

THIRD DIVISION

[G.R. NO. 171354, March 07, 2007]

**MARYLOU B. TOLENTINO, M.D., PETITIONER, VS. COURT OF
APPEALS AND CITYTRUST BANKING CORPORATION,
RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

This Petition for Review on *Certiorari*^[1] assails the October 28, 2005 Decision^[2] of the Court of Appeals in CA-G.R. CV. No. 83794, which reversed the April 22, 2004 Decision^[3] of the Regional Trial Court of Mandaluyong City, Branch 213 in Civil Case No. MC-00-1063, as well as the January 31, 2006 Resolution^[4] denying petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

In May 1996, petitioner Marylou B. Tolentino (Tolentino) applied for and was granted by private respondent Citytrust Banking Corporation ("Citytrust," now Bank of the Philippine Islands) a Business Credit Line Facility for P2,450,000^[5] secured by a First Real Estate Mortgage^[6] over her property covered by Transfer Certificate of Title (TCT) No. 1933.^[7]

On July 16, 1998, Citytrust informed Tolentino that her credit line has expired thereby making her P2,611,440.23 outstanding balance immediately due and demandable.^[8] Tolentino failed to settle her obligations thus her property was extrajudicially foreclosed and sold in a public auction, with Citytrust as the highest bidder. On April 13, 1999, the Certificate of Sale was registered and duly annotated on TCT No. 1933.

As of March 17, 2000, the "Statement of Account To Redeem" ^[9] sent by Citytrust showed petitioner's outstanding obligation at P5,386,993.91. Petitioner asked for a re-computation and the deletion of certain charges, such as the late payment charges, foreclosure expenses, attorney's fees, liquidated damages, and interests, but was denied by Citytrust. As of April 10, 2000, petitioner's outstanding balance amounted to P5,431,337.41.

On April 7, 2000, petitioner filed a Complaint for Judicial Redemption, Accounting and Damages, with application for the issuance of a Temporary Restraining Order/Writ of Preliminary Injunction, against Citytrust and the Register of Deeds of Mandaluyong City.^[10] Petitioner alleged that the bank unilaterally increased the interest charges in her credit line from 17.75% to 23.04%; that she was forced to convert her existing Home Owners Credit Line into an Amortized Term Loan with

interest of 19.50%;^[11] that the bank cancelled her credit line when she refused the said conversion; that her mortgaged property was foreclosed and sold at public auction but the bank did not remit the balance of the proceeds of the foreclosure sale; and that the bank unjustifiably refused her request for accounting and re-computation of the redemption amount.

In its Answer with Counterclaim,^[12] Citytrust asserted that petitioner's credit line has a term of one year and that upon the expiration of the said period, it may be cancelled and closed; that the inclusion of late payment charges, foreclosure expense, attorney's fees, liquidated damages, foreclosure fee, and interests in the redemption price was in accordance with the terms and conditions of their loan and mortgage contracts; that the bid price was applied to the outstanding obligations of petitioner; and that the Complaint of petitioner was merely dilatory and frivolous considering that she has admitted having defaulted in the payment of her obligations.

Meanwhile, TCT No. 1933 was cancelled and a new title^[13] was issued in favor of Citytrust. However, petitioner was able to secure a writ of preliminary injunction,^[14] which enjoined Citytrust from taking possession, selling, and/or otherwise disposing of the foreclosed property.

After trial on the merits, the Regional Trial Court of Mandaluyong City, Branch 213, rendered judgment upholding petitioner's right of redemption, but at the price computed by private respondent. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered upholding the right of the herein plaintiff MARILOU TOLENTINO to redeem the foreclosed property covered by Transfer Certificate of Title No. 1933 in accordance however with the computation stated in the account to redeem as of April 10, 2000 issued by the defendant CITYTRUST BANKING CORPORATION (now FAMILY BANK) particularly marked as Exhibit 10 for the Defendant.

SO ORDERED.^[15]

The trial court held that the filing of an action for judicial redemption by petitioner is equivalent to a formal offer to redeem. Having exercised her right of legal redemption, petitioner should not be barred from redeeming the property, but at the redemption price as computed by Citytrust pursuant to the provisions of their loan agreement. The trial court held that petitioner cannot belatedly claim that the loan agreement and mortgage contract are contracts of adhesion considering that she freely and voluntarily executed the same, nor was she ignorant of the nature and provisions of the agreements.

Both the petitioner and the bank appealed to the Court of Appeals, which rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal of plaintiff is DISMISSED for lack of merit, while the appeal of defendant Bank of the Philippine Islands is hereby GRANTED. The appealed Decision dated April 22, 2004 of the Regional Trial Court of Mandaluyong City, Branch 213 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered DISMISSING the complaint in Civil Case No. MC-00-1063.

With costs against the plaintiff-appellant.

SO ORDERED.^[16]

The Court of Appeals held that petitioner's act of filing an action for judicial redemption without simultaneous consignation of redemption money was not valid. Having failed to exercise her right of redemption within the one-year period provided by law, petitioner thus lost all her rights over the foreclosed property. The appellate court noted that as early as March 17, 2000, Citytrust computed the redemption price at P5,386,993.91; however, petitioner only offered to pay P3 million pesos, without attempting to tender a single centavo to private respondent. Further, records show that when asked during trial if she was prepared to tender the amount, petitioner replied in the negative.

Petitioner's motion for reconsideration was denied; hence, this petition.

Petitioner insists that the mortgage agreement is a contract of adhesion since it was solely prepared by the bank and her only participation thereto was to affix her signature; that the 25% attorney's fees, penalty, late payment charges, and liquidated damages are excessive and unconscionable; that the capital gains tax should not have been added to the computation of the redemption price; that the filing of the complaint for judicial redemption effectively tolled the running one-year prescriptive period; that the consignation of the redemption price is only necessary if the redemption suit was filed after the expiration of the redemption period; and that without admitting the loss of right to redeem, the surplus of the proceeds of the foreclosure sale should have been returned to her.

The petition lacks merit.

A contract of adhesion is an agreement where one of the parties imposes a ready-made form of contract which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.

^[17]

It bears stressing that a contract of adhesion is just as binding as ordinary contracts. However, there are instances when this Court has struck down such contract as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Nevertheless, a contract of adhesion is not invalid per se; it is not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.^[18]

Should there be any ambiguity in a contract of adhesion, such ambiguity is to be construed against the party who prepared it. If, however, the stipulations are not obscure, but are clear and leave no doubt on the intention of the parties, the literal meaning of its stipulations must be held controlling.^[19]

In the instant case, it has not been shown that petitioner signed the contracts through mistake, violence, intimidation, undue influence, or fraud. Petitioner even admitted during trial that she was not compelled to sign the contracts, nor was she totally ignorant of their nature, having been engaged in business since 1984.^[20] Petitioner only raised in issue the following stipulations before the redemption period expired, to wit:

2. **Loan Line** - CityTrust shall make the Loan Line available to Client for a period of one (1) year from the date of this Agreement subject to Section 19; xxx

19. **Cancellation** - (a) The Loan Line may be cancelled by either party upon thirty-day written notice to the other party.

(b) CityTrust may shorten the period of availability of the Loan Line upon thirty-day written notice to Client.

(c) Upon cancellation of the Loan Line or expiration of the period of availability of the Loan Line, the Loan Account and CityTrust Business Credit Line Current Account shall be automatically cancelled/closed and Client shall immediately pay the entire Outstanding Balance. Client shall immediately surrender to CityTrust any and all unused CityTrust Business Credit Line Check(s) as well as the ATM card issued to access the CityTrust Business Credit Line Current Account.

7. **Interest on Outstanding Balance** - The Outstanding Balance shall earn simple interest, computed daily, at such per annum rate for such interest period (of not less than 30 days) as shall be determined in advance by CityTrust and advised initially through the Letter of Approval and thereafter through the Statement of Loan Account. Interest shall be calculated on the basis of actual number of days elapsed and a year of 360 days. Interest accrued shall be automatically debited by the CityTrust against the Loan Account.

9. **Penalty Charges** - Failure to make the full remittance required to cover the Excess Availment within fifteen (15) days from the date that the same is incurred shall subject the Excess Availment to penalty charge. Failure to make the full remittance required to cover an Excess Availment within fifty-nine (59) days from the date that the same is incurred shall subject the entire Outstanding Balance to the aforesaid penalty charge. Penalty charges shall be imposed by CityTrust without prejudice to Sections 7 (Interest on Outstanding Balance) and 15 [Events of Default].

The penalty charge shall be such per annum rate as shall be determined by CityTrust and advised through the Statement of Loan Account and Demand Statement. Said penalty charge shall be fixed for thirty (30) days or such other period as may be determined by CityTrust and shall be automatically debited against the Loan Account.

20. **Collection/Attorney's Fees** - in the event CityTrust is compelled to litigate or engage the services of a lawyer or collection agent for

collection or implementation of the terms of the Agreements, Client shall pay attorney's fees in the sum equivalent to twenty-five (25%) percent of the amount due but which attorney's fees shall in any case be not less than FIVE THOUSAND PESOS (P5,000.00) plus costs of suit and other litigation expenses and, in addition, liquidated damages in the sum equivalent to ten (10%) percent of the amount due but which liquidated damages shall in any case be not less than ONE THOUSAND PESOS (P1,000.00).^[21]

We find the above-quoted provisions explicit and leave no room for construction. It is easily understood, especially by a businesswoman like the petitioner. Thus, we agree with the conclusion of the trial and appellate courts that no compelling reasons were presented to declare the subject contractual documents as void contracts of adhesion.^[22]

Anent the legality of petitioner's judicial redemption and the bank's computation of the redemption price, Section 6 of Act No. 3135,^[23] as amended,^[24] provides for the requisites for a valid redemption, to wit:

SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, insofar as these are not inconsistent with the provisions of this Act.

However, considering that private respondent is a banking institution, the determination of the redemption price is governed by Section 78 of the General Banking Act,^[25] as amended by Presidential Decree No. 1828, which provides:

In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property.

Section 78 of the General Banking Act amended Section 6 of Act No. 3135 insofar as the redemption price is concerned when the mortgagee is a bank or a banking or credit institution.^[26] Thus, the amount at which the foreclosed property is