

THIRD DIVISION

[G.R. No. 191274, December 06, 2017]

ERMA INDUSTRIES, INC., ERNESTO B. MARCELO AND FLERIDA O. MARCELO, PETITIONERS, VS. SECURITY BANK CORPORATION AND SERGIO ORTIZ-LUIS, JR., RESPONDENTS.

DECISION

LEONEN, J.:

This Petition for Review^[1] is an appeal from the Court of Appeals: (1) Decision^[2] dated June 17, 2009, which affirmed in *toto* the Decision^[3] dated May 31, 2004 of Branch 64, Regional Trial Court, Makati City; and (2) Resolution^[4] dated February 3, 2010, which denied petitioners' motion for reconsideration.

On May 5, 1992, Erma Industries, Inc. (Erma) obtained from Security Bank Corporation (Security Bank) a credit facility, the conditions for which are embodied in the Credit Agreement^[5] executed between the parties.^[6]

On the same date, a Continuing Suretyship^[7] agreement was executed in favor of Security Bank, and signed by Spouses Ernesto and Flerida Marcelo and Spouses Sergio and Margarita Ortiz-Luis. Under the Continuing Suretyship Agreement, the sureties agreed to be bound by the provisions of the Credit Agreement and to be jointly and severally liable with Erma in case the latter defaults in any of its payments with Security Bank.

Following the execution of the two agreements and during the period covering May 1992 to July 1993, Erma obtained various peso and dollar denominated loans from Security Bank evidenced by promissory notes,^[8] as follows:

Promissory Note No.	Principal Amount Loaned	Date Loan was obtained	Maturity Date
(Batch One)			
FCDL/82/013/92	US\$175,000.00	5/14/92	8/10/92
FCDL/82/022/92	US\$135,000.00	11/3/92	1/29/93
OACL/82/490/93	P7,300,000.00	7/26/93	10/25/93
OACL/82/509/92	P3,000,000.00	11/9/92	1/29/93
OACL/82/520/92	P1,700,000.00	11/13/92	1/29/93
OACL/82/548/92	P2,000,000.00	11/25/92	1/29/93
(Batch Two)			
OACL/82/179/92	P5,580,000.00	8/10/92	11/8/92
OACL/82/341/93	P350,000.00	5/31/93	7/7/93
OACL/82/347/93	P120,000.00	6/2/93	7/7/93
OACL/82/352/93	P479,000.00	6/3/93	7/7/93 ^[9]

The promissory notes uniformly contain the following stipulations:

1. Interest on the principal at varying rates (7.5% per annum for dollar obligation and 16.75% or 21% per annum on peso obligation);
2. Interest not paid when due shall be compounded monthly from due date;
3. Penalty charge of 2% per month of the total outstanding principal and interest due and unpaid; and
4. Attorney's fees equivalent to 20% of the total amount due plus expenses and costs of collection.^[10]

After defaulting in the payment of the loans, Erma, through its President, Ernesto Marcelo, wrote a letter^[11] dated February 2, 1994 to Security Bank, requesting for the restructuring of the whole of Erma's obligations and converting it into a five-year loan.^[12] A certain property valued at P12 million covered by TCT No. M-7021 and registered in the name of petitioner Ernesto Marcelo was also offered as security.^[13] The title was received by Security Bank and has since then remained in its possession.^[14]

In a letter^[15] dated April 27, 1994, Security Bank approved the partial restructuring of the loans or only up to P5 million.^[16]

On May 10, 1994, Erma reiterated its request for the restructuring of the entire obligation. Erma also stated that the property they offered as collateral could answer for a far bigger amount than what Security Bank had recommended. Nevertheless, Erma suggested that it could add another property as additional security so long as the entire obligation is covered.^[17]

Through a letter^[18] dated November 8, 1994, Security Bank demanded payment, from Erma and the sureties, of Erma's outstanding peso and dollar obligations in the total amounts of P17,995,214.47 and US\$289,730.10, respectively, as of October 31, 1994.

On January 10, 1995, Security Bank filed a Complaint^[19] with the Regional Trial Court of Makati City, for payment of Erma's outstanding loan obligation plus interests and penalties.

Upon the filing of said Complaint and as "it became clear that the Bank would agree only to partial restructuring,"^[20] Erma requested the return of the TCT in its letter dated June 10, 1996.^[21] However, Security Bank retained possession of TCT M-7021.

On June 24, 1999 (after the case was reraffled to Branch 64 from Branch 143),^[22] Security Bank filed its Amended Complaint^[23] for Sum of Money praying that Erma, Spouses Marcelo, and Spouses Ortiz be compelled to execute a Real Estate Mortgage in its favor over the property covered by TCT M-7021.

In Erma and Spouses Marcelo's Amended Answer^[24] dated November 9, 1999, a counterclaim against Security Bank was included for the return of said title to its rightful owner, petitioner Ernesto Marcelo.

Spouses Ortiz, for their part, essentially denied liability. Sergio claimed that he signed the Suretyship Agreement only as an accommodation party and nominal surety; and his obligation, if any, was extinguished by novation when the loan was restructured without his knowledge and consent. Margarita, on the other hand, claimed that she signed the Suretyship Agreement only to signify her marital consent.^[25]

After trial, the Regional Trial Court rendered its Decision^[26] dated May 31, 2004, where it adjudged Erma liable to pay Security Bank the amounts of P17,995,214.47 and US\$289,730.10, inclusive of the stipulated interest and penalty as of October 31, 1994, plus legal interest of 12% per annum from November 1, 1994 until full payment is made.^[27] Given Erma's partial payments of its loan obligation, and the serious slump suffered by its export business, the trial court considered iniquitous to still require Erma to pay 2% penalty per month and legal interest on accrued interest after October 1994.^[28] The Regional Trial Court further denied Security Bank's prayer for attorney's fees on the ground that "there was no conscious effort to evade payment of the obligation."^[29] It likewise denied Erma's prayer for attorney's fees.^[30]

Ernesto Marcelo and Sergio Ortiz-Luis were also held liable to Security Bank as sureties.^[31] Their spouses, on the other hand, were not held liable as sureties as they affixed their signatures in the Continuing Suretyship Agreement only to signify their marital consent.^[32] The trial court further held that there was no novation because the restructuring of Erma's loan obligation whether total or partial, did not materialize.^[33] Consequently, Security Bank was ordered to return TCT No. M-7021 to Spouses Marcelo.^[34]

The Court of Appeals affirmed the Regional Trial Court's Decision *in toto*.^[35] It held that there was no perfected agreement on the restructuring of the loans because Erma never complied with the condition to submit documentary requirements,^[36] and Erma did not accept the partial restructuring of the loan offered by Security Bank.^[37] On the issue of Sergio Ortiz's liability, the Court of Appeals held that under the terms of the Continuing Suretyship agreement, Sergio Ortiz undeniably bound himself jointly and severally with Ernesto Marcelo for the obligations of Erma.^[38]

Finally, the Court of Appeals agreed with the Regional Trial Court that "the 2% penalty per month ... imposed by the [B]ank: on top of the 20% interest per annum on the peso obligation and 7.5% interest per annum on the dollar obligation was iniquitous[.]"^[39] Consequently, the Court of Appeals held that a straight 12% per annum interest on the total amount due would be fair and equitable. In this regard, Erma's prayer to remand the case to the court *a quo* for reception of additional evidence that would further reduce their outstanding obligation was rejected by the Court of Appeals on the grounds that Erma should have presented all evidence at the trial and that it would unduly delay the case even further.^[40]

On April 5, 2010, Erma and Spouses Marcelo filed their Petition for Review. In a Resolution^[41] dated April 28, 2010, the Court denied the petition for failure:

- (1) to state the material dates when the assailed decision of the Court of Appeals was received and when petitioners' motion for reconsideration was filed, in violation of Sections 4(b) and 5, Rule 45 in relation to Section 5(d), Rule 56 of the 1997 Rules of Civil Procedure, as amended; and
- (2) to sufficiently show any reversible error committed by the Court of Appeals in its decision and resolution.

However, in a Resolution dated September 27, 2010, the Court granted petitioners' Motion for Reconsideration and reinstated the Petition. Security Bank Corporation and Sergio R. Ortiz-Luis, Jr. filed their respective Comments; and petitioners their Consolidated Reply.^[42]

In compliance with the Court's Resolution^[43] dated October 8, 2012, petitioners and respondents filed their respective memoranda.

The issues for resolution are:

First, whether the Court of Appeals and the Regional Trial Court erred in finding that petitioners are liable to pay respondent Bank the amounts of P17,995,214.47 and US\$289,730.10, inclusive of interests and penalty charge as of October 31, 1994;

Second, whether the Court of Appeals and the Regional Trial Court erred in finding that petitioners are liable to pay respondent Bank legal interest of twelve percent (12%) per annum from October 1994 until full payment is made;

Third, whether petitioners are entitled to attorney's fees; and

Fourth, whether the Court of Appeals erred in holding respondent Sergio Ortiz - Luis, Jr. solidarily liable with the petitioners to pay the sums of P17,995,214.47 and US\$289,730.10 plus 12% legal interest.

We deny the petition. The Court of Appeals committed no reversible error in affirming in *toto* the decision of the Regional Trial Court.

I

In its Amended Complaint, Security Bank claimed for payment of the total outstanding peso obligation of P17,995,214.47 and total outstanding dollar obligation of US\$289,730.10 as of October 31, 1994. The Bank additionally claimed for:

- (1) Interest of 20% per annum on the peso obligation and 7.5% per annum on the dollar obligation from November 1, 1994 until fully paid;
- (2) Penalty charges of 2% per month on the total outstanding obligation from November 1, 1994 until fully paid;

- (3) Legal interest on the accrued interest from the filing of the Complaint until fully paid; and
- (4) Attorney's fees equivalent to 20% of total outstanding obligations, including interests and penalties.^[44]

The Regional Trial Court denied Security Bank's additional claims for interests and penalty charges for being iniquitous, and imposed instead a 12% legal interest on the total outstanding obligation. Agreeing with the trial court, the Court of Appeals explained that it would only be fair and equitable to impose a straight 12% per annum on the total amount due starting October 1994, rather than the 2% penalty per month on top of the 20% and 7.5% interest on the peso and dollar obligation, respectively, being demanded by the Bank.

Petitioners now contend that since the trial and appellate courts found the stipulated interests and penalty charges to be excessive and iniquitous,^[45] then the amounts of P17,995,214.47 and US\$289,730.10 adjudged against them (which already incorporated the interests and penalty charges) should have been reduced to the actual unpaid principals of P12,957,500.00 and US\$209,941.55, respectively, devoid of any interests and penalty charges.^[46]

Security Bank counters that petitioners raise purely factual questions, which are not proper in a Rule 45 petition before this Court;^[47] and petitioners' arguments were a mere rehash of their arguments before the Court of Appeals, which have already been judiciously passed upon.^[48]

Petitioners are mistaken.

The Regional Trial Court did not delete altogether the 2% monthly penalty charges and stipulated interests of 7.5% (on the dollar obligations) and 20% (on peso obligations). The trial court, in fact, adjudged petitioner Erma liable to pay the amounts of P17,995,214.47 and US\$289,730.10, inclusive of the stipulated interest and penalty as of October 31, 1994, on the basis of Article 1308^[49] of the Civil Code and jurisprudential pronouncements on the obligatory force of contracts - not otherwise contrary to law, morals, good customs or public policy - between contracting parties.^[50]

The stipulated 7.5% or 21% per annum interest constitutes the monetary or conventional interest for borrowing money and is allowed under Article 1956 of the New Civil Code.^[51] On the other hand, the penalty charge of 2% per month accrues from the time of Erma's default in the payment of the principal and/or interest on due date.^[52] This 2% per month charge is penalty or compensatory interest for the delay in the payment of a fixed sum of money, which is separate and distinct from the conventional interest on the principal of the loan.^[53] In this connection, this Court, construing Article 2209^[54] of the Civil Code, held that:

[T]he appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum or money, is the payment of penalty interest at the rate agreed upon; and in the absence