

## THIRD DIVISION

[ G.R. No. 206459, April 06, 2016 ]

**SPOUSES FLORANTE E. JONSAY AND LUZVIMINDA L. JONSAY  
AND MOMARCO IMPORT CO., INC., PETITIONERS, VS.  
SOLIDBANK CORPORATION (NOW METROPOLITAN BANK AND  
TRUST COMPANY), RESPONDENT.**

### DECISION

**REYES, J.:**

Before this Court is a Petition for Review<sup>[1]</sup> from the Amended Decision<sup>[2]</sup> dated November 26, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 94012, which reconsidered its earlier Decision<sup>[3]</sup> therein dated April 27, 2012, and granted in part the appeal of herein respondent Solidbank Corporation (Solidbank) from the Amended Decision<sup>[4]</sup> dated July 7, 2009 of the Regional Trial Court (RTC) of Calamba City, Branch 35, in Civil Case No. 2912-2000-C, which annulled the extrajudicial foreclosure proceedings instituted by Solidbank against the Spouses Florante E. Jonsay (Florante) and Luzviminda L. Jonsay (Luzviminda) (Spouses Jonsay) and Momarco Import Co., Inc. (Momarco) (petitioners) over the mortgaged properties.

### Factual Antecedents

Momarco, controlled and owned by the Spouses Jonsay, is an importer, manufacturer and distributor of animal health and feedmill products catering to cattle, hog and poultry producers. On November 9, 1995, and again on April 28, 1997, Momarco obtained loans of P40,000,000.00 and P 20,000,000.00, respectively, from Solidbank for which the Spouses Jonsay executed a blanket mortgage over three parcels of land they owned in Calamba City, Laguna registered in their names under Transfer Certificates of Title Nos. T-224751, T-210327 and T-269668 containing a total of 23,733 square meters.<sup>[5]</sup> On November 3, 1997,<sup>[6]</sup> the loans were consolidated under one promissory note<sup>[7]</sup> for the combined amount of P60,000,000.00, signed by Florante as President of Momarco, with his wife Luzviminda also signing as co-maker.<sup>[8]</sup> The stipulated rate of interest was 18.75% *per annum*, along with an escalation clause tied to increases in pertinent Central Bank-declared interest rates, by which Solidbank was eventually able to unilaterally increase the interest charges up to 30% *per annum*.<sup>[9]</sup>

Momarco religiously paid the monthly interests charged by Solidbank from November 1995<sup>[10]</sup> until January 1998, when it paid P1,370,321.09. Claiming business reverses brought on by the 1997 Asian financial crisis, Momarco tried unsuccessfully to negotiate a moratorium or suspension in its interest payments. Due to persistent demands by Solidbank, Momarco made its next, and its last, monthly interest payment in April 1998 in the amount of P1,000,000.00. Solidbank

applied the said payment to Momarco's accrued interest for February 1998. Momarco sought a loan from Landbank of the Philippines to pay off its aforesaid debt but its application fell through. The anticipated expropriation by the Department of Public Works and Highways of the mortgaged lots for the extension of the South Luzon Expressway (SLEX) also did not materialize.<sup>[11]</sup>

Solidbank proceeded to extrajudicially foreclose on the mortgage, and at the auction sale held on March 5, 1999, it submitted the winning bid of P82,327,249.54,<sup>[12]</sup> representing Momarco's outstanding loans, interests and penalties, plus attorney's fees of P3,600,000.00. But Momarco now claims that on the date of the auction the fair market value of their mortgaged lots had increased sevenfold to P441,750,000.00.<sup>[13]</sup> On March 22, 1999, Sheriff Adelio Perocho (Sheriff Perocho) issued a certificate of sale to Solidbank, duly annotated on April 15, 1999 on the lots' titles.<sup>[14]</sup>

On March 9, 2000, a month before the expiration of the period to redeem the lots, the petitioners filed a Complaint<sup>[15]</sup> against Solidbank, Sheriff Perocho and the Register of Deeds of Calamba, Laguna, docketed as Civil Case No. 2912-2000-C, for *Annulment of the Extrajudicial Foreclosure of Mortgage, Injunction, Accounting and Damages with Prayer for the Immediate Issuance of a Writ of Preliminary Prohibitory Injunction*. They averred that: (a) the amount claimed by Solidbank as Momarco's total loan indebtedness is bloated; (b) Solidbank's interest charges are illegal for exceeding the legal rate of 12% *per annum*; (c) the filing fee it charged has no legal and factual basis; (d) the attorney's fees of P3,600,000.00 it billed the petitioners is excessive and unconscionable; (e) their previous payments from 1995 to 1997 were not taken into account in computing their principal indebtedness; (f) Sheriff Perocho's certificate of posting was invalid; and (g) the publication of the notice of the auction sale was defective because the *Morning Chronicle* which published the said notice was not a newspaper of general circulation in Calamba, Laguna.<sup>[16]</sup>

After Solidbank filed its Answer with Counterclaim<sup>[17]</sup> on April 12, 2000, the RTC heard and granted the petitioners' application for temporary restraining order on April 13, 2000,<sup>[18]</sup> followed on May 2, 2000<sup>[19]</sup> by issuance of a writ of preliminary prohibitory injunction, thus suspending the consolidation of Solidbank's titles to the subject lots.

The petitioners' principal witness was Florante, whose testimony was summarized by the RTC in its amended decision, as follows:

[Florante] signed the loan documents in blank and the signing took place at his office in Quezon City; he asserted that they were able to pay more than Twenty-Four Million Pesos but the same were not deducted by the bank to arrive at the correct amount of indebtedness. He said that his accountant prepared statement of payments showing the payments made to the bank. He further claimed that there are still other payments, the receipts of which are being retrieved by his accountant. He also asserted that the newspaper where the notice of foreclosure sale was published is not a newspaper of general circulation.

The same cannot be found in a newspaper stand in the place where the mortgaged properties are located; he further claimed that [he] suffered moral, emotional and mental injury; he is a graduate of Doctor of Veterinary Medicine; a permanent member of the Philippine Veterinary Medical Association; graduated and passed the Board; he is the President of [Momarco] and the President of Momarco Resort; he has been engaged in this line of business for 31 years now; his wife is a graduate of Dental Medicine and partner of [Momarco]; he has four (4) children three of them had already graduated and one still in college; x x x he is also claiming for exemplary damages of Five Million Pesos to set an example for other banks like Solidbank, to refrain from filing acts which are irregular and affect borrowers like him, he claimed also for attorney[']s fees of Three Million Pesos.<sup>[20]</sup>

Solidbank's witnesses, Lela Quijano, head of its collection division, and Benjamin Apan, its senior manager for retail operations, admitted that the monthly interests it collected from 1995 to 1998 ranged from 18.75% to 30%, and that for 1998, Momarco paid P2,370,321.09 in interest.<sup>[21]</sup>

### **Ruling of the RTC**

On July 7, 2009, the RTC issued its Amended Decision, the *fallo* of which reads, as follows:

Wherefore, premises considered, judgment is rendered in favor of the [petitioners] and against the defendants] by:

- 1) Declaring the extra-judicial foreclosure proceedings NULL and VOID and without any legal effect and the defendants are prohibited to consolidate the titles in the name of [Solidbank] without prejudice to the filing of the action for collection or recovery of the sum of money secured by the real estate mortgage in the proper forum;
- 2) Ordering that the interest rates on the [petitioners'] indebtedness be reduced to 12% per annum;
- 3) Declaring that the attorney's fees and filing fee being collected by [Solidbank] to be devoid of any legal basis;
- 4) Ordering [Solidbank] to pay the [petitioners] the following sums, to wit:
  - a) Php20,000,000.00 - moral damages;
  - b) Php2,500,000.00 - exemplary damages;
  - c) Php1,[500],000.00 - for attorney's fees.
- 5) Ordering the dismissal of the counterclaim for lack of merit.

SO ORDERED.<sup>[22]</sup>

The RTC ruled that the mortgage contract and the promissory notes prepared by Solidbank, which the Spouses Jonsay signed in blank, were contracts of adhesion; that Solidbank failed to take into account Momarco's payments in the two years preceding 1998 totaling P24,277,293.22 (this amount was not disputed by Solidbank); that the interest rates, ranging from 19% to 30%, as well as the penalties, charges and attorney's fees imposed by Solidbank, were excessive, unconscionable and immoral, and that Solidbank has no *carte blanche* authority under the Usury Law to unilaterally raise the interest rates to levels as to enslave the borrower and hemorrhage its assets; that Solidbank's verification in its application for foreclosure of mortgage was defective because it was signed not by its President but only by a vice-president; that the *Morning Chronicle*, in which the notice of auction was published, was not a newspaper of general circulation because it had no *bona fide* list of paying subscribers; that Solidbank manipulated the foreclosure sale through a defective publication of the notice of auction and by submitting an unconscionably low bid of P82,327,000.00, whereas the value of the lots had risen sevenfold since the rehabilitation of the SLEX.<sup>[23]</sup>

### **Ruling of the CA**

On appeal to the CA, Solidbank interposed the following errors of the RTC, to wit:

THE [RTC] GRAVELY ERRED IN NULLIFYING THE FORECLOSURE PROCEEDINGS CONDUCTED AGAINST [THE PETITIONERS'] PROPERTIES ON THE GROUND THAT THE REAL ESTATE MORTGAGE EXECUTED BY THE PARTIES WAS A CONTRACT OF ADHESION;

THE [RTC] GRAVELY ERRED IN NULLIFYING THE FORECLOSURE PROCEEDINGS CONDUCTED AGAINST [THE PETITIONERS'] PROPERTIES ON THE GROUND THAT THE NEWSPAPER WHERE THE NOTICE OF FORECLOSURE WAS PUBLISHED IS NOT A NEWSPAPER OF GENERAL CIRCULATION;

THE [RTC] GRAVELY ERRED IN NULLIFYING THE FORECLOSURE PROCEEDINGS CONDUCTED AGAINST [THE PETITIONERS'] PROPERTIES ON THE GROUNDS THAT THE INTEREST RATES, PENALTIES, ATTORNEY'S FEES CHARGED ARE EXCESSIVE, UNCONSCIONABLE AND IMMORAL AND THAT THE [SOLIDBANK] DID NOT TAKE INTO ACCOUNT [THE PETITIONERS'] PREVIOUS PAYMENT[S] IN THE AMOUNT OF P24,277,293.27;

THE [RTC] GRAVELY ERRED IN AWARDING MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF THE [PETITIONERS];

THE [RTC] GRAVE[LY] ERRED IN FAILING TO REGARD [THE PETITIONERS] [IN] ESTOPPEL WHEN THE LATTER DID NOT IMPUGN THE VALIDITY OF THE LOAN AND MORTGAGE DOCUMENTS WITHIN A REASONABLE TIME.<sup>[24]</sup>

On April 27, 2012, the CA rendered judgment affirming the RTC *in toto*. It agreed that Solidbank did not comply with the publication requirements under Section 3, Act No. 3135, which provides:

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks **in a newspaper of general circulation in the municipality or city.**<sup>[25]</sup> (Emphasis ours)

According to the CA, the *Morning Chronicle* was not a newspaper of general circulation, notwithstanding the affidavit of publication issued by its publisher, Turing R. Crisostomo (Crisostomo), to that effect as well as the certification of the Clerk of Court of RTC-Calamba City that it was duly accredited by the court since May 28, 1997 to publish legal notices. The CA ruled that it was not enough for Crisostomo to merely state in his affidavit that the *Morning Chronicle* was published and edited in the province of Laguna and in San Pablo City without a showing that it was published to disseminate local news and general information, that it had a *bona fide* list of paying subscribers, that it was published at regular intervals, and that it was in general circulation in Calamba City where the subject properties are located.<sup>[26]</sup>

In *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*,<sup>[27]</sup> cited by the CA, the Court explained that: (1) the object of a notice of sale is to achieve a reasonably wide publicity of the auction by informing the public of the nature and condition of the property to be auctioned, and of the time, place and terms of the sale, and thereby secure bidders and prevent a sacrifice of the property; (2) a newspaper to be considered one of general circulation need not have the largest circulation but must be able to appeal to the public in general and thus ensure a wide readership, and must not be devoted solely to entertainment or the interest of a particular class, profession, trade, calling, race, or religious denomination; and (3) Section 3 of Act No. 3135, as amended by Act No. 4118, does not only require the newspaper to be of general circulation but also that it is circulated in the municipality or city where the property is located.<sup>[28]</sup>

The CA held that the accreditation of the *Morning Chronicle* by the Clerk of Court of the RTC to publish legal notices is not determinative of whether it is a newspaper of general circulation in Calamba City.<sup>[29]</sup>

Concerning the loans due from the petitioners, the CA noted that under the *pro forma* promissory note which Solidbank prepared and which the Spouses Jonsay signed in blank, Solidbank enjoyed unrestrained freedom to unilaterally increase the interest rate in any month. The note gave it authority to increase or decrease the interest rate from time to time, "without any advance notice" and "in the event the Monetary Board of the Central Bank of the Philippines raises or lowers the interest rates on loans." According to the CA, this provision violated the principle of mutuality of contracts embodied in Article 1308<sup>[30]</sup> of the Civil Code.<sup>[31]</sup>