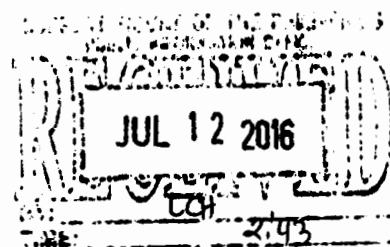




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



SPOUSES JAIME and MATILDE POON,

Petitioners,

- versus -

**PRIME SAVINGS BANK
represented by the PHILIPPINE
DEPOSIT INSURANCE
CORPORATION as Statutory
Liquidator,**

Respondent.

G.R. No. 183794

Present:

SERENO, *CJ*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE and
CAGUIOA, *JJ*.

Promulgated:

JUN 13 2016

X ----- X

DECISION

SERENO, *CJ*:

Before this Court is a Petition for Review on Certiorari¹ assailing the Court of Appeals (CA) Decision² which affirmed the Decision³ issued by Branch 21, Regional Trial Court (RTC) of Naga City.

The RTC ordered the partial rescission of the penal clause in the lease contract over the commercial building of Spouses Jaime and Matilde Poon (petitioners). It directed petitioners to return to Prime Savings Bank (respondent) the sum of ₱1,740,000, representing one-half of the unused portion of its advance rentals, in view of the closure of respondent's business upon order by the *Bangko Sentral ng Pilipinas* (BSP).

¹Rollo, pp. 4-25.

²Id. at 26-37; Dated 29 November 2007, penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring.

³Id. at 40-50; Dated 15 April 2002, penned by Judge Ramon A. Cruz.

ANTECEDENT FACTS

The facts are undisputed.

Petitioners owned a commercial building in Naga City, which they used for their bakery business. On 3 November 2006, Matilde Poon and respondent executed a 10-year Contract of Lease⁴ (Contract) over the building for the latter's use as its branch office in Naga City. They agreed to a fixed monthly rental of ₱60,000, with an advance payment of the rentals for the first 100 months in the amount of ₱6,000,000. As agreed, the advance payment was to be applied immediately, while the rentals for the remaining period of the Contract were to be paid on a monthly basis.⁵

In addition, paragraph 24 of the Contract provides:

24. Should the lease[d] premises be closed, deserted or vacated by the LESSEE, the LESSOR shall have the right to terminate the lease without the necessity of serving a court order and to immediately repossess the leased premises. Thereafter the LESSOR shall open and enter the leased premises in the presence of a representative of the LESSEE (or of the proper authorities) for the purpose of taking a complete inventory of all furniture, fixtures, equipment and/or other materials or property found within the leased premises.

The LESSOR shall thereupon have the right to enter into a new contract with another party. All advanced rentals shall be forfeited in favor of the LESSOR.⁶

Barely three years later, however, the BSP placed respondent under the receivership of the Philippine Deposit Insurance Corporation (PDIC) by virtue of BSP Monetary Board Resolution No. 22,⁷ which reads:

On the basis of the report of Mr. Candon B. Guerrero, Director of Thrift Banks and Non-Bank Financial Institutions (DTBNBFI), in his memorandum dated January 3, 2000, which report showed that the Prime Savings Bank, Inc. (a) is unable to pay its liabilities as they became due in the ordinary course of business; (b) has insufficient realizable assets as determined by the Bangko Sentral ng Pilipinas to meet its liabilities; (c) cannot continue in business without involving probable losses to its depositors and creditors; and **(d) has wilfully violated cease and desist orders under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; x x x.**⁸ (Emphasis supplied)

⁴ Id. at 63-65

⁵ Id. at 63.

⁶ Id. at 64-65

⁷ Dated 7 January 2000.

⁸ RTC Records, p. 16 (Annex "B" of the Complaint). Emphasis supplied.

The BSP eventually ordered respondent's liquidation under Monetary Board Resolution No. 664.⁹

On 12 May 2000, respondent vacated the leased premises and surrendered them to petitioners.¹⁰ Subsequently, the PDIC issued petitioners a demand letter¹¹ asking for the return of the unused advance rental amounting to ₱3,480,000 on the ground that paragraph 24 of the lease agreement had become inoperative, because respondent's closure constituted *force majeure*. The PDIC likewise invoked the principle of *rebus sic stantibus* under Article 1267 of Republic Act No. 386 (Civil Code) as alternative legal basis for demanding the refund.

Petitioners, however, refused the PDIC's demand.¹² They maintained that they were entitled to retain the remainder of the advance rentals following paragraph 24 of their Contract.

Consequently, respondent sued petitioners before the RTC of Naga City for a partial rescission of contract and/or recovery of a sum of money.

THE RTC RULING

After trial, the RTC ordered the partial rescission of the lease agreement, disposing as follows:

WHEREFORE, judgment is hereby entered ordering the partial rescission of the Contract of Lease dated November 3, 1996 particularly the second paragraph of Par. 24 thereof and directing the defendant-spouses Jaime and Matilde Poon to return or refund to the Plaintiff the sum of One Million Seven Hundred Forty Thousand Pesos (₱1,740,000) representing one-half of the unused portion of the advance rentals.

Parties' respective claims for damages and attorney's fees are dismissed.

No costs.¹³

The trial court ruled that the second clause in paragraph 24 of the Contract was penal in nature, and that the clause was a valid contractual agreement.¹⁴ Citing *Provident Savings Bank v. CA*¹⁵ as legal precedent, it ruled that the premature termination of the lease due to the BSP's closure of respondent's business was actually involuntary. Consequently, it would be

⁹ Dated 27 April 2000; id. at 17 (Annex "C" of the Complaint).

¹⁰ Id. at 18 (Annex "D" of the Complaint).

¹¹ Id. at 19 (Annex "E" of the Complaint).

¹² Id. at 20 (Annex "F" of the Complaint).

¹³ *Rollo*, pp. 49-50.

¹⁴ Id. at 48.

¹⁵ G.R. No. 97218, 17 May 1993, 222 SCRA 125.

iniquitous for petitioners to forfeit the entire amount of ₱3,480,000.¹⁶ Invoking its equity jurisdiction under Article 1229 of the Civil Code,¹⁷ the trial court limited the forfeiture to only one-half of that amount to answer for respondent's unpaid utility bills and E-VAT, as well as petitioner's lost business opportunity from its former bakery business.¹⁸

THE CA RULING

On appeal, the CA affirmed the RTC Decision,¹⁹ but had a different rationale for applying Article 1229. The appellate court ruled that the closure of respondent's business was not a fortuitous event. Unlike *Provident Savings Bank*,²⁰ the instant case was one in which respondent was found to have committed fraudulent acts and transactions. Lacking, therefore, was the first requisite of a fortuitous event, i.e, that the cause of the breach of obligation must be independent of the will of the debtor.²¹

Still, the CA sustained the trial court's interpretation of the *provisio* on the forfeiture of advance rentals as a penal clause and the consequent application of Article 1229. The appellate court found that the forfeiture clause in the Contract was intended to prevent respondent from defaulting on the latter's obligation to finish the term of the lease. It further found that respondent had partially performed that obligation and, therefore, the reduction of the penalty was only proper. Similarly, it ruled that the RTC had properly denied petitioners' claims for actual and moral damages for lack of basis.²²

On 10 July 2008,²³ the CA denied petitioners' Motion for Reconsideration. Hence, this Petition.

ISSUES

The issues to be resolved are whether (1) respondent may be released from its contractual obligations to petitioners on grounds of fortuitous event under Article 1174 of the Civil Code and unforeseen event under Article 1267 of the Civil Code; (2) the *provisio* in the parties' Contract allowing the forfeiture of advance rentals was a penal clause; and (3) the penalty agreed upon by the parties may be equitably reduced under Article 1229 of the Civil Code.

¹⁶ *Rollo*, p. 48.

¹⁷ CIVIL CODE, Article 1229 provides:

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.

¹⁸ *Rollo*, p. 49.

¹⁹ *Id.* at 37.

²⁰ G.R. No. 97218, 17 May 1993, 222 SCRA 125.

²¹ *Rollo*, pp. 31-32.

²² *Id.* at 34-36.

²³ *Id.* at 38-39.

COURT RULING

We DENY the Petition.

Preliminarily, we address petitioners' claim that respondent had no cause of action for rescission, because this case does not fall under any of the circumstances enumerated in Articles 1381²⁴ and 1382²⁵ of the Civil Code.

The legal remedy of rescission, however, is by no means limited to the situations covered by the above provisions. The Civil Code uses rescission in two different contexts, namely: (1) rescission on account of breach of contract under Article 1191; and (2) rescission by reason of lesion or economic prejudice under Article 1381.²⁶ While the term "rescission" is used in Article 1191, "resolution" was the original term used in the old Civil Code, on which the article was based. Resolution is a principal action based on a breach by a party, while rescission under Article 1383 is a subsidiary action limited to cases of rescission for lesion under Article 1381 of the New Civil Code.²⁷

It is clear from the allegations in paragraphs 12 and 13 of the Complaint²⁸ that respondent's right of action rested on the alleged abuse by

²⁴ Art. 1381. The following contracts are rescissible:

- (1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;
- (2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;
- (3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;
- (4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;
- (5) All other contracts specially declared by law to be subject to rescission. (1291a)

²⁵ Art. 1382. Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible. (1292)

²⁶ *ASB Realty Corp. v. Ortigas and Co., Ltd. Partnership*, G.R. No. 202947, 9 December 2015.

²⁷ *Ong v. Court of Appeals*, 369 Phil. 243 (1999).

²⁸ *Supra* note 6, at 6. Paragraphs 12 and 13 of the Complaint reads:

12) The refusal of defendant to return the unused portion of advance rental is a manifest **abuse of right** which contravenes **Art. 19 of the Civil Code**, which provides that:

"Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

13) The Lease Contract, particularly **Sec. 24, par. 2** thereof, which is being invoked by the defendant in refusing to return the unused portion of the advance rental, was executed during the time the bank was still of sound financial standing and profitably operating. In insisting that the terms of the provision of the contract be applied at this time, when the bank is already closed due to illiquidity, the defendant is manifestly taking undue advantage of the plaintiff's predicament. In order to protect the plaintiff from such abuse of the defendant, the provision of **Article 24 of the Civil Code** is invoked, as follows:

"Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

petitioners of their right under paragraph 24 of the Contract. Respondent's theory before the trial court was that the tenacious enforcement by petitioners of their right to forfeit the advance rentals was tainted with bad faith, because they knew that respondent was already insolvent. In other words, the action instituted by respondent was for the rescission of reciprocal obligations under Article 1191. The lower courts, therefore, correctly ruled that Articles 1381 and 1382 were inapposite.

We now resolve the main issues.

The closure of respondent's business was neither a fortuitous nor an unforeseen event that rendered the lease agreement functus officio.

Respondent posits that it should be released from its contract with petitioners, because the closure of its business upon the BSP's order constituted a fortuitous event as the Court held in *Provident Savings Bank*.²⁹

The cited case, however, must always be read in the context of the earlier Decision in *Central Bank v. Court of Appeals*.³⁰ The Court ruled in that case that the Monetary Board had acted arbitrarily and in bad faith in ordering the closure of Provident Savings Bank. Accordingly, in the subsequent case of *Provident Savings Bank* it was held that *fuera mayor* had interrupted the prescriptive period to file an action for the foreclosure of the subject mortgage.³¹

In contrast, there is no indication or allegation that the BSP's action in this case was tainted with arbitrariness or bad faith. Instead, its decision to place respondent under receivership and liquidation proceedings was pursuant to Section 30 of Republic Act No. 7653.³² Moreover, respondent was partly accountable for the closure of its banking business. It cannot be said, then, that the closure of its business was independent of its will as in the case of Provident Savings Bank. The legal effect is analogous to that created by contributory negligence in quasi-delict actions.

The period during which the bank cannot do business due to insolvency is not a fortuitous event,³³ unless it is shown that the government's action to place a bank under receivership or liquidation proceedings is tainted with arbitrariness, or that the regulatory body has acted without jurisdiction.³⁴

²⁹ G.R. No. 97218, 17 May 2013, 222 SCRA 125.

³⁰ 193 Phil. 328 (1981).

³¹ Supra note 26.

³² The New Central Bank Act (1993).

³³ See *Spouses Larrobis, Jr. v. Philippine Veterans Bank*, 483 Phil. 33 (2004).

³⁴ See *Central Bank v. Court of Appeals*, supra note 30.

As an alternative justification for its premature termination of the Contract, respondent lessee invokes the doctrine of unforeseen event under Article 1267 of the Civil Code, which provides:

Art. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

The theory of *rebus sic stantibus* in public international law is often cited as the basis of the above article. Under this theory, the parties stipulate in light of certain prevailing conditions, and the theory can be made to apply when these conditions cease to exist.³⁵ The Court, however, has once cautioned that Article 1267 is not an absolute application of the principle of *rebus sic stantibus*, otherwise, it would endanger the security of contractual relations. After all, parties to a contract are presumed to have assumed the risks of unfavorable developments. It is only in absolutely exceptional changes of circumstance, therefore, that equity demands assistance for the debtor.³⁶

*Tagaytay Realty Co., Inc. v. Gacutan*³⁷ lays down the requisites for the application of Article 1267, as follows:

1. The event or change in circumstance could not have been foreseen at the time of the execution of the contract.
2. It makes the performance of the contract extremely difficult but not impossible.
3. It must not be due to the act of any of the parties.
4. The contract is for a future prestation.³⁸

The difficulty of performance should be such that the party seeking to be released from a contractual obligation would be placed at a disadvantage by the unforeseen event. Mere inconvenience, unexpected impediments, increased expenses,³⁹ or even pecuniary inability to fulfil an engagement,⁴⁰ will not relieve the obligor from an undertaking that it has knowingly and freely contracted.

The law speaks of “service.” This term should be understood as referring to the performance of an obligation or a prestation.⁴¹ A prestation is the object of the contract; i.e., it is the conduct (to give, to do or not to do)

³⁵*Naga Telephone Co., Inc. v. Court of Appeals*, G.R. No. 107112, 24 February 1994.

³⁶*So v. Food Fest Land, Inc.*, 631 Phil. 537 (2010); *PNCC v. Court of Appeals*, 338 Phil. 691 (1997).


³⁷G.R. No. 160033, 1 July 2015.

³⁸Supra.

³⁹Supra.

⁴⁰*Central Bank v. Court of Appeals*, 223 Phil. 266 (1985), citing *Repide v. Afzelius*, 39 Phil. 190 (1918).

⁴¹Supra note 36.



required of the parties.⁴² In a reciprocal contract such as the lease in this case, one obligation of respondent as the lessee was to pay the agreed rents for the whole contract period.⁴³ It would be hard-pressed to complete the lease term since it was already out of business only three and a half years into the 10-year contract period. Without a doubt, the second and the fourth requisites mentioned above are present in this case.

The first and the third requisites, however, are lacking. It must be noted that the lease agreement was for 10 years. As shown by the un rebutted testimony of Jaime Poon during trial, the parties had actually considered the possibility of a deterioration or loss of respondent's business within that period:

ATTY. SALES

Q. Now to the offer of that real estate broker for possible lease of your property at No. 38 General Luna Street, Naga City which was then the Madam Poon Bakery, what did you tell your real estate broker?

WITNESS (JAIME POON)

A. When Mrs. Lauang approached me, she told me that she has a client who wants to lease a property in Naga City.

Q. Did she disclose to you the identity of her client?

A. Yes, Sir.

Q. What was the name of her client?

A. That is the Prime Savings Bank.

Q. After you have known that it was the Prime Savings Bank that [wanted] to lease your property located at No. 38 General Luna St., Naga City, what did you tell Mrs. Lauang[?]

A. I told her that if the price is good, I am willing to give up the place where this bakery of mine is situated.

Q. So, did Mrs. Lauang give you the quotation as to the price?

A. Yes, Sir.

Q. What was the amount?

A. She asked first if how much I demand for the price.

Q. What did you tell her?

A. I told her, if they can give me ₱100,000.00 for the rental, I will give up the place.

Q. What do you mean ₱100,000.00 rental?

A. That is only for the establishment [concerned].

Q. What was the period to be covered by the ₱100,000.00 rental?

A. That is monthly basis.

⁴²*The Wellex Group, Inc. v. U-Land Airlines, Co., Ltd.*, G.R. No. 167519, 14 January 2015, 745 SCRA 563(2015), citing *Asuncion v. Court of Appeals*, G.R. No. 109125, 2 December 1994, 238 SCRA 602.

⁴³*Spouses Sy v. Andok's Litson Corp.*, 699 Phil. 184 (2012).

Q. So after telling Mrs. Lauang that you can be amenable to lease the place for ₱100,000.00 monthly, what if any, did Mrs. Lauang tell you?

A. She told me it is very high. And then she asked me if it is still negotiable, I answered, yes.

Q. So, what happened after your clarified to her that [it is] still negotiable?

A. She asked me if there is other condition, and I answered her, yes, if your client can give me advances I can lease my property.

x x x x

Q. So what is your answer when you were asked for the amount of the advances?

A. I told her I need 7 million pesos because I need to pay my debts.

x x x x

Q. Who was with her when she came over?

A. A certain guy name Ricci and said that he is the assistant manager of the Prime Savings Bank.

Q. What did you and Mr. Ricci talk about?

A. I told him the same story as I talked with Mrs. Lauang.

Q. Was the agreement finally reached between you and Mr. Ricci?

A. Not yet, Sir.

Q. What happened after that?

A. He said that he [will discuss] the matter with his higher officer, the branch manager in the person of Henry Lee.

Q. Were you able to meet this Henry Lee?

A. After a week later.

Q. Who was with Henry Lee?

A. Mrs. Lauang.

Q. Was there a final agreement on the day when you and Henry Lee met?

A. Not yet, he offered to reduce the rental and also the advances. Finally I gave way after 2 or 3 negotiations.

Q. What happened after 2 or 3 negotiations?

A. We arrived at ₱60,000.00 for monthly rentals and ₱6,000,000.00 advances for 100 months.

Q. Was the agreement between you and the representative of the Prime Savings Bank reduced into writing?

A. Yes Sir.

x x x x

Q. Now, Mr. Poon, I would like to direct your attention to paragraphs 4 and 5 of the contract of lease which I read: Inasmuch as the leased property is presently mortgaged with the PCI Bank, the

Lessor and the Lessee hereby agree that another property with a clean title shall serve as security for herein Lessee; Provided that the mortgaged property with PCI Bank is cancelled, the Lessee agrees that the above-mentioned property shall be released to herein Lessor; paragraph 5 says: It is hereby stipulated that should the leased property be foreclosed by the PCI Bank or any other banking or financial institution, all unused rentals shall be returned by the Lessor to the Lessee. Now, my question is: Who asked or requested that paragraphs 4 and 5 be incorporated in the contract of lease?

A. Mr. Lee himself.

Q. The representative of the plaintiff?

A. Yes, Sir.

Q. For what purpose did Mr. Lee ask these matters to be incorporated?

A. **Because they are worried that my building might be foreclosed because it is under [mortgage] with the PCI Bank, that is why I gave them protection of a clean title. But I also asked them, what will happen to me, in case your bank will be closed?**

Q. **When you asked that question, what did Mr. Lee tell you?**

A. **He told me that I don't have to worry I will have ₱6,000,000 advances.**

Q. What was your protection as to the 6 million payment made by the plaintiff?

A. That is the protection for me because during that time I have my bakery and I myself [spent] 2 million for the improvement of that bakery and I have sacrificed that for the sake of the offer of lease.

Q. In what manner that you are being protected for that 6 million pesos?

A. **They said that if in case the bank will be closed that advance of 6 million pesos will be forfeited in my favor.**

Q. **And that is what is found in paragraph 24 of the Contract of Lease which I asked you to read?**

A. **That is true.**⁴⁴

Clearly, the closure of respondent's business was not an unforeseen event. As the lease was long-term, it was not lost on the parties that such an eventuality might occur, as it was in fact covered by the terms of their Contract. Besides, as We have previously discussed, the event was not independent of respondent's will.

The forfeiture clause in the Contract is penal in nature.

Petitioners claim that paragraph 24 was not intended as a penal clause. They add that respondent has not even presented any proof of that intent. It

⁴⁴ TSN, 27 November 2001, pp. 7-16. Emphasis supplied.

was, therefore, a reversible error on the part of the CA to construe its forfeiture provision of the Contract as penal in nature.

It is settled that a provision is a penal clause if it calls for the forfeiture of any remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any of the terms and conditions thereof. This kind of agreement may be validly entered into by the parties. The clause is an accessory obligation meant to ensure the performance of the principal obligation by imposing on the debtor a special prestation in case of nonperformance or inadequate performance of the principal obligation.⁴⁵

It is evident from the above-quoted testimony of Jaime Poon that the stipulation on the forfeiture of advance rentals under paragraph 24 is a penal clause in the sense that it provides for liquidated damages.

Notably, paragraph 5 of the Contract also provides:

5. It is hereby stipulated that should the leased property be foreclosed by PCI Bank or any other banking or financial institution, all unused rentals shall be returned by the LESSOR to the LESSEE; x x x.⁴⁶

In effect, the penalty for the premature termination of the Contract works both ways. As the CA correctly found, the penalty was to compel respondent to complete the 10-year term of the lease. Petitioners, too, were similarly obliged to ensure the peaceful use of their building by respondent for the entire duration of the lease under pain of losing the remaining advance rentals paid by the latter.

The forfeiture clauses of the Contract, therefore, served the two functions of a penal clause, i.e., (1) to provide for liquidated damages and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in case of breach.⁴⁷ As the CA correctly found, the prestation secured by those clauses was the parties' mutual obligation to observe the fixed term of the lease. For this reason, We sustain the lower courts' finding that the forfeiture clause in paragraph 24 is a penal clause, even if it is not expressly labelled as such.

A reduction of the penalty agreed upon by the parties is warranted under Article 1129 of the Civil Code.

⁴⁵ *Fort Bonifacio Lending Corp. v. Yllas Lending Corp.*, 588 Phil. 748 (2008), citing *Country Bankers Insurance Corp. v. Court of Appeals*, 278 Phil. 463 (1991).

⁴⁶ *Rollo*, p. 63.

⁴⁷ *Social Security System v. Moonwalk Development and Housing Corp.*, G.R. No. 73345, 7 April 1993, 221 SCRA 119.

We have no reason to doubt that the forfeiture provisions of the Contract were deliberately and intelligently crafted. Under Article 1196 of the Civil Code,⁴⁸ the period of the lease contract is deemed to have been set for the benefit of both parties. Its continuance, effectivity or fulfillment cannot be made to depend exclusively upon the free and uncontrolled choice of just one party.⁴⁹ Petitioners and respondent freely and knowingly committed themselves to respecting the lease period, such that a breach by either party would result in the forfeiture of the remaining advance rentals in favor of the aggrieved party.

If this were an ordinary contest of rights of private contracting parties, respondent lessee would be obligated to abide by its commitment to petitioners. The general rule is that courts have no power to ease the burden of obligations voluntarily assumed by parties, just because things did not turn out as expected at the inception of the contract.⁵⁰

It must be noted, however, that this case was initiated by the PDIC in furtherance of its statutory role as the fiduciary of Prime Savings Bank.⁵¹ As

⁴⁸ Art. 1196. Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other.

⁴⁹ *LL and Company Development and Agro-Industrial Corp. v. Huang Chao Chun*, 428 Phil. 665 (2002).

⁵⁰ *New World Developers and Management, Inc. v. AMA Computer Learning Center, Inc.*, G.R. Nos. 187930 & 188250, 23 February 2015, 751 SCRA 331.

⁵¹ Republic Act No. 7653 (1993), Section 30 provides:

SECTION 30. *Proceedings in Receivership and Liquidation.* — Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

- (a) is unable to pay its liabilities as they become due to the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;
- (b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities;
- or
- (c) cannot continue in business without involving probable losses to its depositors or creditors; or
- (d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

X X X X

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take-over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

the state-appointed receiver and liquidator, the PDIC is mandated to recover and conserve the assets of the foreclosed bank on behalf of the latter's depositors and creditors.⁵² In other words, at stake in this case are not just the rights of petitioners and the correlative liabilities of respondent lessee. Over and above those rights and liabilities is the interest of innocent debtors and creditors of a delinquent bank establishment. These overriding considerations justify the 50% reduction of the penalty agreed upon by petitioners and respondent lessee in keeping with Article 1229 of the Civil Code, which provides:

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.

The reasonableness of a penalty depends on the circumstances in each case, because what is iniquitous and unconscionable in one may be totally just and equitable in another.⁵³ In resolving this issue, courts may consider factors including but not limited to the type, extent and purpose of the penalty; the nature of the obligation; the mode of the breach and its consequences; the supervening realities; and the standing and relationship of the parties.⁵⁴

Under the circumstances, it is neither fair nor reasonable to deprive depositors and creditors of what could be their last chance to recoup whatever bank assets or receivables the PDIC can still legally recover. Besides, nothing has prevented petitioners from putting their building to other profitable uses, since respondent surrendered the premises immediately after the closure of its business. Strict adherence to the doctrine of freedom of contracts, at the expense of the rights of innocent creditors and investors, will only work injustice rather than promote justice in this case.⁵⁵ Such adherence may even be misconstrued as condoning profligate bank operations. We cannot allow this to happen. We are a Court of both law and equity; We cannot sanction grossly unfair results without doing violence to

cont.

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(2) convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines **and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution.** The assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution. (Emphasis supplied.)

⁵² *Balayan Bay Rural Bank, Inc. v. National Livelihood Development Corporation*, G.R. No. 194589, 21 September 2015.

⁵³ *Marquez v. Elisan Credit Corporation*, G.R. No. 194642, 6 April 2015.

⁵⁴ *Ligutan v. Court of Appeals*, 427 Phil. 42 (2002)

⁵⁵ *Borromeo v. Court of Appeals*, 150-B Phil. 770 (1972)

Our solemn obligation to administer justice fairly and equally to all who might be affected by our decisions.⁵⁶

Neither do We find any error in the trial court's denial of the damages and attorney's fees claimed by petitioners. No proof of the supposed expenses they have incurred for the improvement of the leased premises and the payment of respondent's unpaid utility bills can be found in the records. Actual and compensatory damages must be duly proven with a reasonable degree of certainty.⁵⁷

To recover moral and exemplary damages where there is a breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive, or abusive. Attorney's fees are not awarded even if a claimant is compelled to litigate or to incur expenses where no sufficient showing of bad faith exists.⁵⁸ None of these circumstances have been shown in this case.

Finally, in line with prevailing jurisprudence,⁵⁹ legal interest at the rate of 6% per annum is imposed on the monetary award computed from the finality of this Decision until full payment.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals Decision dated 29 November 2007 and its Resolution dated 10 July 2008 in CA-G.R. CV No. 75349 are hereby **MODIFIED** in that legal interest at the rate of 6% per annum is imposed on the monetary award computed from the finality of this Decision until full payment.

No costs.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

⁵⁶ *Carceller v. Court of Appeals*, 362 Phil. 332 (1999).

⁵⁷ *Public Estates Authority v. Chu*, 507 Phil. 472 (2005).

⁵⁸ *Talampas Jr. v. Moldex Realty, Inc.*, G.R. No. 170134, 17 June 2015.

⁵⁹ *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 703 SCRA 439, 458.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision 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
MARIA LOURDES P. A. SERENO
Chief Justice

