

## SECOND DIVISION

[ G.R. No. 184122, January 20, 2010 ]

**BANK OF THE PHILIPPINE ISLANDS, INC., PETITIONER, SPS.  
NORMAN AND ANGELINA YU AND TUANSON BUILDERS  
CORPORATION REPRESENTED BY PRES. NORMAN YU,  
RESPONDENTS.**

### D E C I S I O N

**ABAD, J.:**

This case is about the propriety of a summary judgment in resolving a documented claim of alleged excessive penalty charges, interest, attorney's fees, and foreclosure expenses imposed in an extrajudicial foreclosure of mortgage.

#### The Facts and the Case

Respondents Norman and Angelina Yu (the Yus), doing business as Tuanson Trading, and Tuanson Builders Corporation (Tuanson Builders) borrowed various sums totaling P75 million from Far East Bank and Trust Company. For collateral, they executed real estate mortgages over several of their properties,<sup>[1]</sup> including certain lands in Legazpi City owned by Tuanson Trading.<sup>[2]</sup> In 1999, unable to pay their loans, the Yus and Tuanson Builders requested a loan restructuring,<sup>[3]</sup> which the bank, now merged with Bank of the Philippine Islands (BPI), granted.<sup>[4]</sup> By this time, the Yus' loan balance stood at P33,400,000.00. The restructured loan used the same collaterals, with the exception of Transfer Certificate of Title 40247 that secured a loan of P1,600,000.<sup>[5]</sup>

Despite the restructuring, however, the Yus still had difficulties paying their loan. They asked BPI to release some of the mortgaged lands since their total appraised value far exceeded the amount of the remaining debt. When BPI ignored their request, the Yus withheld payments on their amortizations. Thus, BPI extrajudicially foreclosed<sup>[6]</sup> the mortgaged properties in Legazpi City and in Pili, Camarines Sur. But the Yus sought by court action against BPI and the winning bidder, Magnacraft Development Corporation (Magnacraft), the annulment of the foreclosure sale.

In the course of the proceedings, however, the Yus and Magnacraft entered into a compromise agreement<sup>[7]</sup> that affirmed the latter's ownership of three out of the 10 parcels of land that were auctioned. By virtue of this agreement, the court dismissed the complaint against Magnacraft,<sup>[8]</sup> without prejudice to the Yus filing a new one against BPI.

On October 24, 2003 the Yus filed their new complaint before the Regional Trial Court (RTC) of Legazpi City, Branch 1, in Civil Case 10286 against BPI for recovery of alleged excessive penalty charges, attorney's fees, and foreclosure expenses that

the bank caused to be incorporated in the price of the auctioned properties.<sup>[9]</sup>

In its answer,<sup>[10]</sup> BPI essentially admitted the foreclosure of the mortgaged properties for P39,055,254.95, broken down as follows: P33,283,758.73 as principal debt; P2,110,282.78 as interest; and P3,661,213.46 as penalty charges.<sup>[11]</sup> BPI qualified that the total of P39,055,254.95 corresponded only to the Yus' debt as of date of filing of the petition.<sup>[12]</sup> The notice of the auction sale said that the total was "inclusive of interest, penalty charges, attorney's fee and expenses of this foreclosure."<sup>[13]</sup>

BPI further admitted that its bid of P45,090,566.41 for all the auctioned properties was broken down as follows:<sup>[14]</sup>

Interest	2,763,088.93
Penalty Charges	5,568.649.09
Sub-total.....	<b>40,520,461.09</b>
Add: 10% Attorney's Fees	4,052,046.11
Litigation Expenses & Interest	446,726.74
Cost of Publication & Interest	71,332.47
TOTAL.....	<b>P 45,090,566.41</b>

BPI also admitted that Magnacraft submitted the highest and winning bid of P45,500,000.00.<sup>[15]</sup> The sheriff turned over this amount to BPI.<sup>[16]</sup> According to BPI, it in turn remitted to the Clerk of Court the P409,433.59 difference between its bid price and that of Magnacraft's.<sup>[17]</sup> Although the proceeds of the sale exceeded the P39,055,254.95 stated in the notice of sale by P6,035,311.46,<sup>[18]</sup> the bid amount increased because it now included litigation expenses and attorney's fees as well as interests and penalties as recomputed.<sup>[19]</sup>

BPI admitted that it also pushed through with the second auction for the sale of a lot in Pili, Camarines Sur that secured a remaining debt of P5,562,000.<sup>[20]</sup> BPI made the lone bid<sup>[21]</sup> of P1,701,934.09.<sup>[22]</sup>

The Yus had three causes of action against BPI.

First. The bank imposed excessive penalty charges and interests: over P5 million in penalty charges computed at 36% per annum compared to the 12% per annum that the Court fixed in the cases of *State Investment House, Inc. v. Court of Appeals*<sup>[23]</sup> and *Ruiz v. Court of Appeals*.<sup>[24]</sup> In addition, BPI collected a 14% yearly interest on the principal, bringing the combined penalty charges and interest to 50% of the principal per annum.

Second. BPI also imposed a charge of P4,052,046.11 in attorney's fees, the equivalent of 10% of the principal, interest, and penalty charges.

Third. BPI did not provide documents to support its claim for foreclosure expenses of P446,726.74 and cost of publication of P518,059.21.

As an alternative to their three causes of action, the Yus claimed that BPI was in estoppel to claim more than the amount stated in its published notices. Consequently, it must turn over the excess bid of P6,035,311.46.

After pre-trial, the Yus moved for summary judgment,<sup>[25]</sup> pointing out that based on the answer,<sup>[26]</sup> the common exhibits of the parties,<sup>[27]</sup> and the answer to the written interrogatories to the sheriff,<sup>[28]</sup> no genuine issues of fact exist in the case. The Yus waived their claim for moral damages so the RTC can dispose of the case through a summary judgment.<sup>[29]</sup>

Initially, the RTC granted only a partial summary judgment. It reduced the penalty charge of 36% per annum<sup>[30]</sup> to 12% per annum until the debt would have been fully paid but maintained the attorney's fees as reasonable considering that BPI already waived the P1,761,511.36 that formed part of the attorney's fees and reduced the rate of attorney's fees it collected from 25% to 10% of the amount due. The RTC ruled that facts necessary to resolve the issues on penalties and fees had been admitted by the parties thus dispensing with the need to receive evidence.<sup>[31]</sup>

Still, the RTC held that it needed to receive evidence for the resolution of the issues of (1) whether or not the foreclosure and publication expenses were justified; (2) whether or not the foreclosure of the lot in Pili, Camarines Sur, was valid given that the proceeds of the foreclosure of the properties in Legazpi City sufficiently covered the debt; and (3) whether or not BPI was entitled to its counterclaim for attorney's fees, moral damages, and exemplary damages.<sup>[32]</sup>

The Yus moved for partial reconsideration.<sup>[33]</sup> They argued that, since BPI did not mark in evidence any document in support of the foreclosure expenses it claimed, it may be assumed that the bank had no evidence to prove such expenses. As regards their right to the pro-rating of their debt among the mortgaged properties, the Yus pointed out that BPI did not dispute the fact that the proceeds of the sale of the properties in Legazpi City fully satisfied the debt. Thus, the court could already resolve without trial the issue of whether or not the foreclosure of the Pili property was valid.

Further, the Yus sought reconsideration of the reduction of penalty charges and the allowance of the attorney's fees. They claimed that the penalty charges should be deleted for violation of Republic Act (R.A.) 3765 or the Truth in Lending Act. BPI's disclosure did not state the rate of penalties on late amortizations. Also, the Yus asked the court to reduce the attorney's fees from 10% to 1% of the amount due. On January 3, 2006 the RTC reconsidered its earlier decision and rendered a summary judgment:<sup>[34]</sup>

1. Deleting the penalty charges imposed by BPI for non-compliance with the Truth in Lending Act;
2. Reducing the attorney's fees to 1% of the principal and interest;

3. Upholding the reasonableness of the foreclosure expenses and cost of publication, both with interests;
4. Reiterating the turnover by the Clerk of Court to the Yus of the excess in the bid price;
5. Deleting the Yus' claim for moral damages they having waived it;
6. Denying the Yus' claim for attorney's fees for lack of basis; and
7. Dismissing BPI's counterclaim for moral and exemplary damages and for attorney's fees for lack of merit considering that summary judgment has been rendered in favor of the Yus.

BPI appealed the decision to the Court of Appeals (CA) in CA-G.R. CV 86577. But the CA rendered judgment on January 23, 2008, affirming the RTC decision in all respects. And when BPI asked for reconsideration,<sup>[35]</sup> the CA denied it on July 14, 2008,<sup>[36]</sup> hence, the bank's recourse to this Court.

### **The Issues Presented**

BPI presents the following issues:

1. Whether or not the case presented no genuine issues of fact such as to warrant a summary judgment by the RTC; and
2. Where summary judgment is proper, whether or not the RTC and the CA a) correctly deleted the penalty charges because of BPI's alleged failure to comply with the Truth in Lending Act; b) correctly reduced the attorney's fees to 1% of the judgment debt; and c) properly dismissed BPI's counterclaims for moral and exemplary damages, attorney's fees, and litigation expenses.

### **The Court's Rulings**

**One.** A summary judgment is apt when the essential facts of the case are uncontested or the parties do not raise any genuine issue of fact.<sup>[37]</sup> Here, to resolve the issue of the excessive charges allegedly incorporated into the auction bid price, the RTC simply had to look at a) the pleadings of the parties; b) the loan agreements, the promissory note, and the real estate mortgages between them; c) the foreclosure and bidding documents; and d) the admissions and other disclosures between the parties during pre-trial. Since the parties admitted not only the existence, authenticity, and genuine execution of these documents but also what they stated, the trial court did not need to hold a trial for the reception of the evidence of the parties.

BPI contends that a summary judgment was not proper given the following issues that the parties raised: 1) whether or not the loan agreements between them were valid and enforceable; 2) whether or not the Yus have a cause of action against BPI;

3) whether or not the Yus are proper parties in interest; 4) whether or not the Yus are estopped from questioning the foreclosure proceeding after entering into a compromise agreement with Magnacraft; 5) whether or not the penalty charges and fees and expenses of litigation and publication are excessive; and 6) whether or not BPI violated the Truth in Lending Act.<sup>[38]</sup>

But these are issues that could be readily resolved based on the facts established by the pleadings and the admissions of the parties.<sup>[39]</sup> Indeed, BPI has failed to name any document or item of fact that it would have wanted to adduce at the trial of the case. A trial would have been such a great waste of time and resources.

**Two.** Both the RTC and CA decisions cited BPI's alleged violation of the Truth in Lending Act and the ruling of the Court in *New Sampaguita Builders Construction, Inc. v. Philippine National Bank*<sup>[40]</sup> to justify their deletion of the penalty charges. Section 4 of the Truth in Lending Act states that:

SEC. 4. Any creditor shall furnish to each person to whom credit is extended, prior to the consummation of the transaction, a clear statement in writing setting forth, to the extent applicable and in accordance with rules and regulations prescribed by the Board, the following information:

- (1) the cash price or delivered price of the property or service to be acquired;
- (2) the amounts, if any, to be credited as down payment and/or trade-in;
- (3) the difference between the amounts set forth under clauses (1) and (2);
- (4) the charges, individually itemized, which are paid or to be paid by such person in connection with the transaction but which are not incident to the extension of credit;
- (5) the total amount to be financed;
- (6) the finance charge expressed in terms of pesos and centavos; and
- (7) the percentage that the finance bears to the total amount to be financed expressed as a simple annual rate on the outstanding unpaid balance of the obligation.

Penalty charge, which is liquidated damages resulting from a breach,<sup>[41]</sup> falls under item (6) or finance charge. A finance charge "represents the amount to be paid by the debtor incident to the extension of credit."<sup>[42]</sup> The lender may provide for a penalty clause so long as the amount or rate of the charge and the conditions under which it is to be paid are disclosed to the borrower before he enters into the credit agreement.

In this case, although BPI failed to state the penalty charges in the disclosure statement, the promissory note that the Yus signed, on the same date as the disclosure statement, contained a penalty clause that said: "I/We jointly and severally, promise to further pay a late payment charge on any overdue amount herein at the rate of 3% per month." The promissory note is an acknowledgment of a debt and commitment to repay it on the date and under the conditions that the parties agreed on.<sup>[43]</sup> It is a valid contract absent proof of acts which might have