

FIRST DIVISION

[G.R. No. 174433, February 24, 2014]

PHILIPPINE NATIONAL BANK, PETITIONER, VS. SPOUSES ENRIQUE MANALO & ROSALINDA JACINTO, ARNOLD J. MANALO, ARNEL J. MANALO, AND ARMA J. MANALO, RESPONDENTS.

DECISION

BERSAMIN, J.:

Although banks are free to determine the rate of interest they could impose on their borrowers, they can do so only reasonably, not arbitrarily. They may not take advantage of the ordinary borrowers' lack of familiarity with banking procedures and jargon. Hence, any stipulation on interest unilaterally imposed and increased by them shall be struck down as violative of the principle of mutuality of contracts.

Antecedents

Respondent Spouses Enrique Manalo and Rosalinda Jacinto (Spouses Manalo) applied for an All-Purpose Credit Facility in the amount of P1,000,000.00 with Philippine National Bank (PNB) to finance the construction of their house. After PNB granted their application, they executed a *Real Estate Mortgage* on November 3, 1993 in favor of PNB over their property covered by Transfer Certificate of Title No. S- 23191 as security for the loan.^[1] The credit facility was renewed and increased several times over the years. On September 20, 1996, the credit facility was again renewed for P7,000,000.00. As a consequence, the parties executed a *Supplement to and Amendment of Existing Real Estate Mortgage* whereby the property covered by TCT No. 171859 was added as security for the loan. The additional security was registered in the names of respondents Arnold, Arnel, Anthony, and Arma, all surnamed Manalo, who were their children.^[2]

It was agreed upon that the Spouses Manalo would make monthly payments on the interest. However, PNB claimed that their last recorded payment was made on December, 1997. Thus, PNB sent a demand letter to them on their overdue account and required them to settle the account. PNB sent another demand letter because they failed to heed the first demand.^[3]

After the Spouses Manalo still failed to settle their unpaid account despite the two demand letters, PNB foreclose the mortgage. During the foreclosure sale, PNB was the highest bidder for P15,127,000.00 of the mortgaged properties of the Spouses Manalo. The sheriff issued to PNB the Certificate of Sale dated November 13, 2000.^[4]

After more than a year after the Certificate of Sale had been issued to PNB, the Spouses Manalo instituted this action for the nullification of the foreclosure proceedings and damages. They alleged that they had obtained a loan for

P1,000,000.00 from a certain Benito Tan upon arrangements made by Antoninus Yuvienco, then the General Manager of PNB's Bangkal Branch where they had transacted; that they had been made to understand and had been assured that the P1,000,000.00 would be used to update their account, and that their loan would be restructured and converted into a long-term loan;^[5] that they had been surprised to learn, therefore, that had been declared in default of their obligations, and that the mortgage on their property had been foreclosed and their property had been sold; and that PNB did not comply with Section 3 of Act No. 3135, as amended.^[6]

PNB and Antoninus Yuvienco countered that the P1,000,000.00 loan obtained by the Spouses Manalo from Benito Tan had been credited to their account; that they did not make any assurances on the restructuring and conversion of the Spouses Manalo's loan into a long-term one;^[7] that PNB's right to foreclose the mortgage had been clear especially because the Spouses Manalo had not assailed the validity of the loans and of the mortgage; and that the Spouses Manalo did not allege having fully paid their indebtedness.^[8]

Ruling of the RTC

After trial, the RTC rendered its decision in favor of PNB, holding thusly:

In resolving this present case, one of the most significant matters the court has noted is that while during the pre-trial held on 8 September 2003, plaintiff-spouses Manalo with the assistance counsel had agreed to stipulate that defendants had the right to foreclose upon the subject properties and that the plaintiffs' main thrust was to prove that the foreclosure proceedings were invalid, in the course of the presentation of their evidence, they modified their position and claimed [that] the loan document executed were contracts of adhesion which were null and void because they were prepared entirely under the defendant bank's supervision. They also questioned the interest rates and penalty charges imposed arguing that these were iniquitous, unconscionable and therefore likewise void.

Not having raised the foregoing matters as issues during the pre-trial, plaintiff-spouses are presumably estopped from allowing these matters to serve as part of their evidence, more so because at the pre-trial they expressly recognized the defendant bank's right to foreclose upon the subject property (See Order, pp. 193-195).

However, considering that the defendant bank did not interpose any objection to these matters being made part of plaintiff's evidence so much so that their memorandum contained discussions rebutting plaintiff spouses arguments on these issues, the court must necessarily include these matters in the resolution of the present case.^[9]

The RTC held, however, that the Spouses Manalo's "contract of adhesion" argument was unfounded because they had still accepted the terms and conditions of their credit agreement with PNB and had exerted efforts to pay their obligation;^[10] that the Spouses Manalo were now estopped from questioning the interest rates unilaterally imposed by PNB because they had paid at those rates for three years

without protest;^[11] and that their allegation about PNB violating the notice and publication requirements during the foreclosure proceedings was untenable because personal notice to the mortgagee was not required under Act No. 3135.^[12]

The Spouses Manalo appealed to the CA by assigning a singular error, as follows:

THE COURT A QUO SERIOUSLY ERRED IN DISMISSING PLAINTIFF-APPELLANTS' COMPLAINT FOR BEING (sic) LACK OF MERIT NOTWITHSTANDING THE FACT THAT IT WAS CLEARLY SHOWN THAT THE FORECLOSURE PROCEEDINGS WAS INVALID AND ILLEGAL.^[13]

The Spouses Manalo reiterated their arguments, insisting that: (1) the credit agreements they entered into with PNB were contracts of adhesion;^[14] (2) no interest was due from them because their credit agreements with PNB did not specify the interest rate, and PNB could not unilaterally increase the interest rate without first informing them;^[15] and (3) PNB did not comply with the notice and publication requirements under Section 3 of Act 3135.^[16] On the other hand, PNB and Yuvienco did not file their briefs despite notice.^[17]

Ruling of the CA

In its decision promulgated on March 28, 2006,^[18] the CA affirmed the decision of the RTC insofar as it upheld the validity of the foreclosure proceedings initiated by PNB, but modified the Spouses Manalo's liability for interest. It directed the RTC to see to the recomputation of their indebtedness, and ordered that should the recomputed amount be less than the winning bid in the foreclosure sale, the difference should be immediately returned to the Spouses Manalo.

The CA found it necessary to pass upon the issues of PNB's failure to specify the applicable interest and the lack of mutuality in the execution of the credit agreements considering the earlier cited observation made by the trial court in its decision. Applying Article 1956 of the *Civil Code*, the CA held that PNB's failure to indicate the rate of interest in the credit agreements would not excuse the Spouses Manalo from their contractual obligation to pay interest to PNB because of the express agreement to pay interest in the credit agreements. Nevertheless, the CA ruled that PNB's inadvertence to specify the interest rate should be construed against it because the credit agreements were clearly contracts of adhesion due to their having been prepared solely by PNB.

The CA further held that PNB could not unilaterally increase the rate of interest considering that the credit agreements specifically provided that prior notice was required before an increase in interest rate could be effected. It found that PNB did not adduce proof showing that the Spouses Manalo had been notified before the increased interest rates were imposed; and that PNB's unilateral imposition of the increased interest rate was null and void for being violative of the principle of mutuality of contracts enshrined in Article 1308 of the *Civil Code*. Reinforcing its "contract of adhesion" conclusion, it added that the Spouses Manalo's being in dire need of money rendered them to be not on an equal footing with PNB. Consequently, the CA, relying on *Eastern Shipping Lines, v. Court of Appeals*,^[19] fixed the interest rate to be paid by the Spouses Manalo at 12% *per annum*, computed from their default.

The CA deemed to be untenable the Spouses Manalo's allegation that PNB had failed to comply with the requirements for notice and posting under Section 3 of Act 3135. The CA stated that Sheriff Norberto Magsajo's testimony was sufficient proof of his posting of the required Notice of Sheriff's Sale in three public places; that the notarized Affidavit of Publication presented by Sheriff Magsajo was *prima facie* proof of the publication of the notice; and that the Affidavit of Publication enjoyed the presumption of regularity, such that the Spouses Manalo's bare allegation of non-publication without other proof did not overcome the presumption.

On August 29, 2006, the CA denied the Spouses Manalo's Motion for Reconsideration and PNB's Partial Motion for Reconsideration.^[20]

Issues

In its Memorandum,^[21] PNB raises the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS WAS CORRECT IN NULLIFYING THE INTEREST RATES IMPOSED ON RESPONDENT SPOUSES' LOAN AND IN FIXING THE SAME AT TWELVE PERCENT (12%) FROM DEFAULT, DESPITE THE FACT THAT (i) THE SAME WAS RAISED BY THE RESPONDENTS ONLY FOR THE FIRST TIME ON APPEAL (ii) IT WAS NEVER PART OF THEIR COMPLAINT (iii) WAS EXCLUDED AS AN ISSUE DURING PRE-TRIAL, AND WORSE, (iv) THERE WAS NO FORMALLY OFFERED PERTAINING TO THE SAME DURING TRIAL.

II

WHETHER OR NOT THE COURT OF APPEALS CORRECTLY RULED THAT THERE WAS NO MUTUALITY OF CONSENT IN THE IMPOSITION OF INTEREST RATES ON THE RESPONDENT SPOUSES' LOAN DESPITE THE EXISTENCE OF FACTS AND CIRCUMSTANCES CLEARLY SHOWING RESPONDENTS' ASSENT TO THE RATES OF INTEREST SO IMPOSED BY PNB ON THE LOAN.

Anent the first issue, PNB argues that by passing upon the issue of the validity of the interest rates, and in nullifying the rates imposed on the Spouses Manalo, the CA decided the case in a manner not in accord with Section 15, Rule 44 of the *Rules of Court*, which states that only questions of law or fact raised in the trial court could be assigned as errors on appeal; that to allow the Spouses Manalo to raise an issue for the first time on appeal would "offend the basic rules of fair play, justice and due process;"^[22] that the resolution of the CA was limited to the issues agreed upon by the parties during pre-trial;^[23] that the CA erred in passing upon the validity of the interest rates inasmuch as the Spouses Manalo did not present evidence thereon; and that the Judicial Affidavit of Enrique Manalo, on which the CA relied for its finding, was not offered to prove the invalidity of the interest rates and was, therefore, inadmissible for that purpose.^[24]

As to the substantive issues, PNB claims that the Spouses Manalo's continuous

payment of interest without protest indicated their assent to the interest rates imposed, as well as to the subsequent increases of the rates; and that the CA erred in declaring that the interest rates and subsequent increases were invalid for lack of mutuality between the contracting parties.

Ruling

The appeal lacks merit.

1.

Procedural Issue

Contrary to PNB's argument, the validity of the interest rates and of the increases, and on the lack of mutuality between the parties were not raised by the Spouses Manalo's for the first time on appeal. Rather, the issues were impliedly raised during the trial itself, and PNB's lack of vigilance in voicing out a timely objection made that possible.

It appears that Enrique Manalo's Judicial Affidavit introduced the issues of the validity of the interest rates and the increases, and the lack of mutuality between the parties in the following manner, to wit:

5. True to his words, defendant Yuvienco, after several days, sent us a document through a personnel of defendant PNB, Bangkal, Makati City Branch, who required me and my wife to affix our signature on the said document;

6. When the document was handed over me, I was able to know that it was a Promissory Note which was in ready made form and prepared solely by the defendant PNB;

x x x x

21. As above-noted, the rates of interest imposed by the defendant bank were never the subject of any stipulation between us mortgagors and the defendant PNB as mortgagee;

22. The truth of the matter is that defendant bank imposed rate of interest which ranges from 19% to as high as 28% and which changes from time to time;

23. The irregularity, much less the invalidity of the imposition of iniquitous rates of interest was aggravated by the fact that we were not informed, notified, nor the same had our prior consent and acquiescence therefor. x x x^[25]

PNB cross-examined Enrique Manalo upon his Judicial Affidavit. There is no showing that PNB raised any objection in the course of the cross examination.^[26] Consequently, the RTC rightly passed upon such issues in deciding the case, and its having done so was in total accord with Section 5, Rule 10 of the *Rules of Court*, which states: