

## TWENTY-SECOND DIVISION

[ CA-G.R. CV NO. 02142-MIN, June 04, 2014 ]

**FROILAN S. DIAZ AND AGAPITA M. DIAZ, PLAINTIFFS-APPELLANTS, VS. EQUITABLE BANKING CORPORATION AND THE PROVINCIAL OR EX-OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF MISAMIS ORIENTAL AND DEPUTY PROVINCIAL SHERIFF IV ENRICO C. DAEL, DEFENDANTS-APPELLEES,**

### DECISION

**INTING, J.:**

Before Us on appeal is the Decision<sup>[1]</sup> dated December 29, 2009 of the Regional Trial Court of Cagayan de Oro City, Branch 23, rendered in Civil Case No. 98-733, which is a Complaint for Annulment of Real Estate Mortgage and Promissory Notes, and Annulment of Extrajudicial Foreclosure of Real Estate Mortgage.

The facts<sup>[2]</sup> of the case are as follows:

George Diaz, the son of plaintiffs-appellants Froilan S. Diaz and Agapita M. Diaz, acquired several loans from defendant-appellee Equitable Banking Corporation (Equitable Bank):

Promissory Note No. <sup>[3]</sup>	Executed by:	Amount	Interest Rate	Approved on	Date Due
a.) PN 1045	George Diaz & Froilan Diaz	P2M	15%	January 16, 1995	February 16, 1995
b.) PN 1142	George Diaz	P0.75M	15%	August 24, 1995	August 24, 1996
c.) PN 1143	George Diaz	P3M	14.5%	August 28, 1995	August 24, 1996
d.) PN 1177	George Diaz	P0.2M	17%	December 18, 1995	March 18, 1995

On September 20, 1995, George Diaz was appointed by his parents, plaintiffs-appellants, Froilan S. Diaz and Agapita M. Diaz (Spouses Diaz) as their attorney-in-fact for the purpose of securing the loan obligations with defendant-appellee, Equitable Banking Corporation (Equitable Bank) for not more than six million pesos (P6,000,000.00). The parcel of land located at Osmeña Extension, Cagayan de Oro City, identified as Lot No. 14539-B-1-B, with an area of 1,019 square meters, and covered by Transfer Certificate of Title (TCT) No. T-67774<sup>[4]</sup> was used as collateral. The Special Power of Attorney (SPA)<sup>[5]</sup> was recorded in the TCT, as follows:

"Entry No. 230871 – Special Power of Atty. executed by Sps. Froilan A. Diaz and Agapita M. Diaz do hereby name, constitute and appoint and authorize George M. Diaz to be their true and lawful atty. in fact and to

do the following acts, to wit: to offer and use as collateral for a loan of not more than SIX MILLION PESOS (P6,000,000.00) a parcel of land embrace (*sic*) in this tct, to sign the deed of mortgage and any papers, documents, contracts relative to the above under the terms and conditions that are deemed proper to fit and to receive and/or encash checks due us relative to the above-mentioned mortgage."<sup>[6]</sup>

Thereafter, on October 19, 1995, the plaintiffs-appellants executed a Real Estate Mortgage in favor of the defendant-appellee bank. The REM was executed to guarantee the payment of the four (4) promissory notes. The REM reads as follows:

"Entry No. 230872 – Real Estate Mortgage executed by George M. Diaz, atty. in fact, in favor of the Equitable Banking Corporation to guarantee a principal obligation of P6,000,000.00 pesos subject to all terms and conditions stipulated in said mortgage on file in this office." <sup>[7]</sup>

Both documents were recorded in the TCT on the same day or on October 25, 1995.

The plaintiffs-appellants faithfully complied with their obligation to pay the interest rates when they fell due. However, during the 1997 financial crisis which plagued the Asian markets, Equitable Bank increased the interest rate of the plaintiffs-appellants' loan to 31% per annum.<sup>[8]</sup> When plaintiffs-appellants failed to pay their loan obligation, Equitable Bank imposed the penalty charge of 12% until full payment.

Despite repeated demands from Equitable Bank, the plaintiffs-appellants failed to pay the aforementioned loans to the former. Thus, Equitable Bank was constrained to file an application for Extrajudicial Foreclosure of the Real Estate Mortgage on October 1, 1998. Pursuant to the Sheriff's Notice of Sale, a public auction sale was scheduled on December 18, 1998 to satisfy the indebtedness in the amount of Nine Million One Hundred Sixty-Six Thousand Nine Hundred Forty-Eight (P9,166,948.33) 33/100.<sup>[9]</sup>

To impede the impending sale, the plaintiffs-appellants filed a Complaint<sup>[10]</sup> with the court a *quo* against Equitable Bank for Annulment of Real Estate Mortgage and Promissory Notes, Annulment of Extrajudicial Foreclosure of Real Estate Mortgage with Application for a Writ of Preliminary Injunction and Temporary Restraining Order.

In their complaint, plaintiffs-appellants contend that Equitable Bank violated the mutuality of contract when it unilaterally increased the interest rates without their consent. They also argue that the terms and conditions of the Promissory Notes and Real Estate Mortgage weighed heavily in favor of Equitable Bank.

They further allege that since the Extrajudicial Foreclosure was based on Promissory Notes and a Real Estate Mortgage that were void, the foreclosure should necessarily be void.

On December 17, 1998, the court a *quo* issued a Temporary Restraining Order (TRO) in favor of the plaintiff-appellees. The pertinent portion of the Order states, to wit:

"After careful review of the allegations contained in the verified complaint, there is showing that great and irreparable damage would result to the applicants before the matter could be heard on notice.

x x x

In view thereof and pursuant to the above provisions of the law, the application for the issuance of a temporary restraining order is hereby granted. The Provincial Sheriff or Ex-Officio Sheriff of Misamis Oriental and Deputy Sheriff Manrico Dael and other deputies are hereby enjoined to proceed with the conduct of the auction sale of plaintiffs' mortgage real properties set on December 18, 1998 at 9:00AM until 4:30PM. x x x"

[11]

For its part, the defendant-appellee Equitable Bank avers in its answer<sup>[12]</sup> that the payment of interest rates was sanctioned by the escalation and de-escalation clauses of the promissory notes. Moreover, the plaintiffs-appellants' receipt of the statement of account indicating the rate applied was not only an acknowledgement and ratification of the clauses but was also an unequivocal manifestation of their acquiescence to such rates. Moreover, Equitable Bank opines that the 12% penalty applied to the plaintiffs-appellants was well within the 1/10 of 1% penalty stipulated in the promissory notes and was even advantageous and beneficial to them considering the number of days their loan has been past due.

On August 16, 2006, the court *a quo* issued a pre-trial order with the following issues propounded:

1. Whether or not there was violation of the mutuality of contract;
2. Whether or not there was violation of PD No. 116;
3. Whether or not the Promissory Notes 1045, 1142, 1143 and 1177 are null and void because of the violation of the mutuality of contract and PD No. 116;
4. Whether or not the Real Estate Mortgage and the Foreclosure of Mortgage is null and void because of (sic) violation of mutuality of contract and PD 116;
5. Whether or not plaintiffs are entitled to the relief prayed for in the complaint;
6. Whether or not plaintiffs are in estoppel; and
7. Whether or not defendants are entitled to their counterclaim.<sup>[13]</sup>

Thereafter, on December 29, 2009, the court *a quo* issued the assailed Decision. The dispositive portion of which reads:

"WHEREFORE, the Complaint for Annulment of Real Estate Mortgage and Promissory Notes, Annulment of Extra-Judicial Foreclosure of Real Estate Mortgage with Application for Writ of Preliminary Injunction and Temporary Restraining Order is hereby DISMISSED.

The plaintiff's spouses are bound to pay and as hereby decreed the sum