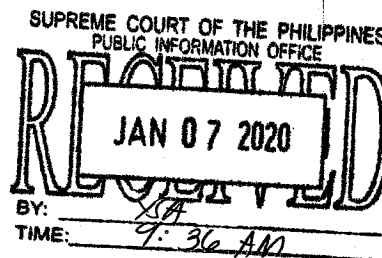




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila



SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 December 2019** which reads as follows:*

“G.R. No. 242974 (Spouses Damiano F. Ampat and Delia Bulalos Ampat vs. Elisan Credit Corporation). — This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the June 28, 2018 Decision² and October 15, 2018 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 107420 that sustained the May 22, 2016 Decision⁴ of the Regional Trial Court (RTC) of Quezon City, Branch 98, in Civil Case No. Q-01-45578.

The Facts

On February 16, 1999, Spouses Damiano F. Ampat and Delia Bulalos Ampat (Spouses Ampat) obtained a ₱595,000.00 loan from Elisan Credit Corporation (ECC) evidenced by a promissory note.⁵ The parties also executed a Real Estate Mortgage in favor of ECC over a parcel of land covered by Transfer Certificate of Title (TCT) No. V-39830⁶ stating therein that it shall secure all obligations which may be incurred by Spouses Ampat. The mortgage was registered with the Office of the Registry of Deeds of Valenzuela City.⁷

Spouses Ampat failed to settle the obligation and were only able to pay ₱110,915.00 with a remainder of ₱484,085.00 as of the filing the Complaint.⁸

¹ *Rollo*, pp. 10-22.

² Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Apolinario D. Bruselas, Jr. and Pablito A. Perez, concurring; *id.* at 88-104.

³ Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Apolinario D. Bruselas, Jr. and Pablito A. Perez, concurring; *id.* at 110-112.

⁴ Rendered by Presiding Judge Marilou D. Runes-Tamang; *id.* at 43-72

⁵ *Id.* at 34.

⁶ *Id.* at 36-37.

⁷ *Id.*

⁸ *Id.* at 28.

Another promissory note was executed by Spouses Ampat for ₱68,000.00 as a second loan of which, only ₱9,310.00 was paid.

On November 15, 2001, a Complaint⁹ for “Judicial Foreclosure” was filed by ECC against Spouses Ampat for their failure to pay the loan despite demands.

In their Answer,¹⁰ Spouses Ampat denied the averments in the Complaint and raised affirmative defenses.

Efforts to amicably settle the case failed. After the termination of pre-trial, trial ensued. ECC presented testimonial and documentary evidence to support its claim.¹¹ After Spouses Ampat’s Motion to Dismiss on Demurrer to Evidence was denied, they proceeded to present their evidence.¹²

The RTC Ruling

After trial, the RTC granted ECC’s complaint but reduced the stipulated interest for being unconscionable and iniquitous.

The RTC decreed:

WHEREFORE, premises considered, [respondent] Elisan Credit Corporation’s claim is **PARTLY GRANTED**. [Petitioners] Spouses Delia B. Ampat and Damiano Ampat are ordered to pay, jointly and severally, the [respondent] Elisan Credit Corporation the following:

a) The amount of Four Hundred Ninety Three Thousand Three Hundred Ninety Five Pesos (Php493,395.00) plus the reduced interest of 12% [*per annum*] computed from 02 January 1999, the date of the obligation, to 21 November 2001, when [respondent] ECC instituted its statement of claim, the date of judicial demand or a total of **₱611,609.80**. The said amount shall earn legal interest of 12% [*per annum*] from date of filing of the complaint until June 2013. But starting July 2013, the legal interest shall be computed at the reduced rate of 6% [*per annum*] of the total obligation until the same is fully paid. From finality of this decision, the total unpaid obligation shall earn legal interest at the rate of 6% [*per annum*] until the same is fully paid;

- b) The reasonable amount of ₱50,000.00 as attorney’s fees; and
- c) The costs of suit,

the same to be paid within a [period] of not less than 90 days nor m[o]re than 120 days from the entry of judgment, and in case of default of such payment, the property subject matter of the mortgage covered by **Transfer Certificate of Title No. B-39830** in the name of Damiano Ampat married to Delia Ampat, shall be sold at public auction to satisfy judgment.

⁹ Id. at 27-31.

¹⁰ Id. at 39-41.

¹¹ Id. at 48-54.

¹² Id. at 45, 55, 60-61.

SO ORDERED.¹³ (Emphasis in the original)

Feeling aggrieved, Spouses Ampat elevated the case to the CA via a Notice of Appeal¹⁴ dated July 1, 2016. In challenging the decision of the RTC, Spouses Ampat alleged that the complaint should have been dismissed for lack of jurisdiction because of improper venue, and lack of authority of the Vice President Joselito Mañalac (VP Mañalac) of ECC to sign the Certification of Non-Forum Shopping and Verification on behalf of the company.

Ruling of the CA

On June 28, 2018, the CA denied the appeal and sustained the assailed decision of the RTC.¹⁵

The CA ruled that objection on venue that was not pleaded either in a motion to dismiss or in the answer is deemed waived. It further ruled that the issue of the alleged improper venue is being raised for the first time on appeal which is not allowed by the Rules.¹⁶

As regards the purported insufficient verification and certification, the CA agreed with the trial court that it can be rectified by requiring the concerned party to submit the necessary documents. In this case, ECC attached a Secretary's Certificate dated January 16, 2001 when it filed its Comment to Spouses Ampat's Motion to Dismiss on Demurrer to Evidence showing that VP Mañalac is authorized to represent ECC in all cases brought by or against it.¹⁷

Unperturbed, Spouses Ampat availed of the instant recourse.

The Issues

The petitioners assigned the following errors, *viz.*:

- A. THE COURT OF APPEALS SERIOUSLY ERRED IN DENYING PETITIONER[S] APPEAL BY RULING THAT THE LATTER CANNOT RAISE THE ISSUE OF IMPROPER VENUE FOR THE FIRST TIME ON APPEAL;
- B. THE COURT OF APPEALS SERIOUSLY ERRED IN DENYING PETITIONER[S] APPEAL BY RULING THAT THE VICE-PRESIDENT OF RESPONDENT

¹³ Id. at 72.

¹⁴ Id. at 73-74.

¹⁵ Id. at 88-104.

¹⁶ Id. at 95-100.

¹⁷ Id. at 100-103.

CORPORATION IS AUTHORIZED TO SIGN THE CERTIFICATE OF NON-FORUM SHOPPING OF THE COMPLAINT FOR JUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; AND

- C. THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT THE PROPERTY OF PETITIONER[S] BE SOLD AT PUBLIC AUCTION IF THEY FAIL TO PAY THE AMOUNT OF PHP611,609.80 PLUS LEGAL INTEREST AND ATTORNEY'S FEES INSTEAD OF DECLARING SUCH FORECLOSURE UNCALLED FOR BECAUSE THE MORTGAGE IS USURIOUS.¹⁸

The Ruling of the Court

The Court has made an exhaustive review of the records of the case and has found no reason to overturn the ruling of the CA.

Issue of improper venue cannot be raised for the first time on appeal

Petitioners claimed that assuming they failed to raise the issue of improper venue during trial and/or appeal, the same must be considered because it is a matter affecting jurisdiction.¹⁹ They added this case is an action for foreclosure of mortgage which is considered a real action, and under the Rules of Court, a real action must be instituted in the proper court having jurisdiction over the area of the property involved.²⁰ Hence, petitioners pray that in the interest of justice, the RTC of Quezon City must be declared to be without jurisdiction to decide this case.²¹

Petitioners' argument is incorrect.

Apparently, petitioners confused jurisdiction with venue of action. "Jurisdiction over the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong. It is conferred by law and an objection based on this ground cannot be waived by the parties.²² The jurisdiction in a petition for foreclosure of real estate mortgage, being a real action, is determined by the assessed value of the property.²³

¹⁸ Id. at 15.

¹⁹ Id. at 17.

²⁰ Id. at 18.

²¹ Id.

²² *Alona G. Roldan v. Spouses Clarence I. Barrios and Anna Lee T. Barrios, Rommel Matorres, and Hon. Jemena Abellar Arbis, in her capacity as Presiding Judge, Branch 6, Regional Trial Court, Aldan*, G.R. No. 214803, APRIL 23, 2018.

²³ Id. at 326.

Venue, on the other hand, refers to the place where a civil action must be tried. The location of the real property determines the venue. It concerns a rule of procedure which looks primarily at the convenience of the litigants.²⁴ It is a basic legal principle that venue is waivable. "Failure of any party to object to the impropriety of venue is deemed a waiver of his right to do so."²⁵

In the instant case, petitioners failed to object or oppose to the improper venue. Hence, they are deemed to have waived the same and cannot belatedly file the said opposition for the first time on appeal.

Distinction between noncompliance and substantial compliance with the requirements of a certificate of non-forum shopping and verification.

Petitioners posited that a vice president is not among the list of officers who is allowed to sign the certification of non-forum shopping in behalf of a corporation in the absence of a board resolution.²⁶ The belated submission of the Secretary's Certificate cannot rectify a null and void Certification.²⁷

Petitioners' averment fails to persuade.

*In Bank of the Phil. Islands v. Court of Appeals.*²⁸

This Court has repeatedly emphasized the need to abide by the Rules of Court and the procedural requirements it imposes. The verification of a complaint and the attachment of a certificate of non-forum shopping are requirements that — as pointed out by the Court, time and again — are basic, necessary and mandatory for procedural orderliness.

Thus, we cannot simply and in a general way apply — given the factual circumstances of this case — the liberal jurisprudential exception in *Shipside* and its line of cases to excuse BPI's failure to submit a board resolution. While we may have excused strict compliance in the past, we did so only on sufficient and justifiable grounds that compelled a liberal approach while avoiding the effective negation of the intent of the rule on non-forum shopping. In other words, **the rule for the submission of a certificate of non-forum shopping, proper in form and substance, remains to be a strict and mandatory rule; any liberal application has to be justified by ample and sufficient reasons that maintain the**

²⁴ *Gumabon v. Larin*, 422 Phil. 222, 229 (2001).

²⁵ *Langkaan Realty Development, Inc. v. United Coconut Planters Bank, and Hon. Court Of Appeals*, 400 Phil. 1349, 1366 (2000).

²⁶ *Rollo*, p. 20.

²⁷ *Id.* at 19.

²⁸ 646 Phil. 617 (2010).

integrity of, and do not detract from, the mandatory character of the rule.²⁹ (Emphasis supplied)

However, a qualification on the rule for the submission of a certificate of non-forum shopping was made in *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*,³⁰ viz.:

A distinction between noncompliance and substantial compliance with the requirements of a certificate of non-forum shopping and verification as provided in the Rules of Court must be made. In this case, it is undisputed that the Petition filed with the RTC was accompanied by a Verification and Certification of Non-Forum Shopping signed by Ms. Beleno, although without proof of authority from the board. However, this Court finds that the belated submission of the Secretary's Certificate constitutes substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure.

X X X X

In *Mediserv v. Court of Appeals*, we said that a liberal construction of the rules may be invoked in situations in which there may be some excusable formal deficiency or error in a pleading, provided that the invocation thereof does not subvert the essence of the proceeding, but at least connotes a reasonable attempt at compliance with the rules. After all, rules of procedure are not to be applied in a very rigid, technical manner, but are used only to help secure substantial justice.³¹ (Citation omitted)

In this case, ECC already appended a Secretary's Certificate dated January 16, 2001 in its Comment to the Motion to Dismiss on Demurrer to Evidence stating that VP Mañalac was authorized to represent the company in all cases brought by or against it.³² This shows substantial compliance by the respondents with the rule on the submission of a certificate of non-forum shopping and verification.

Usurious interest does not invalidate the mortgage agreement.

Petitioners also claimed that the appellate court erred in not declaring the foreclosure sale unwarranted because of the usurious real estate mortgage.

The petitioners are convoluting the issues by speaking of foreclosure sale when there is none yet. The decision of the RTC, as affirmed by the CA, contained an order that in case of default of payment of the principal obligation, the property subject matter of the mortgage covered by Transfer Certificate of Title No. B-39830 in the name of Spouses Ampat shall be sold at public auction to satisfy judgment.

²⁹ Id. at 626.

³⁰ 713 Phil. 240 (2013).

³¹ Id. at 249, 251.

³² *Rollo*, p. 101.

What is clear is the intentions of the petitioners to have this Court invalidate the mortgage agreement because of usurious interests. We find no valid ground to do so. In *Asian Cathay Finance and Leasing Corporation v. Spouses Cesario Gravador, et al.*,³³ this Court ruled that a stipulation on interests which is later found to be usurious does not affect the validity of the principal obligation:

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.

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.³⁴ (Citations omitted and emphasis supplied)

A loan with usurious interest is not totally void, it is invalid only as to the stipulated interest. But "despite the nullity of the stipulated interest rate, the principal loan obligation subsists, and along with it the real estate mortgage that serves as collateral security for it."³⁵

WHEREFORE, the petition is **DENIED** for lack of merit. The June 28, 2018 Decision and the October 15, 2018 Resolution of the Court of Appeals in CA-G.R. CV No. 107420 that sustained the May 22, 2016 Decision of the Regional Trial Court of Quezon City, Branch 98, in Civil Case No. Q-01-45578 are hereby **AFFIRMED**.

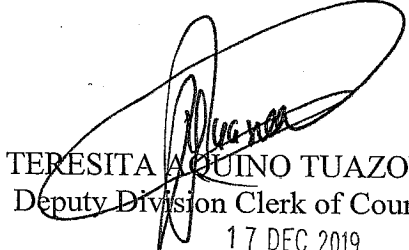
³³ 637 Phil. 504 (2010).

³⁴ Id. at 511-512.

³⁵ 508 Phil. 462, 478 (2005).

SO ORDERED.” (Bernabe, J., on official business; Zalameda, J., on official leave)

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Utch, 12/17*
17 DEC 2019

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(Civil Case No. Q-01-45578)

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