrowed from respondent (*defendant-appellee here*) Php165,000.00. He (*plaintiff-appellant*) alleged the amount was actually an accumulation of several loans given or guaranteed by respondent. As collateral for the loan in August 1999, petitioner (*plaintiff-appellant*) executed a mortgage agreement in favor of respondent, (*defendant-appellee*), mortgaging his parcel of land at Bauang, La Union which is covered by TCT No. T-14647.

Under the second paragraph of the mortgage contract, the due date of the loan was within a period of one month with a seven per cent interest. Petitioner (*plaintiff-appellant*) had up to the month of September 1999 to fully pay his loan to respondent. However, as the finances of petitioner (*plaintiff-appellant*) at that time were insufficient, he anticipated that it would take up to December 25, 1999 for him to be able to pay fully his loan to respondent (*defendant-appellee*).

Petitioner (*plaintiff-appellant*) explained his predicament to respondent and the latter agreed to the extension. **However, respondent (*defendant-appellee*) fixed the interest at seven per cent (7%) a month and further required that petitioner (*plaintiff-appellant*) issue post dated checks to cover the principal and interest.**

Accordingly, petitioner (*plaintiff-appellant*) issued the following checks to respondent (*defendant-appellee*):

CHECK NO.	DATE	AMOUNT
0057668	9-25-99	Php176,550.00
0057669	10-25-99	Php13,200.00
0057670	12-25-99	Php13,200.00
0057671	11-25-99	Php13,200.00

On August 22, 2005, petitioner (*plaintiff-appellant*) purposely sought respondent (*defendant-appellee*) to pay fully his obligation to the latter. During their meeting, however, when petitioner (*plaintiff-appellant*) inquired from respondent (*defendant-appellee*) how much was his obligation under the mortgage contract, the latter informed him that the latter's account was Php9,553,410.00 to his shock and dismay.

Petitioner (*plaintiff-appellant*) vehemently disagreed with respondent (*defendant-appellee*) and contested the Php9,553,410.00, respondent (*defendant-appellee*) pointing to the provision of the real estate mortgage as his basis. Respondent (*defendant-appellee*) relented and revised her computation and reduced the amount to Php1,707,585.00, with ten per cent (10%) as monthly interest.

He (*plaintiff-appellant*) again protested and contested the second computation basing his protest on the provisions of the real estate mortgage agreement as nowhere therein was it stated that his loan will earn a seven or ten per cent monthly interest after 1999. According to him, he made it clear to respondent (*defendant-appellee*) his position that he was liable to pay her Php176,550.00 plus the agreed monthly interest thereon of Php13,200.00 up to December 25, 1999. His liability on the interest for the loan since there was no agreement, should only be the legal interest which is 12% per annum or one per cent a month.

Based on his computation, his total obligation from January 2000 up to September 12, 2005 is Php365,256.00 only, which he was willing to pay, but was not accepted by respondent (*defendant-appellee*)."^[5] (*Emphasis supplied*)

On September 13, 2005, plaintiff-appellant Cecil Floresca ("plaintiff-appellant" for brevity) filed a Petition^[6] for "DECLARATORY RELIEF" against defendant-appellee Liberty Ignacio ("defendant-appellee" for brevity). To this, defendant-appellee filed an "ANSWER TO PETITION"^[7] dated January 5, 2007.

On November 16, 2009, the lower court rendered its assailed Decision^[8] in favor defendant-appellee. The dispositive portion of the Decision decreed:

"WHEREFORE, premises considered, this Court decides:

- 1) Declaring the seven per cent (7%) monthly interest rate from September 1999 to December 1999 and one per cent (1%) monthly penalty from September 1999 up to December 1999 binding and legal; and
- 2) Ordering petitioner to pay respondent the following:
 - a) Php165,000.00 the principal of the loan plus 7% per month and another 1% representing the monthly interest rate and penalty commencing from September 1999 up to December 1999; and
 - b) From January 2000 up to the time the loan is fully paid, an additional 12% legal rate of interest shall be imposed on the principal loan.

No pronouncement as to costs.

SO ORDERED."^[9]

Plaintiff-appellant then filed the Appeal^[10] at bench, praying that:

"PREMISES CONSIDERED, the petitioner, through counsel, respectfully prays that a new order be issued voiding the 1% monthly penalty or 12% annual penalty as without basis and constitutes a tremendous burden on the petitioner being in addition to the 12% per annum legal interest on the principal obligation decreed by the Court Aquo (*sic*) to be paid by the Petitioner from January 2000 to the present time;

PRAYING FURTHER for other remedies deemed just and equitable (*sic*) by the Honorable Court."^[11] (*Emphasis was made in the original*)

Plaintiff-appellant raised the following assignment of errors:

- "1. The Court Aquo (*sic*) erred in finding that 1% monthly penalty on principal obligation was agreed upon and consented to by the Petitioner;
2. The Court Aquo (*sic*) failed to appreciate the rationale behind the imposition of penalty on the principal obligation – that is the failure of the debtor to pay his obligation on due date;
3. The Court Aquo (*sic*) abused its discretion amounting to a lack of jurisdiction in imposing the 1% a month penalty from January 2000 to the present despite the readiness and willingness of the petitioner to pay on August 22, 2005 his obligation amounting to P365,256.00 at the time;

4. The Court Aquo (*sic*) failed to appreciate the fact that the refusal by the respondent to accept petitioner's offer to pay his obligation on August 22, 2005 as the reason for the delay in the settlement of petitioner's obligation which ballooned accordingly and for the case to drag for more than six (6) years."^[12]

Contrary to plaintiff-appellant's allegation in his *assignment of errors 1 and 3*, the lower court did not err in imposing a penalty of one percent (1%) a month on the principal obligation resulting from plaintiff-appellant's failure to pay his obligation to defendant-appellee upon such obligation having become due and demandable.

Plaintiff-appellant had argued that:

"That the mortgage loan agreement, signed by the parties, however, does not specify the rate of penalty in case of non-payment by the petitioner of the obligation on due date;

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That in decreeing the imposition of a 7% interest on the principal from September 1999 to December 1999, **the Court however erred in finding that the parties had agreed on a 1% monthly interest in addition to the 7% monthly interest for the period.** xxx

That what the petitioner is assailing is the one per cent (1%) monthly penalty on the loan from January 2000 to the time the petitioner shall have fully paid his obligation.

That nowhere in the following reproduced relevant portion of the mortgage contract is there a stipulation of a monthly 1% penalty xxx.

That the petitioner maintains his position that the aforestated phrase in the Contract 'failure to pay on due date, a penalty be imposed' is ambiguous, unclear and not definite. The intent of the contracting parties cannot be fathomed. The respondent cannot use it to justify her prayer for a 1% monthly penalty;

That the petitioner likewise maintains its position that the award by the Court Aquo (*sic*) of 1% monthly penalty covering September 1999 to December 1999 is more than sufficient to cover the alleged liquidated damages respondent suffered as it is in addition to the 12% annual legal interest to be paid by petitioner from due date of the unpaid loan up to the time the petitioner can fully pay his entire obligation;

xxx

That in the instant case, the un-envisioned and unspecified one (1%) per cent monthly penalty or 12% per annum penalty when added to the 12% annual legal interest translates to an enormous 24% annual charges on the principal obligation which is a heavy financial burden to Petitioner;"^[13] (*Emphasis supplied*)