

**FEDERICO DENISA AND SIMPLICIO PALANCA,
PLAINTIFFS-APPELLEES, VS. DEVELOPMENT BANK OF THE
PHILIPPINES, ILOILO BRANCH, DEFENDANT-APPELLANT.**

Ponente: INGLES, G. T., J.

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INGLES, G. T., J.:

Before us is an Appeal[1] from the February 8, 2011 Decision[2] of the Regional Trial Court of Negros Occidental, 6th Judicial Region, Branch 54, Bacolod City in Civil Case No. 00-11129 for Annulment of Sheriff's Sale with Reconveyance and Damages, the dispositive portion thereof reads:

"WHEREFORE, judgment is rendered declaring the Foreclosure of the Real Estate Mortgage on January 6, 1999 and the Certificate of Sale dated January 20, 1999 by the Provincial Sheriff of Negros Occidental null and void; and, that the principal loan of P3,500,000.00 is deemed fully paid.

With costs de officio.

SO ORDERED."

The facts of the case as culled from the records are as follows:

This case stemmed from a complaint[3] lodged by plaintiffs-appellees Federico Denisa and Simplicio Palanca against defendant-appellant Development Bank of the Philippines (DBP) Iloilo Branch before RTC Branch 54 for Annulment of Sheriff's Sale with Reconveyance and Damages.

Plaintiffs-appellees alleged in the complaint that they obtained a loan from defendant-appellant in the amount of THREE MILLION FIVE HUNDRED THOUSAND PESOS (P3,500,000.00) for the purchase of a set Purse Seiner fishing boat. They executed a Promissory Note[4] dated October 6, 1994 for the said loan which was secured by a real estate mortgage as well as a chattel mortgage.[5]

Plaintiffs-appellees further alleged that sometime in February 1995, the fishing boat sustained heavy damage when its sonar fishfinder was hit by lighting prompting them to dock the same at its home port where it sustained further damage when another vessel accidentally bumped it, all due to force majeure or an act of God; plaintiffs-appellees then asked defendant-appellant to condone the interest charges of their loan pursuant to Article 1174[6] of the Civil Code; notwithstanding the same, defendant-appellant foreclosed the chattel mortgage on the fishing boat thereby leaving the former without any means of paying its loan obligation; plaintiffs-appellees then proposed a scheme of payment where they will pay for the principal obligation only in the amount of TWO MILLION THREE HUNDRED THOUSAND PESOS (P2,300,000.00) less their claim for damages, in a period of one year but defendant-appellant did not agree; according to plaintiffs-appellees, their payment to defendant-appellant already reached FOUR MILLION SEVEN HUNDRED SIXTY-SIX THOUSAND ONE HUNDRED SEVENTY-THREE PESOS AND SEVENTY-SEVEN CENTAVOS (P4,766,173.77), if we add their payments, the proceeds of the auction sales and the payment made by the Government Service Insurance System (GSIS) who insured the subject fishing boat; with such payments, their

obligation was already extinguished and when defendant-appellant still foreclosed the real estate mortgage, as shown by the certificate of sale, then the same is clearly null and void, hence, this suit.

Plaintiffs-appellees then prayed that the foreclosure of the real estate be declared null and void together with the sheriff's sale; the reconveyance of the real properties subject of the sheriff's sale in their favor; and that they be paid moral and exemplary damages as well as attorney's fees and litigation expenses.

In their Answer with Counterclaim, defendant-appellant denied the material allegations in the complaint and by way of affirmative/special defenses averred that: plaintiffs-appellees do not have a cause of action against it; when the former offered to surrender the fishing fleet, there was symbolic delivery of the real properties subject of the real estate mortgage as well and they are now estopped from claiming that the foreclosure of the real estate and the chattel were void; plaintiffs-appellees obligation to pay its loan is not extinguished by the loss of the sonar fishfinder because its obligation was not to deliver the said thing but to pay a sum of money hence, the applicable law is not Article 1174 of the Civil Code but Article 1263;[7] when the sonar fishfinder was hit by lightning, plaintiffs-appellees were already in default of their quarterly payments hence Article 1165, par 3[8] applies; plaintiffs-appellees are guilty of forum shopping as there is a pending case filed by them against defendant-appellant in RTC Branch 62, Bogu City docketed as Civil Case No. 807 for accounting with prayer for preliminary injunction and temporary restraining order seeking to enjoin the latter from foreclosing the mortgage; their total outstanding obligation when the account was recommended for foreclosure on September 26, 1997 amounted to SEVEN MILLION FOUR HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED FORTY PESOS AND FOURTEEN CENTAVOS (P7,492,440.14) or SIXTY-NINE POINT TWENTY-SIX PERCENT (69.26%) arrearages equivalent to non payment for nine (9) months; defendant-appellant was initially enjoined from foreclosing the real estate mortgage pursuant to an injunction issued in Civil Case No. 807 but the same was lifted when plaintiffs-appellees failed to put up additional bond per PD 385, hence the foreclosure proceeded on January 6, 1999.

Defendant-appellant then prayed that plaintiffs-appellees be ordered to pay the deficiency claim that may be proved during trial, moral and exemplary damages as well as litigation expenses.

Pre-trial was then conducted and per the Pre-Trial Order[9] dated March 6, 2001, the parties agreed on the following stipulation of facts:

- The existence of the defendant-bank is admitted;
- That the defendant is a government financial institution;
- That the plaintiffs Federico Denisa and Simplicio Palanca secured the loan from defendant;
- The Real Estate Mortgage and the Chattel Mortgage are admitted by the defendant to secure the P3,500,000.00 loan payable in three (3) years in ten (10) equal quarterly installments;
- That the defendant-bank foreclosed the chattel mortgage and its accessories and the real estate mortgage;
- The defendant admits that the fishing boat was also hit by a collision because of typhoon Pepang at the pier;
- That the proceeds of the insurance was paid by GSIS to DBP for the account of plaintiffs and admitted by the defendant.

Thereafter, trial ensued. Plaintiffs presented Federico N. Denisa[10] and Renato S. Say[11] as their witnesses. Their testimonies are hereunder summarized as follows:

FEDERICO DENISA

He is the plaintiff in this case, the other plaintiff is Mr. Simplicio Palanca. He secured a loan from DBP, Iloilo Branch in the amount of P3,500,000.00 for which he executed a promissory note bearing his signature and that of his wife, Rebecca Denisa. Simplicio Palanca likewise signed the same as co-maker. Palanca owned the fishing boat that Denisa will buy with the proceeds of the loan. As security of the loan, a chattel mortgage was constituted over the said fishing boat as well as a real estate mortgage over Palanca's real properties. Sometime in February 1995, approximately five (5) months from its acquisition, the fishing boat's roof was hit by lightning causing damage to all its electrical parts including the generator, the radar and the sonar fishfinder. After that, they were fishing without a fishfinder and were not able to profit anymore. He then asked DBP, Iloilo Branch to restructure his account. He has already paid the amount of ONE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED FOURTEEN PESOS AND FIFTY-TWO CENTAVOS (P142,114.52) on January 1, 1995. He has also made a second payment in the amount of ONE HUNDRED FORTY-ONE THOUSAND ONE HUNDRED SEVENTY-EIGHT PESOS AND THIRTY-THREE CENTAVOS (P141,178.33). At that time he was still covered by the six (6) months grace period in accordance with their contract, where it was stipulated that for the first two installments, he will only be paying for the interests only and not for the principal amount yet. His request for restructuring was ignored by DBP, Iloilo Branch so he asked instead that the proceeds of the insurance of the fishing boat be released to him for the repair thereof. It was not released to him but DBP, Iloilo Branch facilitated the claim until it was eventually released after three years. The proceeds of the insurance was paid directly to DBP, Iloilo Branch. The fishing boat was eventually foreclosed by DBP, Iloilo Branch and the latter got all the proceeds of the auction sale. The real estate mortgage was also foreclosed by the bank.

On cross-examination, the witness testified that: per his loan agreement with DBP, Iloilo Branch, he was obliged to pay ten (10) quarterly installments of THREE HUNDRED FIFTY THOUSAND PESOS (P350,000.00) starting on the ninth (9th) month from the date of release in October 14, 1994; he paid ONE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED FOURTEEN PESOS (P142,114.00) on January 30, 1995; his next payment was ONE HUNDRED FORTY-ONE THOUSAND ONE HUNDRED SEVENTY-EIGHT PESOS AND THIRTY-SIX CENTAVOS (P141,178.36) on May 31, 1995; his last payment was TWO HUNDRED THOUSAND PESOS (P200,000.00) on December 4, 1995 after which no personal payments was made by him; he is aware that it was stipulated in the mortgage contract that in case of non-payment of the installment due, he will be deemed in default and it will accelerate the whole obligation which will then become due and demandable; on March 13, 1995[12] and on September 12, 1995,[13] he wrote letters to DBP, Iloilo Branch where he informed the bank that he could not remit payment; another letter[14] was written by him on April 25, 1996 asking the bank to apply to his account the proceeds of the insurance and informing the latter of the damage that the fishing boat sustained; DBP Iloilo Branch replied per letter dated April 30, 1996 to the effect that his additional loan application must be denied as his equity was already insufficient and that with regard the insurance, claim, he needs to submit certain documents to process the same; in reply thereto, he sent a letter dated May 23, 1996 telling the bank to send to him the requirements for the processing of the insurance.

On re-direct, the witness testified that he received a letter from DBP Iloilo Branch dated October 6, 1994 informing him that quarterly installments will start at the end of the ninth (9th) month from initial release. His insurance claim, which he filed thru DBP, Iloilo Branch, was done within the nine (9) months grace period as in fact it was done within the sixth (6th) month. The insurance was eventually released to DBP but the latter did not inform him about it.

On re-cross, the witness testified that the loan was released on October 14, 1994. His insurance claim on the other hand, was made on March 13, 1996.

MR. RENATO SAY

He is the Sheriff IV of the Office of the Clerk of Court, Regional Trial Court of Bacolod City who was presented as a hostile witness. He identified the petition[15] for extra-judicial foreclosure of chattel and real estate mortgage filed by DBP dated November 28, 1996. Pursuant thereto, the auction was set on December 26, 1996 but the same did not push through because of a temporary restraining order issued by the Regional Trial Court of Bago City, Branch 62. The following chattel were eventually auctioned on September 26, 1997 namely: (1) F/B Conqueror II, (2) Skiff Boat; (3) F/B Steel Carrier; (4) F/B Beau, (5) F/B Yvanna Escort and (6) Steel Life Boat. There were three bidders for F/B Yvanna and the highest bidder was Florante Andan for TWO HUNDRED SIXTY-EIGHT THOUSAND PESOS (P268,000.00) as indicated in the minutes[16] of auction sale and the certificate[17] of sale. The other items were auctioned to DBP, Iloilo Branch which was the only bidder and its final bid price amounted of TWO HUNDRED NINETY-EIGHT THOUSAND THIRTEEN PESOS AND SIXTY-NINE CENTAVOS (P298,013.69) per certificate[18] of sale.

With regard the real estate mortgage, the notice of sale scheduled the auction on December 26, 1996 but the same did not push through because of a temporary restraining order also issued by the Regional Trial Court (RTC) of Bago City, Branch 62. It was reset again to October 15, 1997 but was again restrained by the RTC. It was finally auctioned on January 6, 1999 and DBP, Iloilo Branch was the highest bidder. Per the certificate[19] of sale, 17 parcels of land covered by the real estate mortgage were sold to DBP, Iloilo Branch for the amount of TWO MILLION FIVE HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED EIGHTY PESOS (P2,561,580.00).

The witness likewise testified that the total amount of the proceeds of the auction sales was more than FOUR MILLION NINE HUNDRED THOUSAND PESOS (P4,900,000.00). He likewise testified that the promissory note was not attached to the petition filed before their office and they only have the real estate mortgage.

On cross-examination, the witness testified that during the auction sale for the chattel, aside from him, the following persons were also present: Atty. Ibero, representative of DBP, Iloilo Branch; Mr. Federico Denisa; Mr. Florante Andan and Mr. Mabugat. Mr. Andan and Mr. Mabugat submitted their bids together with DBP, Iloilo Branch in the presence of Mr. Federico Denisa who made no objections at all.

With regard the auction sale of the real estate mortgage, the following participated in the proceedings and bid the corresponding amounts: Elenita Yulo Uy for TWO HUNDRED THIRTY-SIX THOUSAND FOUR HUNDRED PESOS (P236,400.00); Almer Tipawan represented by Atty. Allan Macasa for ONE HUNDRED EIGHTY-FIVE THOUSAND FOUR HUNDRED PESOS (P185,400.00); and Antonio Torres III for ONE HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED PESOS (P192,400.00). Their total bid was SIX HUNDRED FOURTEEN THOUSAND PESOS (P614,000.00). The said bidders bid only for certain parcels of land included in the real estate mortgage per their written bid[20] and it was only DBP, Iloilo Branch who bid for all the parcels of land included in the real estate mortgage. Counsel for the appellant's asked if the reason why the bidders bid only for particular parcels of land was because the others were sold already, the witness replied that he did not know.

On re-direct, the witness testified that the fishing net was not included in the bid list because it was merely an accessory of F/B Conqueror II and this was not questioned by the mortgagor when the property was seized. Mr. Denisa did not question it, it was even stored in his residence. Mr. Denisa was present in the bidding but he did not bid, he was just observing, he did not interpose any objection.

Defendant, on the other hand, presented the following witnesses: Crisanta G. Ibeno,[21] Lucia Destacamento[22] and Mr. Jose Bayot.[23] Their testimonies are hereunder summarized as follows:

CRISANTA G. IBENO

She is currently the Branch Manager of DBP, Iloilo Branch, prior to that, she was the Division Chief of the Account Management Division of the bank, the division in charge of packaging and evaluation of loans. As such, she was the one who packaged and evaluated the loan of plaintiffs amounting to THREE MILLION FIVE HUNDRED THOUSAND PESOS (P3,500,000.00). For the said loan, plaintiffs executed a promissory note and a mortgage contract covering chattel and real estate. The loan is payable in ten (10) equal quarterly amortizations spread over three (3) years.

The witness testified that based on the comparative statement of amortization and application of payments prepared by their Accounting Division, which was checked by their Accountant and approved by their Branch Manager Mr. Denico C. Arceo, plaintiffs' first amortization was due on January 14, 1995 in the amount of ONE HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED NINETEEN PESOS AND SIX CENTAVOS (P136,519.06) which is the interest only. He paid ONE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED FOURTEEN PESOS AND FIFTY-TWO CENTAVOS (P142,114.52) on January 30, 1995. This is more than the amount due because he paid beyond the due date or 16 days thereafter so penalty charges were applied. His amortization that fell due on October 14, 1995 in the amount of FOUR HUNDRED NINE THOUSAND PESOS (P409,000.00) was paid only on December 4, 1995 and the payment made was only TWO HUNDRED THOUSAND PESOS (P200,000.00) per O.R. No. 846714. This was his last payment.

According to the witness, they have made a computation wherein assuming that plaintiffs' account was paid up to date, total interest would amount to ONE MILLION ONE HUNDRED FORTY NINE THOUSAND FIFTY NINE PESOS AND THIRTY-THREE CENTAVOS (P1,149,059.33). If we add the principal amount thereto, the total would be FOUR MILLION SIX HUNDRED FORTY-NINE THOUSAND FIFTY-NINE PESOS AND THIRTY-THREE CENTAVOS (P4,649,059.33). In comparison, actual total payment only amounted to FOUR HUNDRED EIGHTY-THREE THOUSAND TWO HUNDRED NINETY-TWO PESOS AND EIGHTY-EIGHT CENTAVOS (P483,292.88).

It is the practice of the bank that if a client fails to pay his amortizations on the due dates, particularly when he or she failed to pay three amortizations already or his arrears are more than 20% of the loan obligation, the bank will send a letter to the said client declaring his account due and demandable. For herein plaintiffs, their first letter was dated April 8, 1996. Per this letter,[24] plaintiffs were given up to March 15, 1996 to pay the amount of TWO HUNDRED FIFTY-FOUR THOUSAND PESOS (P254,000.00) otherwise, their account shall be declared due and demandable. This is pursuant to PD 385 which expressly directs the bank to foreclose mortgage accounts and to enforce collection in case the account is in arrears by 20%. As of February 15, 1996, plaintiffs total obligation has already amounted to FOUR MILLION NINE HUNDRED NINE THOUSAND NINE HUNDRED TWENTY-TWO PESOS AND EIGHTY-SIX CENTAVOS (P4,909,922.86) or they failed to pay three quarterly amortizations. Despite having received the letter, plaintiffs failed to pay the loan. The bank then offered that the loan be restructured. On July 19, 1996,[25] the restructuring was approved but plaintiffs did not comply with the terms and conditions thereof.

The witness further testified that the promissory note signed by the plaintiff expressly provides that failure to pay any installment or interest on the date the same is due is considered an event of default and the unpaid sum shall become immediately due and payable without demand and notice. The mortgage contract likewise provides that if at any time the mortgagor shall fail or refuse to pay any of the amortizations or interests due, all the amortizations and other obligations of the mortgagor shall become, due, payable and defaulted.

The witness likewise informed the court that per plaintiff Denisa's letter[26] addressed to the bank dated

September 12, 1995, the reason he failed to pay his loan obligation was because of the limited fishing grounds. Moreover, his fishing boat was accosted due to illegal fishing. Plaintiff Denisa again wrote the bank on November 24, 1995[27] requesting for an additional loan of ONE MILLION PESOS (P1,000,000.00) to defray the expenses required to upgrade his fishing boat.

On November 27, 1996, the bank wrote plaintiffs a letter[28] declaring their account due and demandable. At that time, their total arrearages amounted to THREE MILLION NINE HUNDRED THOUSAND PESOS (P3,900,000.00) or 69% of the total obligation. In response thereto, plaintiff Denisa wrote a letter[29] dated November 2, 1996, surrendering the fishing fleet for foreclosure and asking that they be furnished with a computation of the amount needed for possible redemption. The bank then commenced foreclosure proceedings but was not able to do so immediately because of an injunction. It was able to foreclose only sometime in 1997.

On cross-examination the witness testified that: as of February 1996, the loan was in arrears by three (3) quarters already or nine (9) months; that the bank knew that during the time the plaintiffs were in arrears, the fishing boat was struck by lightning which damaged its sonar system and hence, it could not go fishing anymore; the fishing boat was insured and the insurance policy was retained by the bank; plaintiffs requested for an additional loan in the amount of ONE MILLION PESOS (P1,000,000.00) but they did not request the bank for an insurance claim; he did not specify the extent of the damage to his boat despite being told by the bank to do through a letter; eventually, DBP, Iloilo Branch was able to receive the proceeds of the insurance in the amount of ONE MILLION NINE HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED EIGHTY-EIGHT PESOS AND SIXTY-EIGHT CENTAVOS (P1,915,888.68) which was then applied to the account of Denisa; despite that, the payment did not update the arrears of Denisa as it was applied to the interests only and not to the principal; the request for additional loan by Denisa was denied by the bank because of its policy and the boat remained damaged and their arrears continued to rise; the bank then foreclosed the chattel mortgage which included six units of the fishing fleet including the fishing net; the witness does not know anymore how much was the proceeds of the auction sale of the chattel; the proceeds was applied to the interest only and not to the principal; per their original agreement, the rate of interest is subject to variable review on a quarterly basis; aside from the interest, the bank also imposed penalty charges and as of September 6, 1997, it amounted to SEVEN MILLION FOUR HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED FORTY PESOS AND FOURTEEN CENTAVOS (P7,492,440.14); if you subtract the principal from the said amount, you will get a total of almost FOUR MILLION PESOS (P4,000,000.00) or double the principal; it was the legal division who handled the foreclosure and not the witness' division.

LUCIA DESTACAMENTO

She is the Division Chief of the Accounting Division of DBP, Iloilo Branch, as such, she is supervising the employees who are involved in the recording and processing of transactions in deposits, loans, acquired assets, clearing of checks and ATM transactions. She is familiar with the account of plaintiff Federico Denisa who has been a long time client of the bank. The said account has incurred arrearages before the maturity date prompting the bank to foreclose. In cases where mortgagors fail to pay their amortizations on the due date, the bank impose default charges on interest past due as well as default charges and advances and other expenses. The bank also impose default charges on past due principal.

The witness identified the statement of amortization and application of payment of the account of plaintiffs[30] duly signed by her and the data comptroller and the branch manager. Per the said statement, should Denisa have paid his account regularly and on time, the total due for the entire term would have been FOUR MILLION SIX HUNDRED FORTY-NINE THOUSAND FIFTY-NINE PESOS AND THIRTY-THREE CENTAVOS (P4,649,059.33). This does not include additional interests, default charges and other charges. Denisa was able to

pay only FOUR HUNDRED EIGHTY-THREE THOUSAND TWO HUNDRED NINETY-TWO PESOS AND EIGHTY-EIGHT CENTAVOS (P483,292.88).

The witness likewise testified that the proceeds of the insurance claim with the GSIS amounted to ONE MILLION NINE HUNDRED SIXTEEN THOUSAND EIGHT HUNDRED SIXTY-SEVEN PESOS AND THIRTY-THREE CENTAVOS (P1,916,867.33) and this was duly received by the bank on May 14, 1998. This was applied to the account of Denisa. Likewise applied to the account of Denisa was the amount of TWO MILLION TWO HUNDRED SIXTY-SIX THOUSAND THIRTEEN PESOS AND FIFTY-NINE CENTAVOS (P2,266,013.59) which is the total proceeds of the auction sale of the chattel subject of the mortgage. This amount included the total bid of the bank in the amount of TWO MILLION NINETY-EIGHT THOUSAND THIRTEEN PESOS AND FIFTY-NINE CENTAVOS (P2,098,013.59) and the bid of Florante Andan in the amount of TWO HUNDRED SIXTY-EIGHT THOUSAND PESOS (P268,000.00). Denisa's obligation before the auction sale was SEVEN MILLIIN FOUR HUNDRED NINETY-TWO THOUSAND FOUR HUNDRED FORTY PESOS AND FOURTEEN CENTAVOS (P7,492,440.14) and after the application of the proceeds of the auction sale, the same was reduced to FIVE MILLION ONE HUNDRED TWENTY-SIX THOUSAND FOUR HUNDRED TWENTY-SIX PESOS AND FIFTY-FIVE CENTAVOS (P5,126,426.55).

After the chattels were foreclosed, Denisa's account t continued to accrue regular interest and other charges including bank advances. From the period September 26, 1997 to May 20, 1998, the total additional charges including the regular interest amounted to SIX MILLION FIVE HUNDRED FORTY-NINE THOUSAND EIGHT HUNDRED SEVENTY-SIX PESOS AND FIFTY CENTAVOS (P6,549,876.50). From this amount the proceeds of the insurance was applied thus the net obligation became FOUR MILLION SIX HUNDRED THIRTY-THREE THOUSAND NINETY-NINE PESOS AND SEVENTEEN CENTAVOS (P4,633,099.17) broken down as follows:

Regular Interest and Past due Principal – P207,269.18

Regular Interest and Unmatured Principal – P925,739.99

Principal Due - P3,500,000.00

Total P4,633,009.17

From the date of application of the insurance payment to the account of Denisa, other charges accrued in the amount of TWO HUNDRED FORTY-ONE THOUSAND THREE HUNDRED SIXTY-SIX PESOS AND SIXTY-TWO CENTAVOS (P241,366.62) making his total obligation as of July 8, 1998 to FOUR MILLION EIGHT HUNDRED SEVENTY-FOUR THOUSAND THREE HUNDRED SEVENTY-FIVE PESOS AND SEVENTY-NINE CENTAVOS (P4,874,375.79).[31]

Denisa was still unable to pay his obligation hence, the real estate mortgage was also foreclosed.

On cross-examination, the witness testified that all the amounts applied to the account of herein plaintiffs were applied to the surcharges and interests and nothing was applied to the principal.

With regard the foreclosure of the real estate mortgage, the proceeds of the auction sale amounted to TWO MILLION FIVE HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED EIGHTY PESOS (P2,561,580.00). She does not have a statement of account reflecting this but the amount was deducted from the bank's total claim. She does not know how much exactly was the bank's total claim at that point because it is now the Acquired Assets Division who handles the account.

On re-direct, the witness reiterated portions of her above testimony.

JOSE BAYOT

He is the Chief Account Management Specialist of DBP, Iloilo Branch in charge of the administration and disposal of the branch acquired assets. He is familiar with the account of herein plaintiffs who obtained a loan of THREE MILLION FIVE HUNDRED THOUSAND PESOS (P3,500,000.00). The account was not paid and the bank foreclosed the chattel mortgage which secured the same. During the auction sale on September 26, 1997, one chattel was sold to a third party buyer and the rest were sold to the bank who was the winning bidder. After the sheriff has awarded the certificate of sale in favor of the bank, the vessels were sold by the bank to other interested parties. Prior to the auction sale, the vessel with steel hull was rusty and in dilapidated condition while those with wooden hulls were leaking. The bank was not able to sell a vessel with wooden hull because it is a total wreck. The same is true with another vessel with wooden hull that was attacked by oysters. One vessel with wooden hull was sold by the bank to a third party for ONE HUNDRED TEN THOUSAND PESOS (P110,000.00). The main vessel, F/B Conqueror II was sold for ONE HUNDRED THOUSAND PESOS (P100,000.00) because it was landlocked and could not be pulled out. Even the subsequent buyer was not able to float it and merely took out the machinery, the engine and the caterpillar of the vessel.

The witness presented and identified a Statement of Net Total Claim as of September 9, 2002 on the Account of Federico Denisa[32] where the total net claim of the bank as of September 9, 2002 amounted to SEVEN MILLION SEVEN HUNDRED NINETY-THREE THOUSAND TWO HUNDRED FORTY-ONE PESOS AND SIXTY-NINE CENTAVOS (P7,793,241.69).

Based on the foregoing, the court a quo, on February 8, 2011, rendered the assailed Decision in favor of the plaintiffs. Displeased with the ruling of the court a quo, defendant, now appellant, interposed the instant appeal and in their Appellant's Brief,[33] the following assignment of errors were made, to wit:

THE COURT A QUO ERRED IN NULLIFYING DBP'S FORECLOSURE SALE OF PLAINTIFFS-APPELLEES' REAL PROPERTIES ON 06 JANUARY 1999 AND THE CORRESPONDING CERTIFICATE OF SALE DATED 19 FEBRUARY 1999[34] ISSUED IN FAVOR OF THE BANK BY RULING THAT:

- (1) THE FORECLOSURE SALE SOUGHT TO COLLECT AN EXCESSIVE OR EXORBITANT OBLIGATION;
- (2) THE INTERESTS AND PENALTIES IMPOSED BY DBP ARE GROSSLY INIQUITOUS AND UNCONSCIONABLE; AND
- (3) THE PRINCIPAL LOAN OF PLAINTIFFS-APPELLEES DENISA ET AL. IN THE AMOUNT OF P3,500,000.00 IS DEEMED FULLY PAID.

Appellant contends that the court a quo made miscomputations on the payments credited to the account of herein appellees which miscomputation was made basis of the rest of its findings to the effect that interests and penalties imposed by the defendant bank are grossly iniquitous and unconscionable. The tabular presentation of the erroneous computations vis-a-vis the correct one is hereunder quoted from the Appellant's Brief as follows:

Erroneous Figures as Stated in the Assailed Decision

Correct Figure

Sum of Application of Payments

P6,398,561.00

P4,699,867.00

Total Loan Amortization Payments of Plaintiffs-Appellees

P483,292.88

P483,000.00

GSIS Insurance Proceeds

P1,916,867.33

P1,916,867.33

Foreclosure Proceeds for the Fishing Boats

P2,098,053.59

P2,300,000.00

Appellant further contends that the court a quo erred in directly applying the amortizations, the proceeds of the insurance and the proceeds of the foreclosure proceedings on the principal loan amount of THREE MILLION FIVE HUNDRED THOUSAND PESOS (P3,500,000.00). The same should be applied first to the interests and charges. Since appellees failed to pay their amortizations on time, their last payment being on December 4, 1995, the interest on their loan increased while the principal amount remained unpaid. The proper computation, according to herein appellant, is as follows:

P7,492,440.14 Outstanding obligation as of the auction sale for the chattels on 26 September 1997 and after application of plaintiffs-appellees' late amortization payments in the amount of P483,000.00 only.

Less: P2,366,013.59 Total of DBP's bid on 26 September 1997 for the auctioned chattels/fishing boats[35] plus the sale proceeds for the fishing boat purchased by Mr. Florante Andan.[36]

P5,126,426.55 Net obligation of Mr. Denisa, et al. after the auction sale.

Plus: P1,423,449.95 Interest, default and other charges accruing after the auction sale until 20 May 1998.

P6,549,867.50 Total obligation after auction sale, inclusive of interest, default and other charges.

Less: P1,916,867.33 GSIS Insurance proceeds for the damages sustained by F/B Conqueror II remitted to DBP in May 1998.

P4,633,009.17 Net obligation after application of GSIS Insurance proceeds.

Plus: P241,366.62 Interest, default and other charges accruing after the auction sale of the chattels until 20 May 1998.

P4,874,375.79 Total unpaid obligation of Mr. Denisa, et al. as of 08 July 1998, hence, the need for DBP to proceed with the foreclosure of the parcels of land mortgaged by them.

Appellants also argued that the court a quo erred in declaring that the stipulated interests and penalties on the loan of appellees are grossly excessive or exorbitant. The promissory note executed by appellees clearly indicated that the loan shall carry an interest rate of 15.263% per annum computed on the basis of the outstanding principal balance and subject to DBP's prevailing/floating interest rate. From October 12, 1995, the interest rate was increased to 16.90% per annum which increase was communicated to appellees. It was likewise stipulated that after due date, in addition to the regular interest on outstanding principal, a default charge on past due principal and interest at the rate of 24% per annum shall be charged the borrower.

Ruling:

Appellant's contention that the court a quo erred in directly applying the amortizations, the proceeds of the insurance and the proceeds of the foreclosure proceedings on the principal loan amount of THREE MILLION FIVE HUNDRED THOUSAND PESOS (P3,500,000.00) is correct. The same should be applied first to the interests and charges. This is in accordance with the ruling of the Supreme Court in the case of SPOUSES VIRGILIO AND DIGNA ANASTACIO-CALINA vs. DEVELOPMENT BANK OF THE PHILIPPINES,[37] to wit:

"(R)espondent had the right to demand interest on its loan based on their contract. In their promissory note, petitioners agreed to pay 12% interest per annum on their loan. Article 1253 of the New Civil Code provides that, if the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. The respondent is a bank. To hold that bank debtors should not pay interest on their loans would be anathema to the nature of any bank's business. The charging of interest for loans forms a very essential and fundamental element of the banking business. In fact, it may be considered to be the very core of the banking's existence or being." (Emphasis original.)

It is undisputed in the instant case that herein appellees contracted a loan in the amount of THREE MILLION FIVE HUNDRED THOUSAND PESOS (P3,500,000.00). It is likewise undisputed that herein appellees agreed on the following terms of payment: it is payable in ten (10) equal quarterly installments for a period of three (3) years, the first two (2) installments covering the interests only; its interest is peg at the rate of 15.263% per annum and subject to the banks prevailing/floating interest rate, and finally, should the borrower fail to pay on the due dates, in addition to the regular interest on the outstanding principal, a default charge at the rate on 24% per annum shall accrue on past due principal and interest.

It is also beyond dispute that herein appellees did not pay on the date the amortizations fell due, the first amortization in the amount of ONE HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED NINETEEN PESOS AND SIX CENTAVOS (P136,519.06) was due on January 14, 1995 but the same was paid only January 30, 1995. Pursuant to the parties' agreement that default charges be imposed should the borrower fail to pay on time, the amount paid by the latter amounted to ONE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED FOURTEEN PESOS AND FIFTY-TWO CENTAVOS (P142,114.52).

The second amortization was due on April 14, 1995 in the amount of ONE HUNDRED THIRTY-THREE THOUSAND FIVE HUNDRED FIFTY-ONE PESOS AND TWENTY FIVE CENTAVOS (P133,551.25). Appellees failed to pay on the due date again and paid only on May 31, 1995 in the amount of ONE HUNDRED FORTY-ONE THOUSAND ONE HUNDRED SEVENTY-EIGHT PESOS AND THIRTY-SIX CENTAVOS (P141,178.36), a higher amount because of the additional default charges.

The third amortization which was due on July 14, 1995 that now includes principal in the amount of THREE HUNDRED FIFTY THOUSAND PESOS (P350,000.00) plus interest of ONE HUNDRED EIGHTY-TWO THOUSAND FIVE HUNDRED NINETEEN PESOS AND SIX CENTAVOS (P136,519.06) or a total of ONE HUNDRED THIRTY-SIX THOUSAND FIVE HUNDRED NINETEEN PESOS AND SIX CENTAVOS (P136,519.06) was not paid by appellees. The fourth amortization in the total amount of FOUR HUNDRED NINETY-FOUR THOUSAND NINE HUNDRED PESOS (P494,900.00), covering both principal and interest, was again unpaid on the date the same was due which was on October 14, 1995. It was paid only on December 4, 1995 and the payment made was only TWO HUNDRED THOUSAND PESOS (P200,000.00).

These are the only payments made by herein appellees. Their failure to pay was allegedly because the fishing boat which they acquired by virtue of their loan, was badly damaged by lightning sometime in February 1995.

Appellees considered this an act of God or a force majeure that would exempt them from paying interests and penalties pursuant to Article 1174 of the Civil Code which reads as follows:

"ART. 1174. Except in cases expressly specified by law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable."

We do not agree with appellees. The Supreme Court, in the case of *GAISANO CAGAYAN, INC. vs. INSURANCE COMPANY OF NORTH AMERICA*,^[38] has ruled that:

"As correctly stated by the CA, where the obligation consists in the payment of money, the failure of the debtor to make the payment even by reason of a fortuitous event shall not relieve him of his liability. The rationale for this is that the rule that an obligor should be held exempt from liability when the loss occurs thru a fortuitous event only holds true when the obligation consists in the delivery of a determinate thing and there is no stipulation holding him liable even in case of fortuitous event. It does not apply when the obligation is pecuniary in nature.^[39]"

Moreover, under Article 1174 of the Civil Code, to exempt the obligor from liability for a breach of an obligation due to an "act of God" or force majeure, the following must concur: (a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor.^[40]

In the instant case, it is clear that appellees' obligation was to pay specific amounts on the date they were due and the lightning did not foreclose all options for them to make payments. We also note that appellees, from the very beginning, have not paid their loan obligation on time, hence, it could not be said that they are free from any participation in, or aggravation of whatever damage sustained by the bank. In fact, the loan was restructured but appellees still failed to pay their loan in accordance with the new conditions. The damage to the fishing boat may have caused them financial distress, still, their claim of financial distress is not an excuse to evade their clear obligation to the bank.

We shall now look at whether or not the interest rate of 15.263% per annum and the penalty charge of 24% per annum, imposed by the bank are grossly iniquitous and unconscionable.

As to the interest rate of 15.263% per annum, later increased to 16.90% per annum starting October 12, 1995, we rule that the same is not excessive.

From the evidence presented by the appellant, particularly the statement of account of herein appellees, total interests for the loan of THREE MILLION FIVE HUNDRED THOUSAND (P3,500,000.00) only amounted to ONE MILLION ONE HUNDRED FORTY-NINE THOUSAND PESOS AND THIRTY CENTAVOS (P1,149,000.30). By no means can this be considered unconscionable or excessive. Appellees cannot renege on their obligation to pay their loan in accordance with the terms of their contract with the bank. A contract is the law between the parties and they are bound by its stipulations.

The Supreme Court, in the case of *SPOUSES ZACARIAS BACOLOR and CATHERINE BACOLOR vs. BANCO FILIPINO SAVINGS AND MORTGAGE BANK, DAGUPAN CITY BRANCH and MARCELINO C. BONUAN*,^[41] has ruled that:

"This Court has consistently held that for sometime now, usury has been legally non-existent and that interest can now be charged as lender and borrower may agree upon. As a matter of fact, Section 1 of Central Bank Circular No. 905 states that:

SECTION 1. The rate of interest, including commissions, premiums, fees and other charges , on a loan or forbearance of any money, goods, or credits, regardless of maturity and whether secured or unsecured, that may be charged or collected by any person, whether natural or judicial, shall not be subject to any ceiling prescribed under or pursuant to the Usury Law, as amended.

Moreover, in *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation*,^[42] this Court has ruled that:

With the suspension of the Usury Law and the removal of interest ceiling, the parties are free to stipulate the interest to be imposed on monetary obligations. Absent any evidence of fraud, undue influence, or any vice of consent exercised by one party against the other, the interest rate agreed upon is binding upon them.

There is no indication in the records that any of the incidents which vitiate consent on the part of petitioners is present. Indeed, the interest rate agreed upon is binding on them. With respect to the penalty and service charges, the same are unconscionable or excessive.

Petitioners invoke this Court's rulings in *Almeda vs. Court of Appeals*^[43] and *Medel vs. Court of Appeals*^[44] to show that the interest rate in the subject promissory note is unconscionable. Their reliance on these cases is misplaced. In *Almeda*, what this Court struck down as being unconscionable and excessive was the unilateral increase in the interest rates from 18% to 68%. This Court ruled thus:

It is plainly obvious, therefore, from the undisputed facts of the case that respondent bank unilaterally altered the terms of its contract by increasing the interest rates of the loan without the prior assent of the latter. In fact, the manner of agreement is itself explicitly stipulated by the Civil Code when it provides, in Article 1956, that "No interest shall be due unless it has been expressly stipulated in writing." What has been "stipulated in writing" from a perusal of the interest rate provision of the credit agreement signed between the parties is that petitioners were bound merely to pay 21% interest x x x.

Petitioners also cannot find refuge in *Medel*. In this case, what this Court declared as unconscionable was the imposition of a 66% interest rate per annum. In the instant case, the interest rate is only 24% per annum, agreed upon by both parties. By no means can it be considered unconscionable or excessive.

Verily, petitioners cannot now renege on their obligation to comply with what is incumbent upon them under the loan agreement. A contract is the law between the parties and they are bound by its stipulations.^[45]"

We note that in the instant case, there was an increase in the interest rate from 15.263% to 16.90% but the same was not a unilateral increase imposed by the bank. From the very beginning, the parties have agreed that the interest rate is subject to quarterly review as it is also subject to DBP's prevailing/floating interest rate.

With regard the penalty charge, it was stipulated in the promissory note that a default charge on past due principal and interest at the rate of 24% per annum shall be charged the borrower. We likewise find the same not excessive. In fact, the Supreme Court has equitably reduced excessive interests to 24% annum in many cases.^[46]

Instructive is the ruling of Supreme Court in the case of *DEVELOPMENT BANK OF THE PHILIPPINES vs. FAMILY FOODS MANUFACTURING CO. LTD., and SPOUSES JULIANCO and CATALINA CENTENO*,^[47] to wit:

"Likewise, the 18% and 22% stipulated rates of interest in the two (2) promissory notes are not unconscionable or excessive, contrary to the CA ruling.

In *Garcia v. Court of Appeals*,^[48] this Court sustained the interest rates of 18% and 24% per annum on the loans obtained by Chemark from Security Bank. Also, in *Bautista v. Pilar Development Corporation*,^[49] the validity of the 21% interest rate was upheld. Thus, the stipulated rates on respondents' promissory notes cannot be stricken down for being contrary to public policy.

Similarly, we uphold the validity of the 8% penalty charge. In *Development Bank of the Philippines v. Go*,^[50] this Court had the occasion to state that the 8% penalty charge is valid, viz.:

This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled. The enforcement of the penalty can be demanded by the creditor only when the non-performance is due to the fault or fraud of the debtor. The non-performance gives rise to the presumption of fault; in order to avoid the payment of the penalty, the debtor has the burden of proving an excuse — the failure of the performance was due to either force majeure or the acts of the creditor himself.

In this case, respondents failed to discharge the burden. Thus, they cannot avoid the payment of the agreed penalty charge."

The same is true in the instant case, appellees attempted to justify their failure to pay their obligation to appellant to force majeure but as discussed above, force majeure does not apply to the instant case.

In sum, the court a quo erred in ruling that the principal loan of P3,500,000.00 should be deemed fully paid and consequently, in declaring the Foreclosure of the Real Estate Mortgage on January 6, 1999 and the Certificate of Sale dated January 20, 1999 by the Provincial Sheriff of Negros Occidental as null and void.

We commiserate with the plight of appellees who have chosen to invest the money they borrowed from the bank on a purse seiner, a type of active fishing gear that was subsequently prohibited from operating in municipal waters in the Philippines pursuant to Republic Act 8550, but as the Supreme Court has said in the above cited case of *DEVELOPMENT BANK OF THE PHILIPPINES vs. FAMILY FOODS* citing *Vales v. Villa*,^[51] and *Spouses Pascual v. Ramos*:^[52]

"All men are presumed to be sane and normal and subject to be moved by substantially the same motives. When of age and sane, they must take care of themselves. In their relations with others in the business of life, wits, sense, intelligence, training, ability and judgment meet and clash and contest, sometimes with gain and advantage to all, sometimes to a few only, with loss and injury to others. In these contests men must depend upon themselves – upon their own abilities, talents, training, sense, acumen, judgment. The fact that one may be worsted by another, of itself, furnishes no cause of complaint. One man cannot complain because another is more able, or better trained, or has better sense or judgment than he has; and when the two meet on a fair field the inferior cannot murmur if the battle goes against him. The law furnishes no protection to the inferior simply because he is inferior, any more than it protects the strong because he is strong. The law furnishes protection to both alike – to one no more or less than to the other. It makes no distinction between the wise and the foolish, the great and the small, the strong and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. Courts cannot constitute themselves guardians of persons who are not legally incompetent. Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome illegally. Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by then – indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actionable wrong, before the courts are authorized to lay hold of the situation and remedy it."

WHEREFORE, on the view above taken, the February 8, 2011 Decision^[53] of the Regional Trial Court of Negros Occidental, 6th Judicial Region, Branch 54, Bacolod City in Civil Case No. 00-11129 is hereby REVERSED AND SET ASIDE. The complaint for Annulment of Sheriff's Sale with Reconveyance and Damages is hereby dismissed for lack of merit.

SO ORDERED.

Maxino, P.A.A., and Francisco, R.C., JJ., concur.

[1] Notice of Appeal, Records at pp. 278-279.

[2] Records at pp. 268-277.

[3] Records at pp. 2-8.

[4] Records at p. 9.

[5] Records at pp. 14-24.

[6] Art. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

[7] Art. 1263. In an obligation to deliver a generic thing, the loss or destruction of anything of the same kind does not extinguish the obligation.

[8] Art. 1165 par 3 - If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery.

[9] Records at pp. 66-68.

[10] Transcripts of Stenographic Notes dated May 29, 2001 and July 12, 2001.

[11] Transcript of Stenographic Notes dated November 29, 2001.

[12] Records at p. 171.

[13] Records at p. 172.

[14] Records at p. 175.

[15] Records at p. 89-90.

[16] Records at p. 92.

[17] Records at p. 94.

[18] Records at p. 95.

[19] Records at pp. 97-100.

[20] Records at p. 105.

[21] Transcripts of Stenographic Notes dated April 15, 2002, July 9, 2002

[22] Transcripts of Stenographic Notes dated August 8, 2002,

[23] Transcript of Stenographic Notes dated September 10, 2002.

[24] Records at p. 171.

[25] Records at p. 182.

- [26] Records at p. 172.
- [27] Records at p. 173-174.
- [28] Records at p. 169.
- [29] Records at p. 170.
- [30] Records at p. 183.
- [31] Records at p. 186.
- [32] Records at p. 197.
- [33] Rollo at pp. 101-148.
- [34] Not 20 January 1999 as erroneously stated by the court a quo in its assailed Decision dated 08 February 2011.
- [35] In the amount of P2,098,013.59.
- [36] In the amount of P268,000.00.
- [37] G.R. No. 159748 , July 31, 2007.
- [38] G.R. No. 147839 , June 8, 2006.
- [39] Lawyers Cooperative Publishing Co. v. Tabora, 121 Phil. 737, 741 (1965).
- [40] Juan F. Nakpil & Sons v. Court of Appeals, 144 SCRA 596 (1986) citing Vasquez v. Court of Appeals, 138 SCRA 553 (1985); Estrada v. Consolacion, 71 SCRA 423 (1976); Austria v. Court of Appeals, 39 SCRA 527 (1971); Republic of the Phil. v. Luzon Stevedoring Corp., 128 Phil. 313 (1967); Lasam v. Smith, 45 Phil. 657 (1924) cited in PHILIPPINE REALTY AND HOLDINGS CORPORATION vs. LEY CONSTRUCTION AND DEVELOPMENT CORPORATION, G. R. No. 165548 , June 13, 2011.
- [41] G.R. No. 148491 , February 8, 2007.
- [42] G.R. No. 139290, May 19, 2006.
- [43] G.R. No. 113412, April 17, 1996.
- [44] G.R. No. 131622, November 27, 1998.
- [45] Salvador v. Court of Appeals, G.R. No. 124899, March 30, 2004.
- [46] ILEANA DR. MACALINAO vs. BANK OF THE PHILIPPINE ISLANDS, G.R. No. 175490 , September 17, 2009; SPOUSES ZACARIAS BACOLOR and CATHERINE BACOLOR vs. BANCO FILIPINO SAVINGS AND MORTGAGE BANK, DAGUPAN CITY BRANCH and MARCELINO C. BONUAN, G.R. 148491, February 8, 2007 and ASIAN CONSTRUCTION and DEVELOPMENT CORPORATION VS. CATHAY PACIFIC STEEL CORPORATION, G.R. No. 167942, June 29, 2010;
- [47] G.R. No. 180458, July 30, 2009.
- [48] Nos. L-82282-83, November 24, 1988.
- [49] 371 Phil. 533, 544 (1999).
- [50] G.R. No. 168779, September 14, 2007.

[51] 35 Phil 769, 787-788 (1916).

[52] 433 Phil. 449, 461 (2002).

[53] Records at pp. 268-277.

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