

FIRST DIVISION

[G.R. NO. 159748, July 31, 2007]

**SPOUSES VIRGILIO AND DIGNA ANASTACIO-CALINA,
PETITIONERS, VS. DEVELOPMENT BANK OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

PUNO, C.J.:

Before the Court is a petition for review on certiorari filed under Rule 45 of the Revised Rules of Court. Petitioner spouses VIRGILIO AND DIGNA ANASTACIO-CALINA (Spouses Calina) seek to reverse the decision^[1] of the Court of Appeals in CA-G.R. CV No. 570655, which set aside the decision of the trial court dated October 14, 1996.

On July 16, 1975, the Spouses Calina and respondent DEVELOPMENT BANK OF THE PHILIPPINES (DBP) entered into an agricultural (deep-sea fishing) loan agreement, whereby respondent lent to petitioners the amount of P1,356,000.00.

On July 24, 1975, as security for payment of the loan, petitioners executed a promissory note^[2] in favor of respondent, promising to pay the aforementioned sum, together with 12% interest per annum, in the following manner:

- At the end of the third month after date of full release or completion of boat (if full release is not availed of), only interest and advances due shall be paid;
- Thereafter, the loan shall be repayable within five (5) years, the first payment to be made on _____ and the subsequent payments on the _____ day of every three (3) months thereafter, and each of all such payments shall be NINETY ONE THOUSAND ONE HUNDRED FORTY FOUR AND 50/100 PESOS (P91,144.50), which shall cover amortizations on the principal and interest at the above mentioned rate.^[3]

On the same date, petitioners also executed a Deed of Undertaking,^[4] which provided the following pertinent conditions for the loan:

1. That the loan shall be utilized specifically to finance 80% of the total fixed cost portion of the loan as follows:

	Acquisition of one (1) unit
	"Purse Seine" Type fishing
	vessel complete with engine
P1,345,258.00	- and accessories; and
<u>350,000.00</u>	Purchase of "Purse Seine"
	- nets and accessories

P1,695,258.00 - Total Fixed Cost
P 339,258.00 - Borrower's Equity
P1,356,000.00 - DBP/IBRD Fund

2. Borrower shall put up out of his own funds the amount of P614,658.00 (P339,258.00 for fixed cost and P275,400.00 for operating cost) representing his counterpart of total project costs to be financed. Borrower shall show proof of the availability of the amount of P275,400.00 required for operating cost before initial release of the loan.

3. Borrower shall avail of the proceeds of the loan within a period of six (6) months from date of perfection of documents for the loan.

x x x

5. This loan shall be secured by chattel mortgage on one (1) unit "Purse Seine" type fishing boat, complete with engine and accessories, including purse seine nets.

x x x

10. That should the borrower fail to avail of the loan or any balance thereof within the said period and should he request for the extension thereof, he shall thereby be obligated to pay thereafter a commitment fee of $\frac{1}{4}$ of 1% per month on the unreleased proceeds of the loan until the same are fully released or cancelled upon written request of the borrower. This provision is, however, without prejudice to the right of the Bank to cancel the loan, recover such amounts as may have been already released therefrom and/or avail of the remedies provided for in the promissory note and mortgage contract or alternatively, the ordinary remedies in law should the delays in the borrower's availing of the proceeds of the loan constitute a violation of the promissory note and mortgage contract in accordance with the provisions thereof, and/or impair the security position of the Bank.

11. That the Bank reserves the right to reduce or stop releases/advances if after inspection and verification the accomplishment in the financed project does not justify giving full amount, or if the conditions of the project do not show improvements commensurate with the amounts already advanced/released. In such an event or in the event of abandonment of the project, all advances/releases made shall automatically become due and demandable and the Bank shall take such legal steps as are necessary to protect its interest.

x x x

17. That the fishing vessel to be mortgaged in favor of DBP shall be covered by an "all risk" insurance policy. In the event that any of the fishing vessel(s) become uninsurable the borrower shall reduce

the outstanding balance of the loan to the loan value of the remaining acceptable securities.

x x x

21. That the borrower shall secure and submit the following:

x x x

c. A performance bond equivalent to 80% of hull cost to guarantee that the fishing vessel shall be constructed in accordance with the plan approved by the said Commission, within one (1) year from date of first release of loan, said performance bond to be cancelled only upon completion of the vessel and presentation to the DBP of a Certificate of Admeasurement and Safety issued by said Commission for the vessel.

x x x.

Pursuant to the conditions set by the Deed of Undertaking, on July 31, 1975, Towers Assurance Corporation, acting as surety for petitioners, executed a Performance Bond for the amount of P319,085.60.

In August 1975, using the first release of the loan from DBP and their own funds to pay for materials and labor costs, the Spouses Calina commenced the construction of a fishing boat on a beach in Panakan, Palawan.^[5] In September 1975, the second release of the loan was given to petitioners by DBP. Petitioners used 95% of this amount to purchase one unit of a Cummins Marine Diesel Engine. Prior to installation in the fishing boat, the engine was placed in storage. On September 25, 1975, the third release of the loan was given to purchase other equipment. At this point, DBP had already released P451,589.80 to petitioners.

In December 1975, petitioners requested DBP to conduct its inspection of the partially completed keel of the fishing boat. However, the inspectors of DBP were unavailable and failed to visit the construction site.

In the last week of January 1976, typhoon **Asyang** hit Palawan, and totally destroyed the fishing boat under construction. All materials were washed out to sea.

On January 26, 1978, petitioner Virgilio Calina informed the DBP of his decision to abandon the project.^[6] He requested the DBP to grant him 60 days within which to sell the Cummins Marine Diesel Engine and out of the proceeds thereof, pay all his obligations to DBP.

On October 3, 1978, the DBP wrote a letter to the petitioners, demanding immediate payment of P666,195.55, representing the amount of their obligation plus interest from August 18, 1978, excluding daily additional interest.^[7]

On December 11, 1980, DBP filed a complaint for sum of money, with a prayer for the issuance of a writ of preliminary attachment for the Cummins Marine Diesel Engine, against the Spouses Calina and Towers Assurance Corporation. Defendant

Towers Assurance Corporation raised the defenses of laches and of the fact that the surety bond was never exposed to any risk, as the amount of the debt was used for the purchase of the Cummins Marine Diesel Engine, and not for the purpose of constructing the fishing vessel.^[8] The Spouses Calina filed their Answer with Counterclaim^[9] for payment of damages on August 14, 1981. On October 20, 1981, the court issued the writ of attachment against the Cummins Marine Diesel Engine.

In a bid to settle their financial obligations to DBP, petitioners sought buyers for the Cummins Marine Diesel Engine by advertising in several newspapers. On September 17, 1984, Pacific Power and Process Corporation offered to buy the Cummins Marine Diesel Engine for P600,000.00.^[10] On October 29, 1984, petitioners requested^[11] the DBP to signify its conformity to the sale. The DBP refused, and decided to sell the engine at public auction. The auction was held on March 8, 1985, but no bids were made for the engine. On August 26, 1985, DBP wrote petitioners a letter,^[12] finally agreeing to the sale of the engine for P600,000.00, and the payment of the proceeds thereof as settlement for their agricultural (deep-sea fishing) loan. DBP also agreed to condone any penalty charges and interest on past due interest computed up to the date of payment of the said amount.

Unfortunately, the petitioners' buyer had already lost interest.^[13] They tried to find other buyers but to no avail. Thus, the Cummins Marine Diesel Engine remained unsold.

In the course of the trial, the parties finally came to an agreement for the disposition of the engine. On August 28, 1989, they filed a Joint Motion to Lift the Writ of Attachment so that they could sell the engine pending litigation and apply the proceeds of the sale to the payment of the Spouses Calina's outstanding account with DBP, **"without prejudice to whatever negotiation and agreements that the parties may enter into to settle the case amicably in the event the sales proceeds of the Cummins Marine Diesel Engine is not sufficient to pay off the total obligation."**^[14] The trial court granted the motion.

On February 3, 1992, the engine was sold for the sum of P550,000.00, and the amount was applied to the loan. The parties, however, could not agree whether the total amount of the loan had been fully settled, hence the trial continued.

Finally, the trial court rendered its decision, the dispositive portion of which stated:

FINDINGS AND CONCLUSIONS:

The Court finds that the CALINA (*sic*) received from DBP only the amount of P451,589.80 of the agreed P1,356,000.00 loan, and this amount was used to purchase the subject Cummins Engine. The non-completion of the vessel was caused by fortuitous event which affected both parties that the DBP novated the contract when it agreed to condone the interest and penalties but was revoked by the failure of CALINA to pay the amount of P600,000.00. However, the Court finds that the subsequent agreement of both parties to sell the subject Engine for P550,000.00 is considered by the Court as substantial compliance of the novated contract for the DBP to condone the interests and penalties, and is in fact more than sufficient to offset the loan of P451,589.80 after condonation

of the interest and penalties.

On the above findings, the Court concludes that, based on the subsequent novation of the contract after the project was discontinued due to fortuitous event, and with the proceeds of the mutually agreed sale of the subject Cummins Engine absorbed by the DBP, the loan obligation is considered as settled and/or fully paid.

WHEREFORE, premises above considered, this case is hereby DISMISSED.^[15]

On July 29, 1998, DBP filed a petition for review^[16] with the Court of Appeals, assigning the following errors to the decision of the trial court:

1. The court *a quo* gravely erred in concluding that "DBP novated the contract when it agreed to condone the interest and penalties but was revoked by the failure of Calina to pay the amount of P600,000.00";
2. The court *a quo* gravely erred in concluding "that the subsequent agreement of both parties to sell the subject engine for P550,000.00 is considered by the [c]ourt as substantial compliance of the novated contract for the DBP to condone the interests and penalties";
3. The court *a quo* gravely erred in concluding that the receipt of DBP of the amount of P550,000.00 realized from the sale of the marine diesel engine "is more than sufficient to offset the loan of P451,589.80 after condonation of interest and penalties." Hence, "the loan obligation x x x is considered as settled and/or fully paid"; and
4. The court *a quo* gravely erred is (*sic*) not ordering the defendants-appellees Spouses Virgilio G. Calina and Digna Anastacio to pay DBP the remaining balance of their loan obligation, plus interest until fully paid, and the pre-agreed attorney's fees.

It was also averred that even if "the DBP through its Board of Governors expressly approved and agreed not only to condone the penalty charges and interest, but also the dismissal of the complaint upon payment of P600,000.00,"^[17] this issue of novation is already moot as it had been revoked by the petitioners' failure to pay the said amount.

On August 27, 2003, the appellate court rendered its Decision,^[18] reversing the trial court, *viz*:

WHEREFORE, in view of the foregoing, the October 14, 1996 Decision of Branch 61, Regional Trial Court, Makati City in Civil Case No. 1622 is **REVERSED and SET ASIDE** and a new one entered ordering defendants-appellees, Spouses Virgilio Calina and Digna Anastacio, to pay plaintiff-appellant, Development Bank of the Philippines, the amount of P666,195.55 plus 12% interest from August 18, 1978 (*sic*) until fully