

### THIRD DIVISION

## [ G.R. NO. 169551, January 24, 2007 ]

**SPOUSES ORLANDO M. LAMBINO AND CARMELITA C. LAMBINO, PETITIONERS, VS. HON. PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 172, VALENZUELA CITY, AND BPI FAMILY BANK, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the Decision<sup>[1]</sup> and the Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 63512. The CA affirmed the Order<sup>[3]</sup> of the Regional Trial Court (RTC) of Valenzuela City, Branch 172, in Civil Case No. 4664-V-95, which denied the motion of petitioners to admit the supplemental complaint.

On July 21, 1994, petitioners Orlando M. Lambino, a lawyer, and his wife, Carmelita C. Lambino, secured a housing loan of P600,000.00 from private respondent BPI Family Savings Bank, Inc. (BPI). The interest rate was 19% per annum payable in 180 monthly installments of P10,097.26. Petitioners executed a Mortgage Loan Agreement (MLA)<sup>[4]</sup> over their property covered by Transfer Certificate of Title No. V-31431 as security for the loan.

Under the MLA, the proceeds of the loan would be released to petitioners depending on the percentage of work completed, as follows:

<u>No. of Release</u>	<u>% of Completion</u>	<u>Amount</u>
1	0%	P150,000.00
2	30%	200,000.00
3	60%	150,000.00
4	90%	<u>100,000.00</u>
		P600,000.00 <sup>[5]</sup>
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The parties agreed that private respondent would release the net proceeds of the loan by crediting their Savings Account No. 5763250956 which petitioners maintained in the Valenzuela branch of the BPI and to debit from said account all amounts that may be due from petitioners under the MLA and other documents executed in connection thereto.<sup>[6]</sup>

However, petitioners failed to pay the monthly amortizations from January 15, 1995

to May 15, 1995. On May 22, 1995, private respondent filed a petition for the extrajudicial foreclosure of the MLA with the *Ex-Officio* Sheriff of the RTC of Valenzuela City and sought to have the property sold to satisfy the balance of petitioners' loan account. The public auction was set at 10:00 a.m. on July 11, 1995.

On June 26, 1995, petitioners filed a complaint for annulment of the MLA and the extrajudicial foreclosure sale with a prayer for a Temporary Restraining Order (TRO) before the RTC of Valenzuela City. They alleged therein that private respondent had released only P555,047.19 on a staggered basis out of their P600,000.00 loan. They offered to pay their monthly amortization on their loan account, but private respondent required them to pay a monthly amortization of P12,900.00 effective December 1995. Despite demand, private respondent refused to release the difference of P44,962.78 of their loan and to readjust their monthly amortization conformably with the MLA. The court issued a TRO and the sale at public auction was reset.

In a letter<sup>[7]</sup> dated April 16, 1996, petitioners offered to settle the balance of their loan account amounting to P539,066.64, less late payment charges, mortgage redemption insurance (MRI) premium interests, foreclosure expenses, attorney's fees and liquidated damages in the total amount of P305,042.57. They proposed to pay on monthly installments for a 15-year period, at an interest rate of 19% per annum. However, private respondent rejected the offer.

In the meantime, the court suspended pretrial to enable the parties to settle the matter amicably. Private respondent furnished petitioners with statements of their account dated June 5, 1996, November 15, 1996 and August 15, 1998. It appears that the following additional charges were imposed on petitioners' account: interests, late payment charges of P25,035.36, MRI of P19,980.00, attorney's fees of P118,010.24, liquidated damages of P118,010.24 and foreclosure expenses of P24,006.73.

Petitioners objected to the aforesaid damages. The updated statement of petitioners' account, dated August 15, 1998, showed that petitioners owed private respondent P1,243,919.60, inclusive of MRI, foreclosure expenses, attorney's fees, and liquidated damages.<sup>[8]</sup>

The pretrial proceeding was terminated on July 23, 1998. The hearing for petitioners to adduce their evidence was set on September 17, 1998. On July 10, 2000, petitioners filed a Motion to Admit their Supplemental Complaint wherein they alleged the following:

#### I

They hereby adopt the allegations of their complaint as integral part hereof;

#### II

The plaintiffs were forced to litigate due to the Petition for Extrajudicial Foreclosure of Mortgage filed by defendant bank and unlawful imposition of escalating and arbitrary rate of interest without the consent of the plaintiffs and not authorized under the Real Estate Mortgage Contract despite advance interest has been deducted thereon, which should not [*sic*] been deducted therefrom, and in spite of the fact that the principal

loan of Six Hundred Thousand [P600,000.00] Pesos was not released in one occasion, but in four [4] occasions separated by one and one half [1 and ½] month, to wit:

First Release	P150,000.00	July 25, 1994
Less the ff:		
Processing fee	1,000.00	
Notarial fee	300.00	
MRI	9,990.00	
1% Commitment fee	6,000.00	
Total Deductions	-----	
<b>Net proceeds received</b>	<b>P18,290.00</b>	
<b>Net proceeds received</b>	<b>P131,710.00</b>	
Second Release	P200,000.00	Sept. 5, 1994
Less the ff:		
<b>Interest charges</b>	<b>3,279.45</b>	
MRI	3,330.00	
Total Deductions	-----	
<b>Net proceeds received</b>	<b>6,609.45</b>	
<b>Net proceeds received</b>	<b>193,390.55</b>	
Third Release	P150,000.00	October 24, 1994
Less the ff:		
<b>Interest charges</b>	8,927.40	
MRI	1,665.00	
Fire ins.	2,069.90	
Total Deductions	-----	
<b>Net proceeds received</b>	<b>12,662.30</b>	
<b>Net proceeds received</b>	<b>137,337.70</b>	
Fourth Release	P100,000.00	November 15, 1994
Less the ff:		
Interest charges	5,726.03	
MRI	1,665.00	
Total Deductions	7,391.03	
<b>Net proceeds received</b>	-----	
<b>Net proceeds received</b>	<b>92,608.97</b>	

The aforesaid unauthorized deductions and advance interest charges were known by plaintiffs only for the first time at the Pre-Trial Brief of defendants.

Aside from the above unauthorized deductions and advance interest payment made, defendant bank also imposed escalating and arbitrary

rate of interest. This is unlawful interest which is condemned by the Supreme Court:

"In the face of the unequivocal interest rate provisions in the credit agreement and in the law requiring the parties to agree to charges in the interest rate in writing, we hold that the unilateral and progressive increases imposed by respondent bank PNB were null and void. Their effect was to increase the total obligation on an eighteen million peso loan to an amount way over three times that which was originally granted to the borrowers. That these increases occasioned by crafty manipulations in the interest rates is unconscionable and neutralizes the salutary policies of extending loans to spur business cannot be disputed." [Underscoring supplied]; [*Almeda v. Court of Appeals*, G.R. No. 113412, April 17, 1996, 256 SCRA 308].

#### IV

The foreclosure and/or liability of plaintiffs should be limited only to the amount in the mortgage [REM] and can not include other items, such as late payment charges, liquidated damages and attorney's fees in accordance with the ruling of the Supreme Court:

"The mortgage provision relied upon by the petitioner is known in American jurisprudence as a 'dragnet'" clause, which is specifically phrased to subsume all debts of past or future origin. Such clauses are 'carefully scrutinized and strictly construed.'

The mortgage contract is also one of adhesion as it was prepared solely by the petitioner and the only participation of the other party was the affixing of his signature or his 'adhesion' thereto. Being a contract of adhesion, the mortgage is to be strictly construed against the petitioner, the party which prepared the agreement.

A reading not only of the earlier quoted provision, but of the entire mortgage contract yields no mention of penalty charges. Construing this silence strictly against the petitioner, it can fairly be concluded that the petitioner did not intend to include the penalties on the promissory notes in the secured amount. This explains the finding by the trial court, as affirmed by the Court of Appeals, That 'penalties and charges are not due for want of stipulations in the mortgage contract.'

Indeed, a mortgage must sufficiently describe the debt sought to be secured, which description must not be such to mislead or deceive, and an obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage. In this case, the mortgage contract provides that it secures notes and other evidences of indebtedness. Under the rule of *ejusdem generis*, where a description of things of a particular class or

kind is accompanied by words of a generic character, the generic words will usually be limited to things of a kindred nature with those particularly enumerated. A penalty charge does not belong to the species of obligations enumerated in the mortgage; hence, the said contract cannot be understood to secure the penalty.

There is also sufficient authority to declare that any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it.' [*Philippine Bank of Communications v. Court of Appeals*, G.R. No. 118552, February 5, 1996, 253 SCRA 253-354].

## V

That plaintiffs, in fact, wrote defendant bank, duly received by its counsel, Atty. Yolando Atienza, offering to settle their indebtedness as early as April 16, 1996 provided that the arbitrary charges, penalties and attorney's fees be deleted but defendant bank refused and insisted for plaintiffs to pay the aforesaid charges, penalties and attorney's fees, a copy of plaintiffs' letter is hereto attached and marked as integral part hereof.<sup>[9]</sup>

Petitioners prayed that, after due proceedings, judgment be rendered in their favor, thus:

WHEREFORE, it is most respectfully prayed that the imposition of escalating and arbitrary rate of interest as well as the unilateral manipulations of interest rate, penalties and other charges be declared null and void/annulled/rescinded and rendered without force and effect, and that plaintiffs be extended other legal and equitable reliefs.<sup>[10]</sup>

On August 11, 2000, the trial court issued an Order<sup>[11]</sup> denying the motion of petitioners in its finding that the alleged escalating and arbitrary rate of interest and other charges imposed by private respondent had accrued long before the complaint was filed. It held that under Section 6, Rule 10 of the Revised Rules of Court, only transactions, occurrences, or events which accrued after the date of the complaint may be set forth in the supplemental complaint.

Petitioners filed a motion for reconsideration of the Order, alleging therein that the escalating, arbitrary rate of interest, and other charges referred to under paragraphs III, IV and V of their supplemental complaint took place after the filing of their complaint. They insist that it was discovered for the first time only after they had been furnished with the statements of account by defendant during pretrial.

However, on January 2, 2001, the court issued an Order<sup>[12]</sup> denying the motion of petitioners.

Petitioners filed a petition for *certiorari* with the CA seeking to nullify the Orders of the RTC. They alleged that the RTC committed grave abuse of its discretion amounting to excess or lack of jurisdiction in issuing the Orders.