

Asian Cathay Finance and Leasing Corporation, *Petitioner vs. Spouses Cesario Gravador and Norma de Vera and Spouses Emma Concepcion G. Dumigpi and Federico L. Dumigpi, Respondents*, G.R. No. 186550; 5 July 2010

Facts: Asian Cathay Finance and Leasing Corporation (ACFLC) extended a loan of ₱800,000.00 to respondent Cesario Gravador (Cesario), with respondents Norma de Vera and Emma Concepcion Dumigpi as his co-makers. The loan was payable in 60 monthly installments of ₱24,000.00 each and secured by a real estate mortgage executed by Cesario over his property. Respondents paid the first installment for November 1999 but failed to pay the subsequent installments. In February 2000, ACFLC demanded payment of ₱1,871,480.00 from respondents. Respondents asked for more time to pay but ACFLC denied their request.

Respondents filed a case for annulment of the real estate mortgage and promissory note before the Regional Trial Court (RTC). Respondents averred that the mortgage did not make reference to the promissory note and contained a provision on the waiver of the mortgagor's right of redemption, which is contrary to law and public policy. Respondents added that the promissory note did not specify the maturity date of the loan, the interest rate, and the mode of payment, and illegally imposed liquidated damages.

ACFLC filed a petition for extrajudicial foreclosure of mortgage with the office of the Deputy Sheriff.

The RTC dismissed respondents' complaint for annulment of mortgage for lack of cause of action, holding that respondents were well-educated individuals who could not feign naiveté in the execution of the loan documents. The RTC further held that the alleged defects in the promissory note and in the deed of real estate mortgage were too insubstantial to warrant the nullification of the mortgage. It added that a promissory note was not one of the essential elements of a mortgage, thus, reference to a promissory note was neither indispensable nor imperative for the validity of the mortgage.

Respondents appealed to the Court of Appeals (CA) which reversed the RTC. The CA held that the amount of ₱1,871,480.00 demanded by ACFLC from respondents was unconscionable and excessive. The CA fixed the interest rate at 12% per annum and reduced the penalty charge to 1% per month. The CA also invalidated the waiver of respondents' right of redemption for reasons of public policy.

When the CA denied ACFLC's motion for reconsideration, ACFLC brought the case to the Supreme Court, insisting on the validity of the real estate mortgage and promissory note. ACFLC argued that right of redemption was a privilege which respondents could waive as they did in this case. It further argued that respondents' action for annulment of mortgage was a collateral attack on its certificate of title.

Issues: (1) Whether or not the interest imposed by ACFLC was unconscionable and excessive; (2) Whether or not the provision in the real estate mortgage on the mortgagor's waiver of right of redemption should be voided for being against public policy; and (3) Whether or not the action for annulment of mortgage was a collateral attack on ACFLC's certificate of title.

Held: (1) It is true that parties to a loan agreement have a wide latitude to stipulate on any interest rate in view of Central Bank Circular No. 905, series of 1982, which suspended the Usury Law ceiling on interest rate effective 1 January 1983. However, interest rates, whenever unconscionable, may be equitably reduced or even invalidated.

In a span of 3 months (from the payment of the initial installment for November 1999 up to ACFLC's demand on 1 February 2000), respondents' principal obligation of ₱800,000.00 ballooned by more than

₱1,000,000.00. ACFLC failed to show any computation on how much interest was imposed and on the penalties charged. Thus, the amount claimed by ACFLC was unconscionable.

Stipulations authorizing the imposition of iniquitous or unconscionable interest are contrary to morals, if not against the law. Under Article 1409 of the Civil Code, these contracts are inexistent and void from the beginning. They cannot be ratified nor the right to set up their illegality as a defense be waived. The nullity of the stipulation on the usurious interest does not, however, affect the lender's right to recover the principal of the loan. Nor would it affect the terms of the real estate mortgage. The right to foreclose the mortgage remains with the creditors, and said right can be exercised upon the failure of the debtors to pay the debt due. The debt due is to be considered without the stipulation of the excessive interest. A legal interest of 12% per annum will be added in place of the excessive interest formerly imposed. The nullification by the CA of the interest rate and the penalty charge and the consequent imposition of an interest rate of 12% and penalty charge of 1% per month cannot, therefore, be considered a reversible error.

The Court cited *Spouses Castro vs. Tan, et al.* (G.R. No. 168940; 24 November 2009), where it held that: "The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals."

(2) Settled is the rule that for a waiver to be valid and effective, it must, in the first place, be couched in clear and unequivocal terms which will leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him. The intention to waive a right or an advantage must be shown clearly and convincingly. ACFLC failed to convince the Court that respondents waived their right of redemption voluntarily.

The Court agreed with the CA's explanation in invalidating the waiver: The supposed waiver was in fine print and in the form and language prepared by ACFLC, partaking of the nature of a contract of adhesion. Doubts in the interpretation of stipulations in contracts of adhesion should be resolved against the party that prepared them. This principle especially holds true with regard to waivers, which are not presumed, but which must be clearly and convincingly shown. ACFLC failed to show the efficacy of this waiver. Moreover, to say that the mortgagor's right of redemption may be waived through a fine print in a mortgage contract is, in the last analysis, tantamount to placing at the mortgagee's absolute disposal the property foreclosed. It would render practically nugatory this right that is provided by law for the mortgagor for reasons of public policy. A contract of adhesion may be struck down as void and unenforceable for being subversive to public policy, when the weaker party is completely deprived of the opportunity to bargain on equal footing.

(3) The case for annulment of mortgage was filed long before the consolidation of ACFLC's title over the property. In fact, when respondents filed said case at the first instance, the title to the property was still in Cesario's name. It was pending with the RTC when ACFLC filed a petition for foreclosure of mortgage and even when a writ of possession was issued. Clearly, ACFLC's title was subject to the final outcome of the case for annulment of mortgage.

Ponente: J. Antonio Eduardo B. Nachura