

Supreme Court of the Philippines
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Republic of the Philippines
Supreme Court
Manila

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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAR 24 2017

THIRD DIVISION

WILLIAM C. LOUH, JR. and
IRENE L. LOUH,

Petitioners,

G.R. No. 225562

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
BERSAMIN,
REYES, and
CAGUIOA, ** JJ.

- versus -

BANK OF THE PHILIPPINE
ISLANDS,

Respondent.

Promulgated:

March 8, 2017

Wilfredo V. Lapitan

X-----X

RESOLUTION

REYES, J.:

Before the Court is the instant petition for review on *certiorari*¹ filed by William C. Louh, Jr. (William) and Irene L. Louh (Irene) (collectively, the Spouses Louh) to assail the Decision² and Resolution,³ dated August 11, 2015 and May 23, 2016, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 100754.

* Additional Member per Raffle dated February 20, 2017 *vice* Associate Justice Francis H. Jardeleza.

** Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

¹ *Rollo*, pp. 5-15.

² Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Melchor Quirino C. Sadang concurring; *id.* at 17-27.

³ *Id.* at 34-35.

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Antecedents

The herein respondent, Bank of the Philippine Islands (BPI), issued a credit card in William's name, with Irene as the extension card holder. Pursuant to the terms and conditions of the cards' issuance, 3.5% finance charge and 6% late payment charge shall be imposed monthly upon unpaid credit availments.⁴

The Spouses Louh made purchases from the use of the credit cards and paid regularly based on the amounts indicated in the Statement of Accounts (SOAs). However, they were remiss in their obligations starting October 14, 2009.⁵ As of August 15, 2010, their account was unsettled prompting BPI to send written demand letters dated August 7, 2010, January 25, 2011 and May 19, 2011. By September 14, 2010, they owed BPI the total amount of ₱533,836.27. Despite repeated verbal and written demands, the Spouses Louh failed to pay BPI.⁶

On August 4, 2011, BPI filed before the Regional Trial Court (RTC) of Makati City a Complaint⁷ for Collection of a Sum of Money.

On February 21, 2012, William filed before the RTC a Motion for Extension of Time to File an Answer or Responsive Pleading.⁸ In its Order⁹ dated February 27, 2012, the RTC granted an extension of 15 days or up to March 4, 2012, but the Spouses Louh still failed to comply within the prescribed period.¹⁰

On June 11, 2012, BPI filed a motion to declare the Spouses Louh in default.¹¹ Before the RTC can rule on BPI's motion, the Spouses Louh filed an Answer¹² on July 20, 2012 or more than three months after the prescribed period, which ended on March 4, 2012.

On July 24, 2012, the RTC issued an Order¹³ declaring the Spouses Louh in default and setting BPI's *ex-parte* presentation of evidence on August 7, 2012. The Branch Clerk of Court thereafter submitted a Commissioner's Report¹⁴ dated September 7, 2012, and the RTC considered

⁴ RTC records, p. 000112.

⁵ Id. at 000108-000109.

⁶ Id. at 000112.

⁷ Docketed as Civil Case No. 11-753, id. at 000001-000005.

⁸ Id. at 000029-000030.

⁹ Issued by Presiding Judge Eugene C. Paras; id. at 000036.

¹⁰ *Rollo*, pp. 19, 22.

¹¹ RTC records, pp. 000037-000039.

¹² Id. at 000044-000046.

¹³ Id. at 000047-000048.

¹⁴ Id. at 000108-000109.

the case submitted for decision on November 27, 2012.¹⁵

On November 29, 2012, the RTC rendered a Decision,¹⁶ the *fallo* of which ordered the Spouses Louh to solidarily pay BPI (1) ₱533,836.27 plus 12% finance and 12% late payment annual charges starting from August 7, 2010 until full payment, and (2) 25% of the amount due as attorney's fees, plus ₱1,000.00 per court hearing and ₱8,064.00 as filing or docket fees; and (3) costs of suit.¹⁷

The RTC explained that BPI had adduced preponderant evidence proving that the Spouses Louh had in fact availed of credit accommodations from the use of the cards. However, the RTC found the 3.5% finance and 6% late payment monthly charges¹⁸ imposed by BPI as iniquitous and unconscionable. Hence, both charges were reduced to 1% monthly. Anent the award of attorney's fees equivalent to 25% of the amount due, the RTC found the same to be within the terms of the parties' agreement.¹⁹

The Spouses Louh filed a Motion for Reconsideration,²⁰ which the RTC denied in the Order²¹ issued on April 8, 2013. The appeal²² they filed was likewise denied by the CA in the herein assailed decision and resolution.

In affirming *in toto* the RTC's judgment, the CA explained that the Spouses Louh were properly declared in default for their failure to file an answer within the reglementary period. The Spouses Louh further filed no motion to set aside the order of default. The CA also found that BPI had offered ample evidence, to wit: (1) delivery receipts pertaining to the credit cards and the terms and conditions governing the use thereof signed by the Spouses Louh; (2) computer-generated authentic copies of the SOAs; and (3) demand letters sent by BPI, which the Spouses Louh received but ignored. As to the award of attorney's fees, the CA ruled that the terms governing the use of the cards explicitly stated that should the account be referred to a collection agency, then 25% of the amount due shall be charged as attorney's fees.²³

In the herein assailed Resolution²⁴ dated May 23, 2016, the CA denied the Spouses Louh's Motion for Reconsideration.²⁵

¹⁵ Id. at 000110.

¹⁶ Id. at 000111-000113.

¹⁷ Id. at 000113.

¹⁸ 42% and 72% *per annum*, respectively.

¹⁹ RTC records, pp. 000112-000113.

²⁰ Id. at 000114-000118.

²¹ Id. at 000123.

²² Id. at 000127-000128.

²³ *Rollo*, pp. 22-26.

²⁴ Id. at 34-35.

²⁵ Id. at 28-32.

Issue

Aggrieved, the Spouses Louh are before the Court raising the sole issue of whether or not the CA erred in sustaining BPI's complaint.²⁶

The Spouses Louh pray for the dismissal of BPI's suit. They likewise seek a relaxation of procedural rules claiming that their failure to file a timely Answer was due to William's medical condition, which required him to undergo a heart by-pass surgery.²⁷ They further alleged that BPI failed to establish its case by preponderance of evidence. Purportedly, BPI did not amply prove that the Spouses Louh had in fact received and accepted the SOAs, which were, however, unilaterally prepared by the bank.²⁸ They allege the same circumstance as to the receipt of the demand letters. The computations likewise did not show the specific amounts pertaining to the principal, interests and penalties. They point out that since their credit limit was only ₱326,000.00, it is evident that the amount of ₱533,836.27 demanded by BPI included unconscionable charges.²⁹

BPI failed to file a comment to the instant petition within the prescribed period, which expired on September 23, 2016.

Ruling of the Court

The Court affirms the herein assailed decision and resolution, but modifies the principal amount and attorney's fees awarded by the RTC and the CA.

The Spouses Louh reiterate that the RTC wrongly declared them in default since by reason of William's sickness, they were entitled to a relaxation of the rules. Moreover, BPI had failed to offer preponderant evidence relative to the actual amount of the Spouses Louh's indebtedness.

The foregoing claims are untenable.

In *Magsino v. De Ocampo*,³⁰ the Court instructs that:

²⁶ Id. at 9.

²⁷ Id. at 10.

²⁸ Id. at 11.

²⁹ Id. at 12.

³⁰ G.R. No. 166944, August 18, 2014, 733 SCRA 202.

Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.

Like all rules, procedural rules should be followed *except* only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure.

The rules were instituted to be faithfully complied with, and allowing them to be ignored or lightly dismissed to suit the convenience of a party like the petitioner was impermissible. Such rules, often derided as merely technical, are to be relaxed only in the furtherance of justice and to benefit the deserving. Their liberal construction in exceptional situations should then rest on a showing of justifiable reasons and of at least a *reasonable attempt at compliance with them*. x x x.³¹ (Citations omitted and emphasis and italics ours)

In the case at bar, the CA aptly pointed out that the Spouses Louh filed their Answer with the RTC only on July 20, 2012 or more than three months after the prescribed period, which expired on March 4, 2012. When they were thereafter declared in default, they filed no motion to set aside the RTC's order, a remedy which is allowed under Rule 9, Section 3³² of the Rules of Civil Procedure. The Spouses Louh failed to show that they exerted due diligence in timely pursuing their cause so as to entitle them to a

³¹ Id. at 219-220, citing *Republic of the Philippines v. Kenrick Development Corp.*, 529 Phil. 876, 885-886 (2006).

³² **Section 3. Default; declaration of.**—If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

(a) *Effect of order of default.*—A party in default shall be entitled to notice of subsequent proceedings but not to take part in the trial.

(b) *Relief from order of default.*—A party declared in default may at any time after notice thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such case, the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice.

liberal construction of the rules, which can only be made in exceptional cases.

The Spouses Louh claim as well that BPI's evidence are insufficient to prove the amounts of the former's obligation; hence, the complaint should be dismissed. The Court, in *Macalinao v. BPI*,³³ emphatically ruled that:

Considering the foregoing rule, respondent BPI should not be made to suffer for petitioner Macalinao's failure to file an answer and concomitantly, to allow the latter to submit additional evidence by dismissing or remanding the case for further reception of evidence. Significantly, petitioner Macalinao herself admitted the existence of her obligation to respondent BPI, albeit with reservation as to the principal amount. Thus, a dismissal of the case would cause great injustice to respondent BPI. Similarly, a remand of the case for further reception of evidence would unduly prolong the proceedings of the instant case and render inutile the proceedings conducted before the lower courts.³⁴

BPI had offered as evidence the (1) testimony of Account Specialist Carlito M. Igos, who executed a Judicial Affidavit in connection with the case, and (2) documentary exhibits, which included the (a) delivery receipts pertaining to the credit cards and the terms and conditions governing the use thereof signed by the Spouses Louh, (b) computer-generated authentic copies of the SOAs,³⁵ and (c) demand letters sent by BPI, which the Spouses Louh received.³⁶ The Clerk of Court subsequently prepared a Commissioner's Report, from which the RTC based its judgment.

The Spouses Louh slept on their rights to refute BPI's evidence, including the receipt of the SOAs and demand letters. BPI cannot be made to pay for the Spouses Louh's negligence, omission or belated actions.

Be that as it may, the Court finds excessive the principal amount and attorney's fees awarded by the RTC and CA. A modification of the reckoning date relative to the computation of the charges is in order too.

In *Macalinao*,³⁷ where BPI charged the credit cardholder of 3.25% interest and 6% penalty per month,³⁸ and 25% of the total amount due as attorney's fees, the Court unequivocally declared that:

³³ 616 Phil. 60 (2009).

³⁴ Id. at 71.

³⁵ RTC records, pp. 000060-000097.

³⁶ Id. at 000111; *rollo*, p. 25.

³⁷ *Supra* note 33.

³⁸ 111% *per annum*.

[T]his is **not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable**. We held in *Chua vs. Timan*:

The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be **equitably reduced to 1% per month or 12% per annum**. We need not unsettle the principle we had affirmed in a plethora of cases that **stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law**. While C.B. Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets. x x x

Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. Hence, courts may reduce the interest rate as reason and equity demand.

The same is true with respect to the penalty charge. x x x Pertinently, Article 1229 of the Civil Code states:

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

x x x x

x x x [T]he **stipulated penalty charge of 3% per month or 36% per annum, in addition to regular interests, is indeed iniquitous and unconscionable**.³⁹ (Citations and emphasis in the original omitted, and emphasis ours)

Thus, in *Macalinao*, the Court reduced both the interest and penalty charges to 12% each, and the attorney's fees to ₱10,000.00.

In *MCMP Construction Corp. v. Monark Equipment Corp.*,⁴⁰ the creditor cumulatively charged the debtor 60% annually as interest, penalty and collection fees, and 25% of the total amount due as attorney's fees. The Court similarly found the rates as exorbitant and unconscionable; hence, directed the reduction of the annual interest to 12%, penalty and collection charges to 6%, and attorney's fees to 5%. The Court explained that attorney's fees are in the nature of liquidated damages, which under Article

³⁹ *Macalinao v. BPI*, supra note 33, at 69-70.

⁴⁰ G.R. No. 201001, November 10, 2014, 739 SCRA 432.

2227 of the New Civil Code, “*shall be equitably reduced if they are iniquitous or unconscionable.*”⁴¹

In the case at bench, BPI imposed a cumulative annual interest of 114%, plus 25% of the amount due as attorney’s fees. Inevitably, the RTC and the CA aptly reduced the charges imposed by BPI upon the Spouses Louh. Note that incorporated in the amount of ₱533,836.27 demanded by BPI as the Spouses Louh’s obligation as of August 7, 2010 were the higher rates of finance and late payment charges, which the courts *a quo* had properly directed to be reduced.

In the SOA⁴² dated October 14, 2009, the principal amount indicated was ₱113,756.83. In accordance with *Macalinao*, the finance and late payment charges to be imposed on the principal amount of ₱113,756.83 are reduced to 12% each *per annum*, reckoned from October 14, 2009, the date when the Spouses Louh became initially remiss in the payment of their obligation to BPI, until full payment.

Anent BPI’s litigation expenses, the Court retains the RTC and CA’s disquisition awarding ₱8,064.00 as filing or docket fees, and costs of suit. However, the Court reduces the attorney’s fees to five percent (5%) of the total amount due from the Spouses Louh pursuant to *MCMP*⁴³ and Article 2227 of the New Civil Code.

WHEREFORE, the Decision and Resolution, dated August 11, 2015 and May 23, 2016, respectively, of the Court of Appeals in CA-G.R. CV No. 100754, finding the Spouses William and Irene Louh liable to the Bank of the Philippine Islands for the payment of their past credit availments, plus finance and late payment charges of 12% each *per annum*, ₱8,064.00 as filing or docket fees, and costs of suit, are **AFFIRMED**. The principal amount due, reckoning period of the computation of finance and late payment charges, and attorney’s fees are, however, **MODIFIED** as follows:

- (1) the principal amount due is ₱113,756.83 as indicated in the Statement of Account dated October 14, 2009;
- (2) finance and late payment charges of twelve percent (12%) each *per annum* shall be computed from October 14, 2009 until full payment; and
- (3) five percent (5%) of the total amount due is to be paid as attorney’s fees.

⁴¹ Id. at 440-443.

⁴² RTC records, pp. 000060-000063.

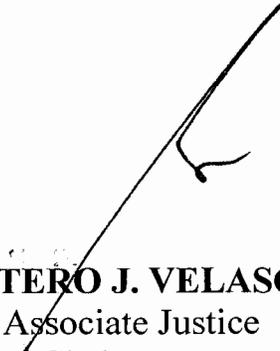
⁴³ *Supra* note 40.

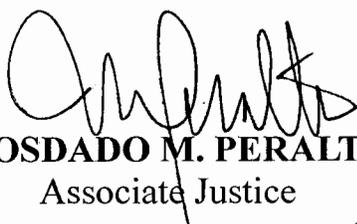
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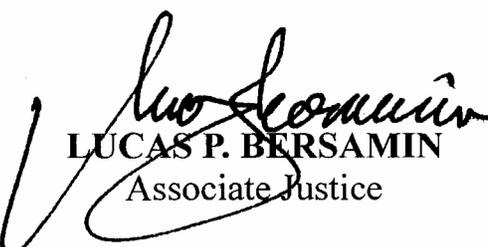
SO ORDERED.

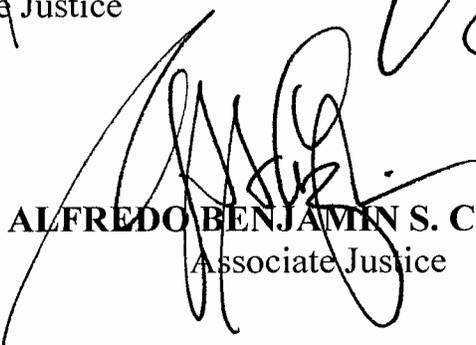

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

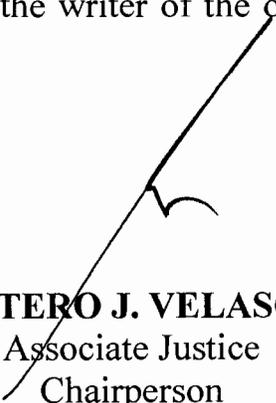

DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

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