

SECOND DIVISION

[G.R. No. 130759, June 20, 2003]

ASIATRUST DEVELOPMENT BANK, PETITIONER, VS. CONCEPTS TRADING CORPORATION, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals and its Resolution in CA-G.R. CV No. 44211 affirming on appeal with modification the Decision^[2] of the Regional Trial Court of Makati, Branch 68, in Civil Case No. 89-3789.

As culled from the records, the facts of the case are as follows:

In March 1996, respondent Concepts Trading Corporation obtained from petitioner Asiatrust Development Corporation a credit accommodation in the amount of P2,000,000 covered by a loan agreement^[3] and secured by real and chattel mortgages.^[4] The amount was drawn from an Industrial Guarantee Loan Fund (IGLF) account opened by the petitioner in favor of the respondent. On March 4, 1986, the respondent executed Promissory Note (PN) No. 3574^[5] in favor of the petitioner. Under the promissory note, the principal amount of P2,000,000 would be charged an interest of 23% per annum, inclusive of 1% service fee. Attached to and made part of the promissory note was the schedule of amortization agreed upon by the parties.^[6] As set forth in the schedule, the payment of the loan was to be amortized quarterly over a period of ten years with a two-year grace period on the principal payment. The first payment fell due on May 15, 1986 and the subsequent installments were to be paid every three months thereafter.

In the event that the respondent defaulted in the payment of any installment or interest thereof, paragraph 4 of the promissory note provided that:

... the entire amount outstanding under this Note shall immediately, without need for any notice, demand, presentment, protest, or of any other act or deed, the right to all of which is hereby waived by the undersigned: (i) become due, payable and defaulted; (ii) be subject to a penalty equivalent to thirty-six percent (36%) per annum thereof; (iii) together with said penalty, commence to earn interest as [sic] the rate of twenty-three percent (23%) per annum counted from the date of default until full payment thereof.

The respondent failed to pay the amortizations due on August 15 and November 15, 1987, prompting the petitioner to enforce the aforementioned acceleration clause. On January 25, 1988, the petitioner sent a letter^[7] to the respondent demanding payment of its outstanding loan obligation, amounting to P3,203,049 under PN No. 3574 and PN No. 4132.^[8]

In its Letter to the petitioner dated February 3, 1988, the respondent expressed its willingness to settle its obligation and, due to its tight financial situation, negotiated for a modified payment scheme.^[9] Thereafter, on March 30, 1988, the parties entered into a Memorandum of Agreement (MOA), the pertinent provisions of which read:

WHEREAS, CONCEPTS hereby acknowledges and affirms that it has applied and was granted by the Bank a credit accommodation consisting of an Industrial Guarantee Loan Fund ("IGLF") Account in the amount of P2.0 Million dated 4 March 1986 (hereinafter, the "LOAN OBLIGATION") which, to date, is already overdue and demandable in its entirety including all interests, penalties, service and other miscellaneous charges.

...

1. CONCEPTS hereby promises and undertakes to pay the BANK the LOAN OBLIGATION in the following manner, to wit:

- a) On 5 May 1988, the amount of P159,259.14, to be covered by a post-dated check for the same amount to be issued by CONCEPTS; and

b) On 5 June 1988 and every 5th of every succeeding month, P150,000.00 until the LOAN OBLIGATION shall have been fully paid. CONCEPTS hereby undertakes to cover the above-mentioned payments by post-dated checks, by first delivering to the BANK five (5) checks covering the first five (5) month period, without prejudice to the BANK's right to demand the delivery of another set of five (5) checks covering the subsequent five (5) month period, 15 days prior to the due date of the last check in the BANK's possession, and so on and so forth, until the LOAN OBLIGATION shall have been fully paid.

It is likewise understood that upon payment of ten (10) monthly amortizations as above-indicated or upon updating of payments of the LOAN OBLIGATION, CONCEPTS shall have the right to re-negotiate with the Bank the reinstatement of the original terms of payment under Promissory Note No. 3574.

...

3. The BANK and CONCEPTS hereby further agree that all other provisions and stipulations in the existing Promissory Notes and other documents evidencing the LOAN OBLIGATION shall remain in force and effect, except those which are inconsistent with the above-mentioned Mode of Payment.

4. CONCEPTS hereby waives notice of dishonor and/or default of its LOAN OBLIGATION: provided, however, that the BANK reserves the right to grant a grace period of (15) days for settlement of the obligation; provided, further, that such grant of a grace period shall not constitute waiver of any right of the BANK. It shall also be understood that CONCEPTS' default in this mode of payment shall likewise automatically accelerate the entire LOAN OBLIGATION.

5. It shall likewise be understood that this mode of payment arises out of the BANK's liberality and is without prejudice and without waiver of the BANK's accrued rights under the existing chattel and real estate mortgages as well as the Continuing Suretyship Agreement pertinent to the LOAN OBLIGATION, all of which mortgages and Agreement are hereby expressly continued to be in force and effect.^[10]

In compliance with its undertaking under the MOA, the respondent delivered the first check dated May 5, 1988 in the amount of P159,259.14 and four other checks in the sum of P150,000 each or for the total amount of P759,259.14. This was followed by another batch of five checks covering the months of October 1988 to February 1989, also in the amount of P150,000 each or for a total amount of P750,000.

On March 30, 1989, the petitioner wrote to the respondent requesting for the delivery of the "last checks to completely rehabilitate" its account in accordance with the MOA. When the respondent failed to make the said payments, the petitioner on April 25, 1989 sent a final demand on the respondent to pay its entire obligation under the IGLF in the amount of P2,361,970.10 within five days from receipt thereof.^[11]

The respondent thereafter filed with the Regional Trial Court of Makati City, Branch 149, a petition for declaratory relief. The respondent alleged that it is up to date in the payment of its loan obligation and, according to its record, the remaining balance amounted to only P316,550.48. The respondent prayed for the trial court to determine the rights and duties of the parties under the MOA to avoid the miscomputation of the loan obligation and any breach thereof.

In its answer, the petitioner averred that as of February 15, 1988, the outstanding obligation of the respondent amounted to P2,833,867.04. According to the petitioner, the monthly amortizations paid by the respondent covered only the penalties accruing on the loan. Further, declaratory relief as a remedy sought by the respondent was allegedly improper as it already committed a breach of its obligations. The respondent filed the action *a quo* merely to defer or avoid payment of its legally contracted loan obligation with the petitioner. By way of compulsory counterclaim, the petitioner prayed for damages and attorney's fees.

The respondent then filed an amended complaint alleging that as of August 1989, it had already paid the petitioner the total amount of P2,259,259 and that there was an overpayment of P100,000. The respondent prayed that the petitioner be ordered to refund the amount overpaid, as well as to release the mortgages and to pay damages and attorney's fees.

After due trial, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

- a) ordering the subject complaint DISMISSED for lack of merit:
- b) ordering the plaintiff to pay to the defendant the amount of P395,210.30 to earn interest at 22% per annum from the date of this decision;
- c) declaring the Real Estate Mortgage and the Chattel Mortgage as valid and subsisting which may be foreclosed by the defendant in case of non-payment of the aforestated obligation after demand;
- d) ordering the plaintiff to pay to the defendant the amount of P10,000.00 as attorney's fees and litigation expenses.

So ordered.^[12]

On appeal by the petitioner, the Court of Appeals (CA) affirmed with modification the decision of the trial court. The CA found that the respondent's outstanding obligation to the petitioner amounted only to P309,298.58. The CA likewise reduced the penalty accruing thereon from 36% to 3% per annum. The dispositive portion of the assailed decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING, the Decision of the lower court dated December 14, 1992 is AFFIRMED with the modification that the outstanding balance of plaintiff-appellee as of September 5, 1989 is P309,298.58 subject to a penalty of 3% per annum, and together with said penalty, the whole amount is subject to an interest of 23% per annum inclusive of service charges, until the entire amount has been fully paid. No pronouncement as to costs.

SO ORDERED.^[13]

Aggrieved, the petitioner now comes to this Court alleging that:

A.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW AND SUPREME COURT DECISIONS IN RULING THAT ASIATRUST WAIVED COLLECTION OF ACCRUED PENALTIES AND CHARGES DUE FROM CONCEPTS UNDER PN 3574 BY EXECUTING THE MOA, BECAUSE THE MOA DID NOT EXPRESSLY PROVIDE FOR SUCH WAIVER, AND STIPULATED THAT, UNLESS INCONSISTENT WITH THE MOA MODE OF PAYMENT, "ALL OTHER EXISTING PROVISIONS AND STIPULATIONS IN THE EXISTING PROMISSORY NOTES X X X SHALL REMAIN IN FORCE AND EFFECT."

B.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH §20 OF RULE 132 OF THE RULES OF COURT IN FINDING WITNESS REBECCA DE LA CRUZ' UNREBUTTED IDENTIFICATION OF ASIATRUST'S EXHIBIT "7" AS A STATEMENT OF ACCOUNT, AND HER UNREBUTTED IDENTIFICATION OF THE SIGNATURE OF THE EXHIBIT, AS INSUFFICIENT AUTHENTICATION OF THAT EXHIBIT, AND IN RELYING ON TESTIMONY READ FROM A LEDGER NEITHER IDENTIFIED NOR OFFERED IN EVIDENCE.^[14]

The petition is bereft of merit.

The petitioner maintains that the CA erred in holding that the petitioner waived collection of accrued penalties and miscellaneous charges under PN 3574 by entering into the MOA. No such waiver was expressed in the MOA and, in fact, paragraph 3 thereof expressly provides that "all other provisions and stipulations in the existing promissory notes and other documents evidencing the LOAN OBLIGATION shall remain in force and effect, except those which are inconsistent with the above-mentioned mode of payment." Further, the petitioner's consistent application of the payments respondent made to the penalties, charges and interests is a plain manifestation of its contractual intent, and is properly cognizable as evidence of that intent under Article 1371 of the Civil Code which provides:

Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.

The petitioner likewise avers that the CA erred in not according probative value to the statement of account which the petitioner offered in evidence. The petitioner contends that, contrary to the holding of the CA, the statement of account was properly identified by its witness, Rebecca de la Cruz.

The Court does not agree with the petitioner.

It is a time-honored rule of evidence that when the terms of an agreement are reduced to writing, it is deemed to contain all the terms agreed upon and no evidence of such terms can be admitted other than the contents of the agreement itself.^[15] This rule allows exceptions, in that a party may present parole evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleadings:

- a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
- b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
- c) The validity of the written agreement; or
- d) The existence of other terms agreed to by the parties or their successors-in-interest after the execution of the written agreement.^[16]

A careful perusal of the MOA reveals that it fixed the respondent's loan obligation to the petitioner at P2,000,000 which was already due and demandable in its entirety, including "all interests, penalties, service and other miscellaneous charges." Further, Paragraph 1 thereof set forth the manner by which the loan obligation was to be paid, to wit:

1. CONCEPTS hereby promises and undertakes to pay the BANK the LOAN OBLIGATION in the following manner, to wit:

- a) On 5 May 1988, the amount of P159,259.14, to be covered by a post-dated check for the same amount to be issued by CONCEPTS; and
- b) On 5 June 1988 and every 5th of every succeeding month, P150,000.00 until the LOAN OBLIGATION shall have been fully paid. CONCEPTS hereby undertakes to cover the above-mentioned payments by post-dated checks, by first delivering to the BANK five (5) checks covering the first five (5) month period, without prejudice to the BANK's right to demand the delivery of another set of five (5) checks covering the subsequent five (5) month period, 15 days prior to the due date of the last check in the BANK's possession, and so on and so forth, until the LOAN OBLIGATION shall have been fully paid.

It is likewise understood that upon payment of ten (10) monthly amortizations as above-indicated or upon updating of payments of the LOAN OBLIGATION, CONCEPTS shall have the right to re-negotiate with the Bank the reinstatement of the original terms of payment under Promissory Note No. 3574.^[17]

However, the MOA failed to state the exact amounts of interests, service charges and penalties accruing on the loan obligation. To determine the same, the CA relied on the testimony of the petitioner's comptroller, Rebecca de la Cruz, who testified thereon as follows:

Atty. Ortiz:

Q: Now, as of the date January 25, 1988 what was the total obligation of the plaintiff to the defendant?

COURT: (to the witness)

According to your ledger it could be any date closer to January 25, 1988?

WITNESS:

A: The date which is closer to January 25, 1988 is April 28, 1988. It says here if you still have a 2 MILLION PESO principal balance. We have here an interest of P24,000.00 and still we have service charges.

COURT:

Service charges of how much?

WITNESS:

A: P123,000.00 and still we have unpaid penalties of P76,000.00, Your Honor.^[18]

Based on the foregoing, the CA correctly fixed the respondent's outstanding balance to the petitioner as of the execution of the MOA at P2,223,000 consisting of the principal obligation of P2,000,000, penalties of P76,000, service charges of P123,000 and interests of P24,000:

After a thorough review of the MOA, We are convinced that plaintiff-appellee's obligation consists of its original P2 million loan under PN No. 3574 including interests and service fees but excluding