

FIFTH DIVISION

[CA-G.R. SP NO. 118838, March 13, 2015]

ROSEMARIE YDIA, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

DECISION

GARCIA-FERNANDEZ, J.:

This is a petition for review under Rule 42 of the Rules of Court, as amended, seeking to reverse the decision issued by the Regional Trial Court of Makati City, Br. 66 in Civil Case No. 10-694^[1] on November 30, 2010 which affirmed in toto the decision issued by the Metropolitan Trial Court of Makati City, Br. 62 in Civil Case No. 83742^[2] on April 13, 2010.

The factual antecedents are as follows:

On January 8, 2004, respondent Bank of the Philippine Islands filed a complaint^[3] for sum of money against the petitioner Rosemarie Ydia before the MeTC, with prayer for the payment of the sum amounting of P397,990.394 as of October 12, 2003, plus finance charge at the rate of 3.25% per month from November 13, 2003 until the total obligation is paid, late payment charges amounting to 6% per month from November 13, 2003 until fully paid, as well as liquidated damages and attorney's fees. In said complaint, respondent alleges that petitioner, a card member under Customer No 0201-0020-0183-1676, proposed to settle her outstanding credit card obligation with the respondent. Accordingly, petitioner signed a document entitled "Extended Payment Arrangement" (EPA), but failed to pay any of the amounts when due under the EPA. Despite demand, petitioner still failed to pay her obligation with the respondent, thus the latter was compelled to file the instant complaint.

In her answer^[4], petitioner admitted having signed the EPA but claims that she never agreed to any of the terms in the EPA because the terms of the EPA were not explained to her; that no proper demand was made since the demand letter presented by the respondent in the complaint does not bear any signature; that the penalties and interests imposed by the respondent in the EPA are exorbitant and unconscionable; and that petitioner has fully paid her obligation considering she has paid a total of P108,000.00 as of January 15, 2004. Petitioner likewise claims she is entitled to moral damages, exemplary damages, and litigation costs due to respondent's unwarranted act of threatening her and filing the instant suit for sum of money.

After trial, the MeTC in the decision dated April 3, 2010^[5], ruled in favor of respondent, the dispositive portion of which reads:

"WHEREFORE, premises considered, defendant ROSEMARIE M. YDIA is ordered to pay plaintiff the unpaid principal balance of **Three Hundred Forty Four Thousand One Hundred Ninety Nine Pesos and 41/100 (Php344,199,41)**, with interest at the rate of 12% per annum and 1% penalty charge per month from January 16, 2004, until the amount is fully paid. Defendant is likewise ordered to pay attorney's fees of Thirty four Thousand Pesos (Php34,000.00), plus the costs of suit.

All other claims of the plaintiff are denied for lack of merit.

The claim against defendant John Doe is dismissed for lack of evidence.

Likewise, the counterclaims of the defendant are dismissed for lack of merit.

SO ORDERED."

In ruling accordingly, the MeTC found that petitioner has admitted the due execution and validity of the EPA and her claim that she signed the EPA under duress was negated by her conduct of paying the amortization in accordance with the EPA. As for the balance to be paid, the MeTC found that petitioner's outstanding balance as of January 15, 2004 stands at P344,199.41. However, the MeTC found that the 6% penalty as well as the 3.25% finance charges and interest per month are iniquitous and unconscionable, thus deciding to reduce the rates to an interest of 12% per annum and an additional 1% per month.

Petitioner appealed^[6] the decision dated April 30, 2010 to the RTC, alleging that the EPA is invalid since she was made to sign the EPA under duress and harassment, as proven by her testimony. Assuming that the EPA was valid, petitioner claims that the MeTC erred in the computation of the remaining balance. Finally, petitioner alleges that respondent is not the real party-in-interest since the issuer of the credit card is BPI Card Finance Corporation and not the respondent. The RTC denied the appeal in its decision dated November 30, 2010^[7] and affirmed the decision of the MeTC in toto, stating as follows:

"In the instant case, the court finds no merit in the claim of the defendant-appellant that she signed the EPA under duress and that the terms and conditions were never explained to her. Being persistent in the enforcement and collection of an outstanding obligation made through several phone calls can hardly be considered a duress as the term is contemplated under the law. Defendant-appellant may not be allowed to even feign ignorance about the nature of her transaction with the plaintiff-appellee. When asked about her profession, she admitted being a certified public accountant. Thus:

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Given her educational attainment, she is presumed to have a working knowledge of the consequences of default in the payment of her credit card obligation as well as the computation of the corresponding penalties and interest charges. In a span of almost three years after signing the EPA, the defendant-appellant religiously made payments without

question. In fact, she never sought to have the EPA annulled on the ground that her consent thereto was vitiated. It was only when she could not pay the stipulated monthly installment of P15,000 apparently due to financial difficulty that she stopped paying altogether. No other conclusion can be drawn except that the defendant-appellant freely entered into such agreement and assumed the obligation to pay the outstanding balance upon signing the EPA. It is basic that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith (Article 1159, New Civil Code).

Anent the second assignment of error, the court notes with approval of the computation made by the court a quo of the remaining obligation based on the amount stated in the EPA less the total payments made by the defendant-appellant. Likewise, the lower court properly reduced the interest to 12% per annum and 1% penalty per month in light of prevailing jurisprudence an pursuant to the New Civil Code:

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Finally, for the first time on appeal, the defendant-appellant advanced the contention that the lower court should have dismissed the case outright for lack of cause of action inasmuch as the plaintiff-appellee is not the real party-in-interest. xxx

Such argument deserves scant consideration. If an action is not brought in the name of the real party-in-interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action (Rule 16, Section 1(g) of the 1997 Rules of Court). It must be recalled, however, that defenses and objections not pleaded in a motion to dismiss or in the answer are deemed waived (Rule 9, Section 1 of the 1997 Rules of Court). In fact, under the omnibus motion rules, a motion attacking a pleading, order, judgment, or proceeding shall include all objections then available, and all objections not so included shall be deemed waived. (Rule 15, Section 8 of the 1997 Rules of Court). xxx

Lack of cause of action as a ground for dismissal does not fall under any of the aforementioned exceptions and pronouncement of the Court and is therefore deemed waived after the defendant-appellant failed to interpose the same at the first instance. Besides, defendant-appellant actively participated in the proceedings before the lower court and therefore had every opportunity to raise the same. It is too late in the day for her to ventilate the issue now that the decision of the court a quo which did not pass upon the same is on appeal. xxx

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It is also noteworthy that the defendant-appellant readily admitted that she is indeed indebted to the plaintiff-appellant by virtue of the purchases she made using the credit card issued to her. She cannot now evade such obligation with her belated claim that the plaintiff-appellant is not the real party-in-interest.”