

## SECOND DIVISION

[ G.R. No. 177260, March 30, 2011 ]

**LOTTO RESTAURANT CORPORATION, REPRESENTED BY SUAT KIM GO, PETITIONER, VS. BPI FAMILY SAVINGS BANK, INC., RESPONDENT.**

### D E C I S I O N

**ABAD, J.:**

This case is about a bank's right under the loan agreement to adjust the loan interest from a fixed rate to the prevailing market rate and, further, to foreclose the real estate mortgage that secures the same upon the borrower's default.

#### The Facts and the Case

On December 23, 1999 petitioner Lotto Restaurant Corporation (Lotto) got a loan of P3,000,000.00 from the DBS Bank (DBS) at an interest rate of 11.5% *per annum*. The promissory note it executed provided that Lotto would pay DBS a monthly amortization of P35,045.69 for 180 months. To secure payment of the loan, Lotto, represented by Suat Kim Go (Go), its General Manager, mortgaged to DBS a condominium unit that belonged to it.<sup>[1]</sup>

Lotto paid its monthly amortizations for 12 months from December 24, 1999 to December 24, 2000. But in January 2001, after DBS increased the interest to 19% *per annum*, Lotto contested the increase and stopped paying the loan. After respondent BPI Family Savings Bank, Inc. (BPI) acquired DBS, Lotto tried to negotiate with BPI for reduction of interest but the latter agreed to reduce it to only 14.7% *per annum*, which was still unacceptable to Lotto.<sup>[2]</sup>

On October 21, 2002 BPI foreclosed the mortgage on Lotto's condominium unit<sup>[3]</sup> to satisfy its unpaid claim of P5,283,470.26, which included interest, penalties, fire insurance premium, attorney's fees, and estimated foreclosure expenses. BPI's computation applied an interest rate of 19% *per annum* for the period December 24, 2000 to November 24, 2001; and 14.7% *per annum* for the period December 24, 2001 to October 10, 2002.<sup>[4]</sup>

To stop the foreclosure, Lotto filed against BPI with the Regional Trial Court (RTC) of Manila<sup>[5]</sup> in Civil Case 02-105415 an action for reformation or annulment of real estate mortgage with prayer for a temporary restraining order (TRO) and preliminary injunction.<sup>[6]</sup> The RTC issued a TRO on January 3, 2003 and a preliminary injunction on February 6, 2003,<sup>[7]</sup> enjoining the foreclosure sale of the condominium unit. Mediation in the case failed.<sup>[8]</sup>

On January 11, 2005 the RTC rendered a decision in Lotto's favor,<sup>[9]</sup> finding that

DBS breached the stipulations in the promissory note when it unilaterally increased the interest rate on its loan from 11.5% to 19% *per annum*. Further, the RTC held that the mortgage on the condominium unit was void since the Lotto Board of Directors did not authorize Go to sign the document. The RTC directed the Register of Deeds to cancel the encumbrance on Lotto's title and ordered Lotto to pay BPI its loan of P2,990,832.00 at P35,045.69 a month, less the amortizations that it already paid.

Aggrieved, BPI appealed to the Court of Appeals (CA), which reversed the RTC Decision on November 22, 2006<sup>[10]</sup> in CA-G.R. CV 84701. The CA held that Lotto was estopped from questioning the validity of the promissory note and the real estate mortgage since, having authorized Go to take out a loan from the bank, it followed that it also authorized her to provide the security that the loan required. The CA also clarified that Lotto's gross loan was P3,000,000.00; the P2,990,832.00 that the RTC referred to was the net proceeds of the loan.

As to the increase in the interest rate, the CA found that the 11.5% rate provided in the promissory note pertained only to the period from December 24, 1999 to December 24, 2000. The note provided that, upon the lapse of that period, the loan would already bear an interest based on the prevailing market rate. The increase from 11.5% to 19% for the subsequent period was thus valid. The CA upheld the mortgage and lifted the RTC's writ of preliminary injunction. With the denial of its motion for reconsideration,<sup>[11]</sup> Lotto filed the present petition for review.

### **The Issues Presented**

The issues in this case are:

1. Whether or not DBS, now BPI, validly adjusted the rate of interest on Lotto's loan from 11.5% to 19% *per annum* beginning on December 24, 2000; and
2. Whether or not BPI has the right to foreclose the real estate mortgage for non-payment of the loan.

### **The Court's Ruling**

**One.** Lotto insists that DBS had no right to unilaterally increase the interest rate on its loan from 11.5% to 19% *per annum* after the passage of a year. Lotto argues that DBS could, under the terms and conditions of the promissory note, make such adjustments only after 180 months following the execution of the promissory note.

But, paragraphs 7 and 8 of the promissory note<sup>[12]</sup> clearly provide that the 11.5% interest rate *per annum* applied only to the first year of the loan. Thus:

7. EFFECTIVE INTEREST RATE (nr=er) **11.5\*** %p.a.  
(Method of Computation attached) **12.24.99-12.24.2000**

8. SCHEDULE OF PAYMENT

a. Single payment due on \_\_\_\_\_ P \_\_\_\_\_  
(Date)