

## THIRD DIVISION

[ G.R. No. 148753, July 30, 2004 ]

**NEW SAMPAGUITA BUILDERS CONSTRUCTION, INC. (NSBCI)  
AND SPOUSES EDUARDO R. DEE AND ARCELITA M. DEE,  
PETITIONERS, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

Courts have the authority to strike down or to modify provisions in promissory notes that grant the lenders unrestrained power to increase interest rates, penalties and other charges at the latter's sole discretion and without giving prior notice to and securing the consent of the borrowers. This unilateral authority is anathema to the mutuality of contracts and enable lenders to take undue advantage of borrowers. Although the Usury Law has been effectively repealed, courts may still reduce iniquitous or unconscionable rates charged for the use of money. Furthermore, excessive interests, penalties and other charges not revealed in disclosure statements issued by banks, even if stipulated in the promissory notes, cannot be given effect under the Truth in Lending Act.

#### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to nullify the June 20, 2001 Decision<sup>[2]</sup> of the Court of Appeals<sup>[3]</sup> (CA) in CA-GR CV No. 55231. The decretal portion of the assailed Decision reads as follows:

"WHEREFORE, the decision of the Regional Trial Court of Dagupan City, Branch 40 dated December 28, 1995 is **REVERSED** and **SET ASIDE**. The foreclosure proceedings of the mortgaged properties of defendants-appellees<sup>[4]</sup> and the February 26, 1992 auction sale are declared legal and valid and said defendants-appellees are ordered to pay plaintiff-appellant PNB,<sup>[5]</sup> jointly and severally[,] the amount of deficiency that will be computed by the trial court based on the original penalty of 6% per annum as explicitly stated in the loan documents and to pay attorney's fees in an amount equivalent to x x x 1% of the total amount due and the costs of suit and expenses of litigation."<sup>[6]</sup>

#### The Facts

The facts are narrated by the CA as follows:

"On February 11, 1989, Board Resolution No. 05, Series of 1989 was approved by [Petitioner] NSBCI [1]) authorizing the company to x x x apply for or secure a commercial loan with the PNB in an aggregate amount of P8.0M, under such terms agreed by the Bank and the NSBCI,

using or mortgaging the real estate properties registered in the name of its President and Chairman of the Board [Petitioner] Eduardo R. Dee as collateral; [and] 2) authorizing [petitioner-spouses] to secure the loan and to sign any [and all] documents which may be required by [Respondent] PNB[,] and that [petitioner-spouses] shall act as sureties or co-obligors who shall be jointly and severally liable with [Petitioner] NSBCI for the payment of any [and all] obligations.

"On August 15, 1989, Resolution No. 77 was approved by granting the request of [Respondent] PNB thru its Board NSBCI for an P8 Million loan broken down into a revolving credit line of P7.7M and an unadvised line of P0.3M for additional operating and working capital<sup>[7]</sup> to mobilize its various construction projects, namely:

- '1)MWSS Watermain;
- 2) NEA-Liberty farm;
- 3) Olongapo City Pag-Asa Public Market;
- 4) Renovation of COA-NCR Buildings 1, 2 and 9;
- 5) Dupels, Inc., Extensive prawn farm development project;
- 6) Banawe Hotel Phase II;
- 7) Clark Air Base -- Barracks and Buildings; and
- 8) Others: EDSA Lighting, Roxas Blvd. Painting  
NEA Sapang Palay and Angeles City.'

"The loan of [Petitioner] NSBCI was secured by a first mortgage on the following: a) three (3) parcels of residential land located at Mangaldan, Pangasinan with total land area of 1,214 square meters[,] including improvements thereon and registered under TCT Nos. 128449, 126071, and 126072 of the Registry of Deeds of Pangasinan; b) six (6) parcels of residential land situated at San Fabian, Pangasinan with total area of 1,767 square meters[,] including improvements thereon and covered by TCT Nos. 144006, 144005, 120458, 120890, 144161[,] and 121127 of the Registry of Deeds of Pangasinan; and c) a residential lot and improvements thereon located at Mangaldan, Pangasinan with an area of 4,437 square meters and covered by TCT No. 140378 of the Registry of Deeds of Pangasinan.

"The loan was further secured by the joint and several signatures of [Petitioners] Eduardo Dee and Arcelita Marquez Dee, who signed as accommodation-mortgagors since all the collaterals were owned by them and registered in their names.

"Moreover [Petitioner] NSBCI executed the following documents, viz: a) promissory note dated June 29, 1989 in the amount of P5,000,000.00 with due date on October 27, 1989; [b)] promissory note dated September 1, 1989 in the amount of P2,700,000.00 with due date on December 30, 1989; and c) promissory note dated September 6, 1989 in the amount of P300,000.00 with maturity date on January 4, 1990.

"In addition, [petitioner] corporation also signed the Credit Agreement dated August 31, 1989 relating to the 'revolving credit line' of P7.7 Million x x x and the Credit Agreement dated September 5, 1989 to support the

'unadvised line' of P300,000.00.

"On August 31, 1989, [petitioner-spouses] executed a 'Joint and Solidary Agreement' (JSA) in favor of [Respondent] PNB 'unconditionally and irrevocably binding themselves to be jointly and severally liable with the borrower for the payment of all sums due and payable to the Bank under the Credit Document.'

"Later on, [Petitioner] NSBCI failed to comply with its obligations under the promissory notes.

"On June 18, 1991, [Petitioner] Eduardo R. Dee on behalf of [Petitioner] NSBCI sent a letter to the Branch Manager of the PNB Dagupan Branch requesting for a 90-day extension for the payment of interests and restructuring of its loan for another term.

"Subsequently, NSBCI tendered payment to [Respondent] PNB [of] three (3) checks aggregating P1,000,000.00, namely 1) check no. 316004 dated August 8, 1991 in the amount of P200,000.00; 2) check no. 03499997 dated August 8, 1991 in the amount of P650,000.00; and 3) check no. 03499998 dated August 15, 1991 in the amount of P150,000.00.<sup>[8]</sup>

"In a meeting held on August 12, 1991, [Respondent] PNB's representative[,] Mr. Rolly Cruzabra, was informed by [Petitioner] Eduardo Dee of his intention to remit to [Respondent] PNB post-dated checks covering interests, penalties and part of the loan principals of his due account.

"On August 22, 1991, [Respondent] bank's Crispin Carcamo wrote [Petitioner] Eduardo Dee[,] informing him that [Petitioner] NSBCI's proposal [was] acceptable[,] provided the total payment should be P4,128,968.29 that [would] cover the amount of P1,019,231.33 as principal, P3,056,058.03 as interests and penalties[,] and P53,678.93 for insurance[,] with the issuance of post-dated checks to be dated not later than November 29, 1991.

"On September 6, 1991, [Petitioner] Eduardo Dee wrote the PNB Branch Manager reiterating his proposals for the settlement of [Petitioner] NSBCI's past due loan account amounting to P7,019,231.33.

"[Petitioner] Eduardo Dee later tendered four (4) post-dated Interbank checks aggregating P1,111,306.67 in favor of [Respondent] PNB, viz:

'Check No.	Date	Amount
03500087	Sept. 29, 1991	P277,826.70
03500088	Oct. 29, 1991	P277,826.70
03500089	Nov. 29, 1991	P277,826.70
03500090	Dec. 20, 1991	P277,826.57'

"Upon presentment[,] however, x x x check nos. 03500087 and 03500088

dated September 29 and October 29, 1991 were dishonored by the drawee bank and returned due [to] a 'stop payment' order from [petitioners].

"On November 12, 1991, PNB's Mr. Carcamo wrote [Petitioner] Eduardo Dee informing him that unless the dishonored checks [were] made good, said PNB branch 'shall recall its recommendation to the Head Office for the restructuring of the loan account and refer the matter to its legal counsel for legal action.['] [Petitioners] did not heed [respondent's] warning and as a result[,] the PNB Dagupan Branch sent demand letters to [Petitioner] NSBCI at its office address at 1611 ERDC Building, E. Rodriguez Sr. Avenue, Quezon City[,] asking it to settle its past due loan account.

"[Petitioners] nevertheless failed to pay their loan obligations within the [timeframe] given them and as a result, [Respondent] PNB filed with the Provincial Sheriff of Pangasinan at Lingayen a Petition for Sale under Act 3135, as amended[,] and Presidential Decree No. 385 dated January 30, 1992.

"The notice of extra-judicial sale of the mortgaged properties relating to said PNB's [P]etition for [S]ale was published in the February 8, 15 and 22, 1992 issues of the Weekly Guardian, allegedly a newspaper of general circulation in the Province of Pangasinan, including the cities of Dagupan and San Carlos. In addition[,] copies of the notice were posted in three (3) public places[,] and copies thereof furnished [Petitioner] NSBCI at 1611 [ERDC Building,] E. Rodriguez Sr. Avenue, Quezon City, [and at] 555 Shaw Blvd., Mandaluyong[, Metro Manila;] and [Petitioner] Sps. Eduardo and Arcelita Dee at 213 Wilson St., San Juan, Metro Manila.

"On February 26, 1992, the Provincial Deputy Sheriff Cresencio F. Ferrer of Lingayen, Pangasinan foreclosed the real estate mortgage and sold at public auction the mortgaged properties of [petitioner-spouses,] with [Respondent] PNB being declared the highest bidder for the amount of P10,334,000.00.

"On March 2, 1992, copies of the Sheriff's Certificate of Sale were sent by registered mail to [petitioner] corporation's address at 1611 [ERDC Building,] E. Rodriguez Sr. Avenue, Quezon City and [petitioner-spouses'] address at 213 Wilson St., San Juan, Metro Manila.

"On April 6, 1992, the PNB Dagupan Branch Manager sent a letter to [petitioners] at their address at 1611 [ERDC Building,] E. Rodriguez Sr. Avenue, Quezon City[,] informing them that the properties securing their loan account [had] been sold at public auction, that the Sheriff's Certificate of Sale had been registered with the Registry of Deeds of Pangasinan on March 13, 1992[,] and that a period of one (1) year therefrom [was] granted to them within which to redeem their properties.

"[Petitioners] failed to redeem their properties within the one-year redemption period[,] and so [Respondent] PNB executed a [D]eed of [A]bsolute [S]ale consolidating title to the properties in its name. TCT

Nos. 189935 to 189944 were later issued to [Petitioner] PNB by the Registry of Deeds of Pangasinan.

"On August 4, 1992, [Respondent] PNB informed [Petitioner] NSBCI that the proceeds of the sale conducted on February 26, 1992 were not sufficient to cover its total claim amounting to P12,506,476.43[,] and thus demanded from the latter the deficiency of P2,172,476.43 plus interest and other charges[,] until the amount [was] fully paid.

"[Petitioners] refused to pay the above deficiency claim which compelled [Respondent] PNB to institute the instant [C]omplaint for the collection of its deficiency claim.

"Finding that the PNB debt relief package automatically [granted] to [Petitioner] NSBCI the benefits under the program, the court a quo ruled in favor of [petitioners] in its Decision dated December 28, 1995, the fallo of which reads:

'In view of the foregoing, the Court believes and so holds that the [respondent] has no cause of action against the [petitioners].

'*WHEREFORE*, the case is hereby *DISMISSED*, without costs.'"

[9]

On appeal, respondent assailed the trial court's Decision dismissing its deficiency claim on the mortgage debt. It also challenged the ruling of the lower court that Petitioner NSBCI's loan account was bloated, and that the inadequacy of the bid price was sufficient to set aside the auction sale.

### **Ruling of the Court of Appeals**

Reversing the trial court, the CA held that Petitioner NSBCI did not avail itself of respondent's debt relief package (DRP) or take steps to comply with the conditions for qualifying under the program. The appellate court also ruled that entitlement to the program was not a matter of right, because such entitlement was still subject to the approval of higher bank authorities, based on their assessment of the borrower's repayment capability and satisfaction of other requirements.

As to the misapplication of loan payments, the CA held that the subsidiary ledgers of NSBCI's loan accounts with respondent reflected all the loan proceeds as well as the partial payments that had been applied either to the principal or to the interests, penalties and other charges. Having been made in the ordinary and usual course of the banking business of respondent, its entries were presumed accurate, regular and fair under Section 5(q) of Rule 131 of the Rules of Court. Petitioners failed to rebut this presumption.

The increases in the interest rates on NSBCI's loan were also held to be authorized by law and the Monetary Board and -- like the increases in penalty rates -- voluntarily and freely agreed upon by the parties in the Credit Agreements they executed. Thus, these increases were binding upon petitioners.

However, after considering that two to three of Petitioner NSBCI's projects covered