544 Phil. 18

FIRST DIVISION

[G.R. NO. 148491, February 08, 2007]

SPOUSES ZACARIAS BACOLOR AND CATHERINE BACOLOR, PETITIONERS, VS. BANCO FILIPINO SAVINGS AND MORTGAGE BANK, DAGUPAN CITY BRANCH AND MARCELINO C. BONUAN, RESPONDENTS.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision [1] of the Court of Appeals in CA-G.R. CV No. 47732 promulgated on February 23, 2001 and its Resolution dated May 30, 2001.

On February 11, 1982, spouses Zacarias and Catherine Bacolor, herein petitioners, obtained a loan of P244,000.00 from Banco Filipino Savings and Mortgage Bank, Dagupan City Branch, respondent. They executed a promissory note providing that the amount shall be payable within a period of ten (10) years with a monthly amortization of P5,380.00 beginning March 11, 1982 and every 11th day of the month thereafter; that the interest rate shall be twenty-four percent (24%) *per annum*, with a penalty of three percent (3%) on any unpaid monthly amortization; that there shall be a service charge of three percent (3%) *per annum* on the loan; and that in case respondent bank seeks the assistance of counsel to enforce the collection of the loan, petitioners shall be liable for ten percent (10%) of the amount due as attorney's fees and fifteen percent (15%) of the amount due as liquidated damages.

As security for the loan, petitioners mortgaged with respondent bank their parcel of land located in Dagupan City, Pangasinan, registered under Transfer Certificate of Title No. 40827.

From March 11, 1982 to July 10, 1991, petitioners paid respondent bank P412, 199.36. Thereafter, they failed to pay the remaining balance of the loan.

On August 7, 1992, petitioners received from respondent bank a statement of account stating that their indebtedness as of July 31, 1992 amounts to **P840,845.61.**

In its letter dated January 13, 1993, respondent bank informed petitioners that should they fail to pay their loan within fifteen (15) days from notice, appropriate action shall be taken against them.

Due to petitioners' failure to settle their obligation, respondent instituted, on March 5, 1993, an action for extra-judicial foreclosure of mortgage.

Prior thereto, or on February 1, 1993, petitioners filed with Branch 40 of the same RTC, a complaint for violation of the Usury Law against respondent, docketed as Civil Case No. D-10480. They alleged that the provisions of the promissory note constitute a usurious transaction considering the (1) rate of interest, (2) the rate of penalties, service charge, attorney's fees and liquidated damages, and (3) deductions for surcharges and insurance premium. In their amended complaint, petitioners further alleged that, during the closure of respondent bank, it ceased to be a banking institution and, therefore, could not charge interests and institute foreclosure proceeding.

On August 25, 1994, the RTC rendered its decision dismissing petitioners' complaint, holding that:

> (1) The terms and conditions of the Deed of Mortgage and the Promissory Note are legal and not usurious.
>
> The plaintiff freely signed the Deed of Mortgage and the Promissory Note with full knowledge of its terms and conditions.
>
> The interest rate of 24% per annum is not usurious and does not violate the Usury Law (Act 2655) as amended by P.D. No. 166.
>
> The rate of interest, including commissions, premiums, fees and other charges, on a loan or forbearance of any money etc., regardless of maturity x x x, shall not be subject to any ceiling under or pursuant to the Usury Law, as amended (CB Circular no. 905). Hence, the 24% interest per annum is allowed under P.D. No. 166.
>
> For sometime now, usury has been legally non-existent. Interest can now be as lender and borrower may agree upon (Verdejo v. CA, Jan. 29, 1988. 157 SCRA 743).
>
> The imposition of penalties in case the obligation is not fulfilled is not prohibited by the Usury Law. Parties to a contract of loan may validly agree upon the imposition of penalty charges in case of delay or non-payment of the loan. The purpose is to compel the debtor to pay his debt on time (Go Chioco v. Martinez, 45 Phil. 256, 265).
>
> (2) The closure of Banco Filipino did not suspend or stop its usual and normal banking operations like the collection of loan receivables and foreclosures of mortgages.
>
> In view of the foregoing, plaintiffs failed to substantiate their cause of action against the defendant. [2]

On appeal, the Court of Appeals rendered its Decision affirming the Decision of the trial court. Petitioner's subsequent motion for reconsideration was denied.

Hence, this present petition for review on certiorari raising this lone issue: whether the interest rate is "excessive and unconscionable."

It is the petitioners' contention that while the Usury Law ceiling on interest rates

was lifted by Central Bank Circular No. 905, there is nothing in the said circular which grants respondent bank carte blanche authority to raise interest rates to levels which "either enslave the borrower or lead to a hemorrhaging of their assets." [3]

In its comment [4], respondent bank maintained that petitioner, by signing the Deed of Mortgage and Promissory Note, knowingly and freely consented to its terms and conditions. A contract between the parties must not be impaired. The interest rate of 24% per annum is not usurious and does not violate the Usury Law. [5]

The petition lacks merit.

Article 1956 of the Civil Code provides that *no interest shall be due unless it has been expressly stipulated in writing.* Here, the parties agreed in writing on February 11, 1982 that the rate of interest on the petitioners' loan shall be 24% per annum.

At the time the parties entered into the loan transaction, the applicable law was the Usury Law (Act 2655), as amended by P.D. No. 166, which provides that the rate of interest for the forbearance of money when secured by a mortgage upon real estate, should not be more than 6% per annum *or the maximum rate prescribed by the Monetary Board of the Central Bank of the Philippines in force at the time the loan was granted*. Central Bank Circular No. 783, which took effect on July 1, 1981, removed the ceiling on interest rates on a certain class of loans, thus:

> SECTION 2. **The interest rate on a loan forbearance of any money, goods, or credits with a maturity of more than seven hundred thirty (730) days shall not be subject to any ceiling.** [6]

In the present case, the term of the subject loan is for a period of 10 years. Considering that its maturity is more than 730 days, the interest rate is not subject to any ceiling following the above provision. Therefore, the 24% interest rate agreed upon by parties does not violate the Usury Law, as amended by P.D. 116.

This Court has consistently held that for sometime now, usury has been legally non-inexistent and that interest can now be charged as lender and borrower may agree upon. [7] As a matter of fact, Section 1 of Central Bank Circular No. 905 states that:

> SECTION 1. The rate of interest, including commissions, premiums, fees and other charges , on a loan or forbearance of any money, goods, or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by any person, whether natural or judicial, **shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended**. [8]

Moreover, in *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation,* [9] **this Court has ruled that:**

> With the suspension of the Usury Law and the removal of interest ceiling, the parties are free to stipulate the interest to be imposed on monetary obligations. Absent any evidence of fraud, undue influence, or any vice