

## THIRD DIVISION

[ G.R. No. 146942, April 22, 2003 ]

**CORAZON G. RUIZ, PETITIONER, VS. COURT OF APPEALS AND  
CONSUELO TORRES, RESPONDENTS.**

### DECISION

**PUNO, J.:**

On appeal is the decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 56621 dated 25 August 2000, setting aside the decision<sup>[2]</sup> of the trial court dated 19 May 1997 and lifting the permanent injunction on the foreclosure sale of the subject lot covered by TCT No. RT-96686, as well as its subsequent Resolution<sup>[3]</sup> dated 26 January 2001, denying petitioner's Motion for Reconsideration.

The facts of the case are as follows:

Petitioner Corazon G. Ruiz is engaged in the business of buying and selling jewelry.<sup>[4]</sup> She obtained loans from private respondent Consuelo Torres on different occasions, in the following amounts: P100,000.00; P200,000.00; P300,000.00; and P150,000.00.<sup>[5]</sup> Prior to their maturity, the loans were consolidated under one (1) promissory note dated March 22, 1995, which reads as follows:<sup>[6]</sup>

"P750,000.00            Quezon City, March 22, 1995

#### **PROMISSORY NOTE**

For value received, I, CORAZON RUIZ, as principal and ROGELIO RUIZ as surety in solidum, jointly and severally promise to pay to the order of CONSUELO P. TORRES the sum of SEVEN HUNDRED FIFTY THOUSAND PESOS (P750,000.00) Philippine Currency, to earn an interest at the rate of three per cent (3%) a month, for thirteen months, payable every \_\_\_\_\_ of the month, and to start on April 1995 and to mature on April 1996, subject to renewal.

If the amount due is not paid on date due, a SURCHARGE of ONE PERCENT of the principal loan, for every month default, shall be collected.

Remaining balance as of the maturity date shall earn an interest at the rate of ten percent a month, compounded monthly.

It is finally agreed that the principal and surety in solidum, shall pay attorney's fees at the rate of twenty-five percent (25%) of the entire amount to be collected, in case this note is not paid according to the

terms and conditions set forth, and same is referred to a lawyer for collection.

In computing the interest and surcharge, a fraction of the month shall be considered one full month.

In the event of an amicable settlement, the principal and surety in solidum shall reimburse the expenses of the plaintiff.

(Sgd.)  
Corazon \_\_\_\_\_  
Ruiz  
Principal Surety"

The consolidated loan of P750,000.00 was secured by a real estate mortgage on a 240-square meter lot in New Haven Village, Novaliches, Quezon City, covered by Transfer Certificate of Title (TCT) No. RT-96686, and registered in the name of petitioner.<sup>[7]</sup> The mortgage was signed by Corazon Ruiz for herself and as attorney-in-fact of her husband Rogelio. It was executed on 20 March 1995, or two (2) days before the execution of the subject promissory note.<sup>[8]</sup>

Thereafter, petitioner obtained three (3) more loans from private respondent, under the following promissory notes: (1) promissory note dated 21 April 1995, in the amount of P100,000.00;<sup>[9]</sup> (2) promissory note dated May 23, 1995, in the amount of P100,000.00;<sup>[10]</sup> and (3) promissory note dated December 21, 1995, in the amount of P100,000.00.<sup>[11]</sup> These combined loans of P300,000.00 were secured by P571,000.00 worth of jewelry pledged by petitioner to private respondent.<sup>[12]</sup>

From April 1995 to March 1996, petitioner paid the stipulated 3% monthly interest on the P750,000.00 loan,<sup>[13]</sup> amounting to P270,000.00.<sup>[14]</sup> After March 1996, petitioner was unable to make interest payments as she had difficulties collecting from her clients in her jewelry business.<sup>[15]</sup>

Due to petitioner's failure to pay the principal loan of P750,000.00, as well as the interest payment for April 1996, private respondent demanded payment not only of the P750,000.00 loan, but also of the P300,000.00 loan.<sup>[16]</sup> When petitioner failed to pay, private respondent sought the extra-judicial foreclosure of the aforementioned real estate mortgage.<sup>[17]</sup>

On September 5, 1996, Acting Clerk of Court and Ex-Officio Sheriff Perlita V. Ele, Deputy Sheriff In-Charge Rolando G. Acal and Supervising Sheriff Silverio P. Bernas issued a Notice of Sheriff's Sale of subject lot. The public auction was scheduled on October 8, 1996.<sup>[18]</sup>

On October 7, 1996, one (1) day before the scheduled auction sale, petitioner filed a complaint with the RTC of Quezon City docketed as Civil Case No. Q-96-29024, with a prayer for the issuance of a Temporary Restraining Order to enjoin the sheriff from proceeding with the foreclosure sale and to fix her indebtedness to private respondent to P706,000.00. The computed amount of P706,000.00 was based on the aggregate loan of P750,000.00, covered by the March 22, 1995 promissory

note, plus the other loans of P300,000.00, covered by separate promissory notes, plus interest, minus P571,000.00 representing the amount of jewelry pledged in favor of private respondent.<sup>[19]</sup>

The trial court granted the prayer for the issuance of a Temporary Restraining Order,<sup>[20]</sup> and on 29 October 1996, issued a writ of preliminary injunction.<sup>[21]</sup> In its Decision dated May 19, 1997, it ordered the Clerk of Court and Ex-Officio Sheriff to desist with the foreclosure sale of the subject property, and it made permanent the writ of preliminary injunction. It held that the real estate mortgage is unenforceable because of the lack of the participation and signature of petitioner's husband. It noted that although the subject real estate mortgage stated that petitioner was "attorney-in-fact for herself and her husband," the Special Power of Attorney was never presented in court during the trial.<sup>[22]</sup>

The trial court further held that the promissory note in question is a unilateral contract of adhesion drafted by private respondent. It struck down the contract as repugnant to public policy because it was imposed by a dominant bargaining party (private respondent) on a weaker party (petitioner).<sup>[23]</sup> Nevertheless, it held that petitioner still has an obligation to pay the private respondent. Private respondent was further barred from imposing on petitioner the obligation to pay the surcharge of one percent (1%) per month from March 1996 onwards, and interest of ten percent (10%) a month, compounded monthly from September 1996 to January 1997. Petitioner was thus ordered to pay the amount of P750,000.00 plus three percent (3%) interest per month, or a total of P885,000.00, plus legal interest from date of [receipt of] the decision until the total amount of P885,000.00 is paid.<sup>[24]</sup>

Aside from the foregoing, the trial court took into account petitioner's proposal to pay her other obligations to private respondent in the amount of P392,000.00.<sup>[25]</sup>

The trial court also recognized the expenses borne by private respondent with regard the foreclosure sale and attorney's fees. As the notice of the foreclosure sale has already been published, it ordered the petitioner to reimburse private respondent the amount of P15,000.00 plus attorney's fees of the same amount.<sup>[26]</sup>

Thus, the trial court computed petitioner's obligation to private respondent, as follows:

Principal Loan .....	P 750,000.00
Interest.....	135,000.00
Other Loans.....	392,000.00
Publication Fees.....	15,000.00
Attorney's Fees .....	<u>15,000.00</u>
 TOTAL.....	 P1,307,000.00

with legal interest from date of receipt of decision until payment of total amount of P1,307,000.00 has been made.<sup>[27]</sup>

Private respondent's motion for reconsideration was denied in an Order dated July 21, 1997.

Private respondent appealed to the Court of Appeals. The appellate court set aside the decision of the trial court. It ruled that the real estate mortgage is valid despite the non-participation of petitioner's husband in its execution because the land on which it was constituted is paraphernal property of petitioner-wife. Consequently, she may encumber the lot without the consent of her husband.<sup>[28]</sup> It allowed its foreclosure since the loan it secured was not paid.

Nonetheless, the appellate court declared as invalid the 10% compounded monthly interest<sup>[29]</sup> and the 10% surcharge per month stipulated in the promissory notes dated May 23, 1995 and December 1, 1995,<sup>[30]</sup> and so too the 1% compounded monthly interest stipulated in the promissory note dated 21 April 1995,<sup>[31]</sup> for being excessive, iniquitous, unconscionable, and contrary to morals. It held that the legal rate of interest of 12% per annum shall apply after the maturity dates of the notes until full payment of the entire amount due, and that the only permissible rate of surcharge is 1% per month, without compounding.<sup>[32]</sup> The appellate court also granted attorney's fees in the amount of P50,000.00, and not the stipulated 25% of the amount due, following the ruling in the case of **Medel v. Court of Appeals**.<sup>[33]</sup>

Now, before this Court, petitioner assigns the following errors:

(1) PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE PROMISSORY NOTE OF P750,000.00 IS NOT A CONTRACT OF ADHESION DESPITE THE CLEAR SHOWING THAT THE SAME IS A READY-MADE CONTRACT PREPARED BY (THE) RESPONDENT CONSUELO TORRES AND DID NOT REFLECT THEIR TRUE INTENTIONS AS IT WEIGHED HEAVILY IN FAVOR OF RESPONDENT AND AGAINST PETITIONER.

(2) PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT THE PROPERTY COVERED BY THE SUBJECT DEED OF MORTGAGE OF MARCH 20, 1995 IS A PARAPHERNAL PROPERTY OF THE PETITIONER AND NOT CONJUGAL EVEN THOUGH THE ISSUE OF WHETHER OR NOT THE MORTGAGED PROPERTY IS PARAPHERNAL WAS NEVER RAISED, NOR DISCUSSED AND ARGUED BEFORE THE TRIAL COURT.

(3) PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DISREGARDING THE TRIAL COURT'S COMPUTATION OF THE ACTUAL OBLIGATIONS OF THE PETITIONER WITH (THE) RESPONDENT TORRES EVEN THOUGH THE SAME IS BASED ON EVIDENCE SUBMITTED BEFORE IT.

The pertinent issues to be resolved are:

- (1) Whether the promissory note of P750,000.00 is a contract of adhesion;
- (2) Whether the real property covered by the subject deed of mortgage dated March 20, 1995 is paraphernal property of petitioner; and
- (3) Whether the rates of interests and surcharges on the obligation of petitioner to private respondent are valid.

## I

We hold that the promissory note in the case at bar is not a contract of adhesion. In **Sweet Lines, Inc. vs. Teves**,<sup>[34]</sup> this Court discussed the nature of a contract of adhesion as follows:

" . . . there are certain contracts almost all the provisions of which have been drafted only by one party, usually a corporation. Such contracts are called *contracts of adhesion*, because the only participation of the other party is the signing of his signature or his 'adhesion' thereto. Insurance contracts, bills of lading, contracts of sale of lots on the installment plan fall into this category."<sup>[35]</sup>

" . . . it is drafted only by one party, usually the corporation, and is sought to be accepted or adhered to by the other party . . . who cannot change the same and who are thus made to adhere hereto on the 'take it or leave it' basis . . . "<sup>[36]</sup>

In said case of **Sweet Lines**,<sup>[37]</sup> the conditions of the contract on the 4 x 6 inches passenger ticket are in fine print. Thus we held:

" . . . it is hardly just and proper to expect the passengers to examine their tickets received from crowded/congested counters, more often than not during rush hours, for conditions that may be printed thereon, much less charge them with having consented to the conditions, so printed, especially if there are a number of such conditions in fine print, as in this case."<sup>[38]</sup>

We further stressed in the said case that the questioned 'Condition No. 14' was prepared solely by one party which was the corporation, and the other party who was then a passenger had no say in its preparation. The passengers have no opportunity to examine and consider the terms and conditions of the contract prior to the purchase of their tickets.<sup>[39]</sup>

In the case at bar, the promissory note in question did not contain any fine print provision which could not have been examined by the petitioner. Petitioner had all the time to go over and study the stipulations embodied in the promissory note. Aside from the March 22, 1995 promissory note for P750,000.00, three other promissory notes of different dates and amounts were executed by petitioner in favor of private respondent. These promissory notes contain similar terms and conditions, with a little variance in the terms of interests and surcharges. The fact that petitioner and private respondent had entered into not only one but several loan transactions shows that petitioner was not in any way compelled to accept the terms allegedly imposed by private respondent. Moreover, petitioner, in her complaint<sup>[40]</sup> dated October 7, 1996 filed with the trial court, never claimed that she was forced to sign the subject note. Paragraph five of her complaint states:

"That on or about March 22, 1995 plaintiff was required by the defendant Torres to execute a promissory note consolidating her unpaid principal loan and interests which said defendant computed to be in the sum of P750,000.00 . . ."