REVISED RESOLUTION

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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **October 1, 2019** *which reads as follows:*

"G.R. No. 197219 (*FIRST LEPANTO-TAISHO INSURANCE CORPORATION [now known as FLT PRIME INSURANCE CORPORATION], Petitioner, v. LAVINE LOUNGEWEAR MANUFACTURING, INC., JOSE F. MANACOP, HARISH RAMNANI, CHANDRU P. PESSUMAL, SALVADOR T. CORTEZ, MAUREEN RAMNANI, and BANCO DE ORO UNIBANK, INC. (formerly EQUITABLE PCI BANK, INC.), Respondents.*)

G.R. No. 197227 (*LAVINE LOUNGEWEAR MANUFACTURING, INC., Petitioner, v. PHILIPPINE FIRE AND MARINE INSURANCE CORPORATION, et al., Respondents; JOSE F. MANACOP, et al., Intervenors-Crossclaimants-Respondents; PHILIPPINE FIRE AND MARINE INSURANCE CORPORATION, et al., cross Defendants-Respondents.*)

G.R. No. 197244 (*PHILIPPINE FIRE AND MARINE INSURANCE CORPORATION, Petitioner, v. LAVINE LOUNGEWEAR MANUFACTURING, INC., Respondents.*)

G.R. No. 197867 (*RIZAL SURETY AND INSURANCE COMPANY, Petitioner, v. THE HONORABLE FORMER SPECIAL FIFTH DIVISION OF THE COURT OF APPEALS, LAVINE LOUNGEWEAR MANUFACTURING, INC., JOSE F. MANACOP, HARISH RAMNANI, CHANDRU P. PESSUMAL, SALVADOR T. CORTEZ and MAUREEN RAMNANI, Respondents.*)

- over – nine (9) pages ...

G.R. No. 198481 (*JOSE F. MANACOP, HARISH C. RAMNANI, CHANDRU P. PESSUMAL and MAUREEN M. RAMNANI, Petitioners, v. LAVINE LOUNGEWEAR MANUFACTURING, INC., PHILIPPINE FIRE AND MARINE INSURANCE CORP., RIZAL SURETY AND INSURANCE CO., BANCO DE ORO UNIBANK, INC., and FLT PRIME INSURANCE CORPORATION (formerly FIRST LEPANTO-TAISHO INSURANCE CORPORATION), Respondents.*) – The issues relevant to the consolidated petitions hinges on the fire loss claims by Lavine Loungewear Manufacturing, Inc. (Lavine) with the Philippine Fire and Marine Insurance Corp. (PFMIC), Rizal Surety and Insurance Co. (RSIC), Tabacalera Insurance Corp. (TICO) and First Lepanto-Taisho Insurance Corp., in connection with its loan and mortgage contract with Equitable Banking Corporation (now BDO Unibank Inc.).

In its assailed resolution[1], the Court of Appeals (CA) held that the dismissal of the main complaint did not render the intervention ineffective. Neither is the trial court divested of jurisdiction over the intervenors' complaint by their non-payment of docket fees.

On the merits, the CA set the proper valuation of the loss assessment at ₱112,245,324.34 based on the recommendation of the Association of Philippine Adjustment Companies (APAC). It found the insurance companies not guilty of unreasonable delay in the payment of the proceeds which would warrant the imposition of interest twice the ceiling prescribed by the Monetary Board. Instead, the CA fixed the insurance companies' interest liability at six percent (6%) under Article 2209 of the Civil Code, and ordered the remand of the case to the trial court to determine the correct amount of the loan.

After a thorough review of the records, We sustain the findings and conclusions of law of the CA in CA-G.R. CV No. 90499, being in accord with law and evidence.

I

The complaint-in-intervention subsists despite the dismissal of the principal action and the non-payment of docket fees by the intervenors

[1] *Rollo* (G.R. No. 197219), pp. 114-161; penned by Associate Justice Amy C. Lazaro-Javier (now a member of the Court), with the concurrence of Associate Justice Sesinando E. Villon and Associate Justice Mario V. Lopez.

An intervenor's petition showing its right to the affirmative relief sought will be preserved and heard regardless of the disposition of the main complaint.[2] As We ruled in *Eagle Realty Corp. v. Republic,* the dismissal of the main action due to lack of personality of the plaintiff will not terminate the prosecution of the complaint in intervention. Having been allowed to become a party to the suit, the intervenor has the right to pursue its claim to judgment.[3] We also held in *Dio v. Subic Bay Marine Exploratorium, Inc.,*[4] that regardless of the nature of the counterclaim, the same shall remain despite the dismissal of the main complaint, as long as it states a sufficient cause of action.

Here, the intervenors proved their status as the incumbent officers and directors of Lavine. Their claim thus withstood the dismissal of Chandru Ramnani's principal action because the latter lacked the personality to represent Lavine.

The non-payment of docket fees also did not affect the intervenors' claim. To recall, the intervenors interposed a compulsory counterclaim that merely echoed the demand of the plaintiff for direct payment of the insurance proceeds. Evidently, the relief they sought arises out of the transaction constituting the subject matter of the plaintiff's claim. Additionally, the intervenors' counterclaim raised questions which may appropriately be determined by the court in its own merits. Thus, it must survive whether or not the docket fees were paid.

In any case, the non-payment of docket fees did not divest the trial court of jurisdiction over the subject matter of intervention as this may be considered a lien on the judgment award.

II
The insurance companies are liable under Article 2209 of the Civil Code

PFMIC, RSIC, and First Lepanto assert in common the improper imposition of any interest payments over their respective obligations. They argued that the CA's finding of the absence of delay in the release of the insurance proceeds ran counter to any charge of interest.

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2 *Metropolitan Bank and Trust Co. v. Presiding Judge, RTC Manila, Br. 39,* G.R. No. 89909, September 21, 1990, 189 SCRA 820, 826.
3 G.R. No. 151424, July 4, 2008, 557 SCRA 77, 91.
4 G.R. No. 189532, June 11, 2014, 726 SCRA 244.

This assertion is devoid of basis.

Article 2209 of the *New Civil Code*[5] has been applied by this Court in actions for damages arising from unpaid insurance claims.[6] In *Tio Khe Chio v. Court of Appeals,*[7] We used the same basis in imposing the interest of 6% against the obligation of the insurance company after a finding that there was no unjustified refusal or withholding of payment on the insured's claim.

The insurance companies' refusal to pay the claim was due to the intra-corporate dispute among the board of directors of Lavine and the conflicting claims to the insurance proceeds. While their explanation satisfactorily negated the conclusion that their refusal to pay was done unjustifiably so as to warrant the application of Sections 243[8] and 244[9] of the Insurance Code,[10] the same was not sufficient to free them from any liability under their respective policies.

The respective obligations of the insurance companies must therefore be computed from November 26, 2001, the date when the trial court admitted the intervenors' *Second Amended Answer-in-Intervention with Counterclaim* dated October 15, 2001, and subject to 6% interest.[11]

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[5] Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent *per annum.*

[6] *Castelo v. Court of Appeals,* G.R. No. 96372, May 22, 1995, 244 SCRA 180, 191.

[7] G.R. Nos. 76101-02, September 30, 1991, 202 SCRA 119.

[8] **Sec. 243.** The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

[9] **Sec. 244.** In case of any litigation for the enforcement of any policy or contract of insurance, it shall be the duty of the Commissioner or the Court, as the case may be, to make a finding as to whether the payment of the claim of the insured has been unreasonably denied or withheld; and in the affirmative case, the insurance company shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the insured person by reason of such unreasonable denial or withholding of payment plus interest of twice the ceiling prescribed by the Monetary Board of the amount of the claim due the insured, from the date following the time prescribed in section two hundred forty-two or in section two hundred forty-three, as the case may be, until the claim is fully satisfied; Provided, That the failure to pay any such claim within the time prescribed in said sections shall be considered prima facie evidence of unreasonable delay in payment.

[10] *Tio Khe Chio v. Court of Appeals,* G.R. Nos. 76101-02, September 30, 1991, 202 SCRA 119, 123.

[11] *Rollo* (G.R. No. 197867), p. 116.

III
The APAC valuation properly appraised the insurance companies' obligation

The CA correctly fixed Lavine's loss assessment at ₱112,245,324.34 based on the APAC valuation.

Adverse to this conclusion, the intervenors asserted that Harish Ramnani's initial acceptance of the APAC recommendation was conditioned upon the insurance companies' immediate payment of the proceeds. Since the condition did not occur, Lavine should not be bound by the APAC recommendation, but instead of the higher valuation at ₱169 million.

This argument is mistaken.

The condition imposed required sole action on the part of the companies without regard to compliance with the mandated procedure under the law. Thus, We agree with the ruling of the CA that the undertaking required of the insurance companies constituted a potestative condition dependent solely upon their will, which is void in accordance with Article 1182 of the Civil Code.[12] This notwithstanding, since the said potestative condition was imposed not on the birth of the obligation to pay the proceeds but on its fulfillment, only the condition was avoided, leaving the obligation unaffected.[13]

Accordingly, the insurance companies must pay their proportionate share of the entire loss appraisal in accordance with the coverage of their respective policies.

IV
Remand to the trial court is necessary for the computation of the disputed amount of loan

The issue on the correct balance of the loan, if any, to Equitable Bank undoubtedly requires a review of factual matters which are beyond the domain of a petition for review on *certiorari* under Rule 45.

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[12] Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

[13] *Romero v. Court of Appeals,* G.R. No. 107207, November 23, 1995, 250 SCRA 223, 234-235.

It is undisputed that Lavine obtained loan and mortgage contracts with Equitable bank. The parties, however, differed on the total amount of loan and the balance thereof – with Lavine claiming overpayment as against Equitable Bank's assertion of deficiency.

The remand of the case to the trial court is thus proper for further reception and determination of relevant evidence. The CA adequately ratiocinated the propriety of remand to the trial court, and We quote:

> We cannot give credence to Harish Ramnani's self-serving testimony that P26,499,132.37 was debited from his personal account with BDO as payment for the loans for the same remains unsubstantiated. Self-serving statements have very little weight, even if made under oath, absent any other independent evidence.
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> We likewise cannot give weight to Lavine's and Harish Ramnani's claim that they had already paid BDO US$12,754,693.43 in 1997 and US$6,392,418.00 in 1998 when BDO received exports proceeds in Lavine's behalf as negotiating bank for the latter's foreign transactions. Intervenors-crossclaimants-appellees presented the following as alleged proofs of Lavine's payment: a) List of Import Licenses issued to Lavine Loungewear Mfg. Corp. for the year of 1997 issued by the Department of Trade and Industry (DTI), Garments and Textile Export Board (GTEB; b) List of Textile Export Clearance (TEC) issued by GTEB to Lavine from January 1, 1997 and December 31, 1997; c) List of Textile Export Clearance (TEC) issued by GTEB to Lavine from January 1, 1998 to December 31, 1998; and d) List of Textile Export Clearance (TEC) issued by GTEB to Lavine from January 1, 1999 and December 31, 1999. But as BDO has correctly argued, these documents do not adequately show that BDO was actually paid for the loans it granted to Lavine. At best, these documents merely show a list of import licenses and the textile export clearances issued to Lavine. They do not show that BDO actually received the sums indicated therein as payment for Lavine's loans. There is also no showing that BDO and Lavine had an agreement that all export proceeds be immediately applied as payment for Lavine's loans. These documents simply do not serve the purpose for which they were offered i.e. to prove that export proceeds received by BDO were applied to Lavine's loans. It bears stressing that Lavine, alleging payment, had the burden of proving the same. xxx
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> We, nonetheless, rule that Lavine had proven total payments of P111,459,898.82 to BDO as duly established by Equitable Bank Check Nos. 0110-347946, 0110-468741, 0110-569623, 0110-569602, 0110-569585, 071412, 0110-716257, FEBTC Check Nos. FLT-0000018281, 0000020132, 0000006696, 0000020131, PCI Bank Check No. 0000111199, Unionbank Check No. 0520006027525, and intervenors-crossclaimants-appellees' and PFMIC admissions in their respective brief.

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As for how much Lavine actually owes BDO, the latter insists that Lavine has not yet paid its entire loans covered by the following: a) Promissory Note No. TL-GH-97-0292 dated September 25, 1997 for US$49,000.00; b) Promissory Note No. TL-GH-98-0008 dated March 3, 1998 for US$392,596.82; c) Promissory Note No. TL-GH-98-0013 dated March 26, 1998 for US$674,469.35; d) Promissory Note No. TL-GH-98-0018 dated April 17, 1998 for US$70,000.00; e) Promissory Note No. TL-GH-98-0037 dated June 25, 1998 for US$316,068.44; f) Promissory Note No. 98000317 dated November 4, 1998 for P23,329,105.99; and g) Promissory Note No. 99000319 dated January 4, 1999 for P20,451,472.67, or a total of US$1,502,134.61 in dollar loans and P43,780,578.66 in peso loans. Harish Ramnani had signed all the promissory notes and corresponding disclosure statements of loan/credit transaction in Lavine's behalf. All promissory notes uniformly provide they were executed by Lavine "for value received".

It is worthy to note that intervenors-crossclaimants-appellees themselves admit the due execution of the following: a) Promissory Note No. TL-GH-97-0292 dated September 25, 1997 for US$49,000.00; b) Promissory Note No. TL-GH-98-0013 dated March 26, 1998 for US$674,469.35; c) Promissory Note No. TL-GH-98-0018 dated April 17, 1998 for US$70,000.00; and d) Promissory Note No. TL-GH-98-0037 dated June 25, 1998 for US$316,068.44. They, nonetheless, claim that the following promissory notes were spurious and dubious for having been issued after the fire and without supporting documents such as the corresponding surety agreements, credit application, letter of approval, check release, viz: a) Promissory Note No. TL-GH-98-0008 dated March 3, 1998 for US$392,596.82; b) Promissory Note No. 98000317 dated November 4, 1998 for P23,329,105.99; and c) Promissory Note No. 99000319 dated January 4, 1999 for P20,451,472.67. xxx

A perusal of Promissory Note Nos. TL-GH-98-0008, 98000317 and 99000319 shows that all of them were signed by Harish Ramnani himself in Lavine's behalf. The promissory notes even bore documentary stamps amounting to large sums of money. A contract is valid when all the following elements are present: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. Here, Lavine freely entered into the three contracts of loan when Harish Ramnani, in its behalf, signed the promissory notes. The objects of the contracts of loan were the sums loaned by BDO to Lavine. The cause for Lavine was its desire to borrow money from BDO. Absent any substantiated challenge against the existence of these essential requisites, the contracts of loan via the promissory notes in question, are deemed valid. Lavine's and intervenors-crossclaimants-appellees' general allegation that the three promissory notes were dubious and suspect and could not have been issued after the fire because of

> Lavine's lack of means to pay them is plainly speculative. More so because there was no categorical denial on the part of Harish Ramnani himself of the fact that he knowingly and voluntarily signed these promissory notes. To be sure, mere conjecture or speculation will not outweigh the existence and due execution of these documents and the fact established thereby, i.e. the "value received" by Lavine, through Harish Ramnani, pertaining to each and every promissory note that it voluntarily and knowingly signed as debtor or promissor.[14]

However, We find it necessary to modify the legal rate of interest to conform with law[15] and jurisprudence.[16] The interest on the damages by reason of delay for the insurance companies' respective obligation should be modified to 6% *per annum* from November 26, 2001, and another 6% *per annum* from the finality of the resolution until full payment.

WHEREFORE, the Court **DENIES** the petitions for review; **AFFIRMS** the June 9, 2011 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 90499, with **MODIFICATION** that the legal interest imposed on the respective balance of the insurance proceeds due from Philippine Fire and Marine Insurance Corporation, Rizal Surety and Insurance Co., First Lepanto-Taisho Insurance Corporation, and Tabacalera Insurance Co. shall be 6% *per annum* from November 26, 2001, and another 6% *per annum* from finality of the resolution until fully paid; and **REMANDS** these cases to the Regional Trial Court, Branch 71, Pasig City for the computation of the amount of loan to Banco De Oro Unibank Inc. (formerly Equitable PCI Bank, Inc.).

SO ORDERED." ***Carandang, J.,*** *on official leave.*

Very truly yours,

LIBRADA C. BUENA
Division Clerk of Court
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14 *Rollo* (G.R. No. 197219), pp. 146-150.
15 BSP Circular No. 799, series of 2013.
16 *Nacar vs. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439.

Revision: *Petition* and *this case* changed to *petitions* and *these cases.*

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Court of Appeals (x)
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