

ASIATRUST DEVELOPMENT BANK, SUBSTITUTED BY ASIA UNITED BANK CORPORATION, PLAINTIFF-APPELLANT, VS. MITSUBOSHI APPLIANCE CORPORATION AND ANTHONY NGO, DEFENDANTS-APPELLEES.

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is an appeal filed by Asia United Bank Corporation (“Asia United”), as a substitute of Asiatrust Development Bank (“Asiatrust”), seeking to reverse and set aside the Decision[1] dated August 5, 2013 rendered by Presiding Judge Afable E. Cajigal of Branch 96 of the Regional Trial Court (“RTC”) in Quezon City, National Capital Judicial Region, in Civil Case No. Q-07-61650.

The material and relevant facts of the case, as can be culled from the record, are as follows:

On May 31, 1999, Asiatrust Development Bank, a thrift banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, granted a credit facility[2] in the amount of Five Million Pesos (P5,000,000.00) to defendant-appellee Mitsuboshi Appliance Corporation (“Mitsuboshi”), likewise, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. The credit facility's effectivity period was only for a period of three (3) months.

The aforementioned loan was secured by a Chattel Mortgage[3] dated November 27, 2000 which covered the following properties of Mitsuboshi, to wit: (1) one JSWJ 800sII Japan/800 tons Plastic Injection Moulding Machine; (2) one Nissei Japan 350 tons Plastic Injection Machine; (3) one Nissei Japan/200 tons Plastic Injection Machine and (4) one Nissei Japan/150 tons Plastic Injection Machine.

On October 1, 2004, Mitsuboshi's previous loan agreement with Asiatrust was restructured into a five (5)-year term loan in the total amount of Four Million Five Hundred Eight Thousand One Hundred Forty Five and 87/100 Pesos (P4,508,145.87) with an interest rate of ten (10) percent per annum[4]. Subsequently, a promissory note[5] dated October 15, 2004 in the amount of Four Million Five Hundred Eight Thousand One Hundred Forty Five and 87/100 Pesos (P4,508,145.87) with a maturity date of January 15, 2010 was issued by Mitsuboshi to Asiatrust.

By reason of the restructuring of the loan, a Supplemental Agreement to the Chattel Mortgage[6] was executed by Mitsuboshi in favor of Asiatrust wherein it was stated that the previous Chattel Mortgage of Mitsuboshi dated November 27, 2000 shall now serve as security for the above-mentioned restructured loan. A Continuing Suretyship[7] was likewise executed by Ngo Khe Teng a.k.a. Anthony C. Ngo (“Ngo”), herein defendant-appellee, as additional security for the restructured loan.

Thereafter, Mitsuboshi failed to comply with its obligation under its restructured loan with Asiatrust, despite several demands for its payment. On July 23, 2007, a final demand letter[8] was given by Asiatrust to Mitsuboshi on account of its failure to comply with its outstanding obligation amounting to Three Million Eight Hundred Ninety Two Thousand One Hundred Thirty Five and 79/100 Pesos (P3,892,135.79) exclusive of interest, penalties

and charges, but such demand remained unheeded.

Thus, on December 12, 2007, Asiatrust filed a Complaint for Replevin and Damages[9] against Mitsuboshi with the trial court. The case was then docketed as Civil Case No. Q-07-61650.

In the said Complaint, Asiatrust alleged that it had already initiated extra-judicial foreclosure proceedings before the Regional Trial Court in Quezon City on account of Mitsuboshi's default in the payment of its indebtedness but the latter still unduly refused to surrender the properties which it used as collateral for the restructured loan. The said complaint also stated that the subject properties had not been taken by virtue of a tax assessment or a fine imposed pursuant to law or seized under execution or attachment or, if they were so seized, that they were exempt from such seizure.

Asiatrust prayed that a judgment be rendered confirming its right of possession over the subject machineries, its right to sell the same at a public auction, and its right to collect the deficiency in the event that the proceeds of the foreclosure sale is insufficient to cover the entire obligation. In the alternative, Asiatrust sought for the payment by Mitsuboshi of its outstanding obligation in the amount of Five Million Four Hundred Thousand Twenty Seven Thousand Nine Hundred Eighty Seven and 42/100 Pesos (P5,427,987.42) plus interests, penalties and other charges. Lastly, Asiatrust sought for the award of damages and attorney's fees in its favor.

In support of the prayer for the issuance of the writ of replevin, Asiatrust submitted the Affidavit of Merit[10] of Jerome D. Lising, an account officer of Asiatrust who was in charge of the account of Mitsuboshi.

On December 17, 2007, Presiding Judge Afable E. Cajigal issued an Order[11] portions of which are cited herein for reference:

“Finding the application for the issuance of the writ of replevin to be sufficient in form and substance, and that it appears that plaintiff had the right to possess the subject property considering that defendant failed to pay several monthly amortizations which were secured by the subject property, and that defendant refused to turn over said property despite several demands from the plaintiff, and that the property has not been distrained or taken for tax assessment or a fine pursuant to law or seized under a writ of execution, preliminary attachment, or otherwise placed under custodia legis, or if so seized, that it is exempt from such seizure or custody, the motion for issuance of writ of replevin is hereby GRANTED.

“ACCORDINGLY, upon filing by the plaintiff of a bond in the amount of Five Million One Hundred Thousand (P5,100,000.00) Pesos, let a writ of replevin issue to seize the subject property.

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“SO ORDERED.”

Asiatrust then posted the required replevin bond through Visayan Surety and Insurance Corporation[12]. On December 18, 2007, a Writ of Seizure[13] was issued by the Branch Clerk of Court of Branch 96 of the RTC in Quezon City. As a consequence, the sheriff seized subject properties, dismantled and removed them from the premises where they were installed and advertised them for sale at public auction.

On January 8, 2008, Mitsuboshi filed its Answer with Counterclaim[14] denying that it refused to surrender the chattels subject matter of the extra-judicial foreclosure proceedings as the sheriff never made any demand for the same. Mitsuboshi countered that an extra-judicial foreclosure proceeding had even been scheduled by the sheriff on December 20, 2007 at 9:00 o'clock in the morning which was to be conducted inside its own factory.

Mitsuboshi contended that, contrary to the claim of Asiatrust, the total value of the subject chattels is Nine Million Four Hundred Thirty Five Thousand Pesos (P9,435,000.00) as they were first made as collateral for the credit

facility in the amount of Five Million Pesos, then later to the restructured loan in the amount of P4,508,145.87. Mitsuboshi likewise asserted that it had already paid a substantial sum to Asiatrust to cover the principal amount and interest on the loan but, because of the unconscionable penalty charges that it incurred, its outstanding loan was still pegged at P4,946,219.63, as indicated in the facsimile transmittal that it received from Asiatrust's employee, Jerome D. Lising.

Mitsuboshi further contended that it had exerted efforts towards a compromise with Asiatrust with respect to the payment of its outstanding obligation to avoid the necessity of a foreclosure proceeding but the latter opted to institute the instant action and, as a consequence, a writ of replevin had been issued by the trial court. According to Mitsuboshi, the careless removal of the subject chattels from Mitsuboshi's factory had severely depreciated the reasonable value of the four machineries.

On January 14, 2008, the auction sale of the four subject machineries was conducted wherein Asiatrust emerged as the lone and highest bidder.

On March 13, 2008, Mitsuboshi amended its Answer with Counterclaim[15], contending that there were irregularities in the auction sale which was conducted by the sheriff on January 14, 2008. By reason of the same, Mitsuboshi countered that it had already filed a Formal Protest[16] with the Office of the Ex Officio Sheriff of the RTC in Quezon City. Mitsuboshi insinuated that it had been deprived of the opportunity to participate in the extra-judicial foreclosure proceeding when Anthony Ngo and a friend who was willing to participate in the auction sale were led to believe that there was no auction sale to take place on January 14, 2008 at 9:00 o'clock in the morning inside the HMR Auction Center, considering that the Sheriff, who was supposed to conduct the auction sale, was nowhere to be found and that there were no other persons who were interested to participate therein aside from them. However, after Anthony Ngo and his friend left the premises, the foreclosure proceeding immediately took place and Asiatrust, which was the highest and only bidder, entered its bid at the measly amount of One Million Three Hundred Fifty Nine Thousand Pesos (P1,359,000.00) for the four plastic molding injection machines, an amount grossly lower than Asiatrust's declared appraised value for the machineries at Two Million Five Hundred Fifty Thousand Pesos (P2,550,000.00).

Mitsuboshi added that, despite its protest, persons who were not knowledgeable on how the subject machineries should be properly dismantled had caused the careless removal of the same. Since the required care in the dismantling of the subject machineries was not observed, Mitsuboshi contended that the same could only be sold as junks as they could no longer be restored to their original and working condition.

As counterclaim, Mitsuboshi sought for the declaration of the nullity of the auction sale of the subject machineries for failure to comply with the requirements as mandated by law. Mitsuboshi also prayed for the award of damages, attorney's fees and litigation expenses.

On the same date, or on March 13, 2008, a motion for leave of court to amend the complaint was filed by Asiatrust, wherein Anthony C. Ngo was impleaded as additional defendant for being a surety of defendant-appellee corporation[17]. The said motion for leave of court was granted and the amended complaint was admitted by the trial court on May 26, 2008[18].

Subsequently, an Answer to the Amended Complaint[19] was filed by Mitsuboshi on September 22, 2008. Meanwhile, Anthony C. Ngo filed his Answer with Counterclaim[20] on September 25, 2008 wherein he denied any liability on the ground that he executed the said surety agreement in his capacity as an officer of Mitsuboshi.

The trial court then set the case for pre-trial with the parties filing their respective Pre-Trial Briefs. During the pre-trial conference, the parties failed to reach an amicable settlement, hence, the trial court terminated the

pre-trial and set the case for trial. The parties then proceeded with the presentation of their respective evidences.

During the pendency of the case before the trial court, a Motion for Substitution of Party Plaintiff Asiatrust Development Bank, Inc. to Asia United Bank Corporation (“Asia United”) was filed and accordingly granted in an Order[21] which was issued by the trial court on August 17, 2012.

After the trial on the merits, the trial court rendered the assailed Decision dated August 5, 2013, pertinent portions of which are quoted herein as follows:

“The Court believes that the plaintiff is entitled to foreclose the chattel mortgage agreement pursuant to the conditions set forth in Section 7 thereof since the default is even supported by a final demand letter. Indeed, the Court is convinced that the acceleration clause of the contract is enforceable despite the partial payments made which the plaintiff admittedly accepted. These partial payments made do not extinguish the obligation and merely established the desire of the defendant to settle the obligation the best way it can.

“However, the Court seriously considered whether or not the manner by which the foreclosure proceedings was done has to be scrutinized because the machineries serving as security to pay the balance of the obligation are substantial in value and makes this Court believe that the same could have settled the total remaining balance and defendant Mitsuboshi could still recover something out of it. There is a need therefore to review who between the parties are entitled to the relief prayed for.

“The malpractices to alter the value of the machineries in the concealed bidding is not new and a matter of judicial notice. This Court is convinced that the failure of the plaintiff to present the Sheriff and its counsel Atty. Pacis that actively participated in the questioned foreclosure is fatal because the evidence adduced by the defendant Mitsuboshi in support of their compulsory counterclaim are indeed appreciable.

“The deficiency assessment being claimed by the plaintiff based on the Court’s observation of the evidence on record is without any factual and legal basis. While the plaintiff correctly invoked Section 14 of the Chattel Mortgage Law that the proceeds of the auction sale shall be applied to the payment first of the costs and expenses of keeping and sale and then to the payment of demand or obligation secured by such mortgage, still the regularity in the conduct of the auction sale must be strictly observed.

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“WHEREFORE, in the light of the foregoing, judgment is hereby rendered in favor of the defendants and against the plaintiff, by:

- (1) Dismissing the plaintiff's complaint against both defendants for lack of merit.
- (2) Ordering the plaintiff to pay the defendants the following:
 - (a) Moral damages of Three Million Pesos (Php3,000,000.00);
 - (b) Exemplary damages of One Million Pesos (Php1,000,000.00);
 - (c) Attorney's fees of Fifty Thousand Pesos (Php50,000.00) aside from the totality of the honorarium fee of Three Thousand Pesos (Php3,000.00) per court appearance as and for attorney's fees; and
 - (d) Pay the costs of suit.

“SO ORDERED.”

Aggrieved, Asia United filed this instant appeal raising the following errors which were committed by the lower court in its decision:

I.

THE COURT A QUO ERRED WHEN IT RENDERED A JUDGMENT DISMISSING THE PLAINTIFF-APPELLANT'S COMPLAINT AGAINST THE DEFENDANTS-APPELLEES FOR DEFICIENCY AMOUNT.

II.

THE COURT A QUO ERRED IN AWARDING DAMAGES TO DEFENDANTS-APPELLEES DESPITE THE ABSENCE OF ANY FACTUAL OR LEGAL BASIS IN SUPPORT OF THEIR COMPULSORY COUNTERCLAIM.

III.

THE COURT A QUO ERRED IN AWARDING DAMAGES IN FAVOR OF THE DEFENDANTS-APPELLEES WHICH ARE EXCESSIVE, UNREASONABLE AND NOT COMMENSURATE TO THE INJURY SUSTAINED BY THE LATTER.

IV.

THE COURT A QUO ERRED WHEN IT GRANTED ATTORNEY'S FEES IN FAVOR OF THE DEFENDANTS-APPELLEES THERE BEING NO FACTUAL OR LEGAL GROUND TO AWARD THE SAME.

In sum, the issues brought before this Court for resolution are, whether Asia United is entitled to recover from the defendants-appellees the deficiency amount arising from the extra-judicial foreclosure of the subject machineries and whether the award by the trial court of damages and attorney's fees in favor of the defendants-appellees was proper.

After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the appeal in this case to be meritorious.

Well-settled is the rule that, upon the default by a mortgagor in the payment of its indebtedness, the mortgagee has the right to the possession of the property mortgaged preparatory to its selling in a public auction. Section 14 of the Chattel Mortgage Law[22] provides, inter alia, that the mortgage, his executor, administrator, or assign, may, after thirty days from the time the condition is broken, shall cause the mortgaged property, or any part thereof, to be sold at public auction.

In the case of *Bachrach Motor Co. vs. Summers*[23], the Supreme Court held the right to the possession of mortgaged properties by the mortgagee/creditor to be unquestionable, however, if the debtor/mortgagor refuses to yield up the property, the creditor/mortgagee must institute an action, either to effect a judicial foreclosure directly, or to secure possession as a preliminary to the sale contemplated. A mortgagee/creditor cannot lawfully take the property by force against the will of the debtor/mortgagor. The only restriction on the mode by which the mortgagee shall secure possession of the mortgaged property after breach of condition is that he must act in an orderly manner and without creating a breach of the peace, subjecting himself to an action for trespass[24].

A fortiori, the complaint before the trial court is for delivery of personal property with a prayer for the issuance of a writ of replevin and for damages. A writ of replevin was, in fact, issued by the trial court and the four subject machineries had been subsequently sold at a public auction. Since the proceeds of the sale was insufficient to cover the entire obligation of Mitsuboshi, Asia United seeks for the recovery of the deficiency amount from Mitsuboshi, exclusive of interests and other charges.

In a replevin case, the Rules of Court expressly provides that:

“After trial of the issues, the court shall determine who has the right of possession to and the value of the

property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for its value in case delivery cannot be made, and also for such damages as either party may prove, with costs.”[25]

In the case at bench, it is undisputed that Mitsuboshi had defaulted in the payment of its loan to Asia United, formerly Asiatrust. The final demand letter[26] given by Asiatrust to Mitsuboshi on July 23, 2007 which informed the latter of its failure to pay its indebtedness further established the fact of such default in payment. Mitsuboshi even impliedly admitted the same by its act of negotiating for lower penalty charges and submitting proposals to Asiatrust with respect to the manner of payment of its outstanding obligation. On the basis of the stipulations as contained in the Chattel Mortgage[27] and the Supplemental Agreement to the Chattel Mortgage[28] executed by Mitsuboshi in favor of Asiatrust, Asia United, as the present mortgagee, has the right to the possession of the properties mortgaged preparatory to their being sold in a public auction. Sections 6 and 7 of the above-mentioned Chattel Mortgage which further buttress such right of Asia United in case of default are likewise cited herein for reference:

“Section 6. When Mortgagor is in Default – The Mortgagor is in default within the meaning and contemplation of this Mortgage without need for notice to or consent of the Mortgagor, or any other act or deed, in case the Borrower and/or the Mortgagor is in default under the provisions of the Agreement.

“Section 7. Effects of Default by Mortgagor – Default by the Mortgagor within the meaning and contemplation of Section 6 shall, without need for any notice or demand or any act or deed, all of which are hereby waived, have the same effects and entitle the Mortgagee to exercise the same remedies provided for in the Agreement, in addition to the following, all of which remedies shall be alternative, concurrent and cumulative unless prohibited by law:

a) The Mortgagee shall have the right to immediately foreclose on this Mortgage in accordance with Section 8 and shall have the rights, powers and remedies set forth in said Section; xxx”[29]

With respect to Asia United Bank's right to recover the deficiency from Mitsuboshi, there is no dispute that the proceeds of the extra-judicial foreclosure sale of the four subject machineries were insufficient to cover the entire obligation that Mitsuboshi owed to Asiatrust. Asia United asseverated that it had the right to collect from Mitsuboshi the remainder of its obligation after deducting the amount obtained from the extrajudicial foreclosure sale.

As already discussed, the properties of Mitsuboshi which were seized by virtue of the Writs of Replevin were extra-judicially foreclosed and sold at public auction by Asia United in the exercise of its absolute right under the contract entered into by the parties, without need of prior notice or demand to forthwith judicially or extra-judicially foreclose this mortgage. As mortgagee/creditor, it had the right to proceed against all or any of the mortgaged rights, interests and properties for the full satisfaction of the mortgagors' entire obligation to the mortgagee.

As a matter of course, since the proceeds of the sale of the four machineries were insufficient to cover the indebtedness of the defendants-appellees, Asia United is thus entitled to recover the deficiency amount from the latter. It is a settled jurisprudential teaching that, if the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of the mortgage, the mortgagee is entitled to claim the deficiency from the debtor. To deny the mortgagee the right to maintain an action to recover the deficiency after foreclosure of the chattel mortgage would be to overlook the fact that the chattel mortgage is only given as security and not as payment for the debt in case of failure of payment[30]. Accordingly, it has been held that a deficiency claim arising from the extrajudicial foreclosure is allowed[31].

The foregoing notwithstanding, Mitsuboshi averred that it was Asia United which had grossly undervalued the four subject machineries by setting their appraised value at P2,550,000.00, significantly lower than its acquired value which was at P9,435,000.00, thus, it (Mitsuboshi) cannot be held liable for the balance or deficiency especially because it was Asia United, through Asiatruster, which bought the properties at the foreclosure sale and had previously caused the careless implementation of the writ of replevin despite the warning given by Anthony Ngo as to the technical expertise needed in handling the subject machineries.

Having nonetheless examined the chattel mortgage document as part of the records, we are not convinced that the defendants-appellees effectively prove that the mortgaged properties had a market value of at least P9,000,000.00 on January 14, 2008, the date of the foreclosure sale. At best, the chattel mortgage contract only indicated that the required aggregate fair market value of all the mortgaged properties should be equal or at least 200% of the aggregate of all the outstanding secured obligations[32], but the same does not automatically constitute evidence of Mitsuboshi's compliance therewith. It is worthy to note that the Chattel Mortgage Agreement was executed as early as on November 27, 2000, hence, it is far from being an accurate estimate of the market value of the properties at the time of the foreclosure sale eight years thereafter. Considering the nature of the chattels, the daily wear and tear thereof would greatly contribute to the depreciation of its market value. Veritably, the execution by Anthony Ngo of a Continuing Suretyship Agreement to serve as additional security for Mitsuboshi's indebtedness further supports the presumption that the value of the mortgaged properties is insufficient to cover Mitsuboshi's existing indebtedness. Aside from the chattel mortgage contract and Ngo's self-serving declaration of the fair market value of the four injection pumps, no other evidence was adduced by the defendants-appellees before the trial court. Thus, it is clear that the chattel mortgage contract and Ngo's declaration as to the fair market value of the four machineries cannot suffice to substantiate the defendants-appellees' allegation of gross inadequacy of the bidding price.

In the same manner, the testimony of Jerome D. Lising, the Account Officer of Asiatruster Development Bank, cannot be used as sufficient basis for the determination of the fair market value of the four subject machineries since his basis for such valuation was the acceptance by the bank of the said chattels as security for Mitsuboshi's indebtedness[33].

Other than the mere inadequacy of the bid price at the auction sale, Mitsuboshi likewise alleged that there were irregularities in the foreclosure proceeding and that a better price could be had for its properties under the circumstances. According to Mitsuboshi, as contained in its Formal Protest[34] with with the Office of the Ex Officio Sheriff of the RTC in Quezon City, it had been deprived of the opportunity to participate in the extra-judicial foreclosure proceeding when, Anthony Ngo, together with a friend who was willing to bid for as high as Eight Million Pesos (P8,000,000.00), was led to believe that there was no auction sale to take place on January 14, 2008 at 9:00 o'clock in the morning, inside the HMR Auction Center, considering that the Sheriff who was supposed to conduct the auction sale was nowhere to be found and that there were no other persons interested to participate therein aside from them. However, after Ngo and his friend left the premises, the extra-judicial foreclosure sale immediately took place and the properties were awarded to Asiatruster, who was the only bidder.

A careful analysis of the circumstances which allegedly constituted the irregularities in the conduct of the auction sale would lead us to the conclusion that the defendants-appellees' own misgivings were what brought about their own predicament. First and foremost, there was no issue that they received the required notice with respect to the conduct of the auction sale. As a matter of fact, Ngo claimed that he, together with a prospective bidder, was at the place of the auction, particularly at the HMR Auction Center, on January 14, 2008 at 9:00 o'clock in the morning. Ngo averred that, because the sheriff was not there and that there was no other bidder, he presumed that

no actual auction sale would take place so they left the place.

To our mind, the claim of the defendants-appellees that they were deprived of the opportunity to participate in the auction sale was totally unsubstantiated and self-serving. As clearly admitted by the defendants-appellees in their Amended Answer, they were of the “impression” that the auction sale would not push through and that the same would just be re-scheduled to another date[35]. The defendants-appellees' basis for such conclusion was because of the absence of the sheriff and other bidders at the designated time and place of the auction sale. However, their act of leaving the auction place at 10:00 o'clock in the morning without any formal advice from the officiating officer or from the trial court that the auction sale was canceled was done at their own risk. As further admitted by the defendants-appellees, the auction sale immediately took place after they left which could be safely estimated at 10:00 o'clock in the morning. We are of the opinion that the one hour delay in the conduct of the public auction could not be construed as an irregularity which could be a ground to annul the foreclosure sale, considering that there was compliance with the mandatory notice requirement as to the schedule of the auction sale and that the auction sale was still conducted on the same day, albeit, a little bit late. There could also be no deprivation of the opportunity to participate in the auction sale as the same was opened to willing bidders since there was no allegation that the defendants-appellees were prevented from entering the auction site.

From the foregoing, the defendants-appellees' evidence leave us with no choice but to uphold the presumption of regularity in the conduct of the auction sale.

We likewise cannot hold the plaintiff-appellant liable for the depreciation of the value of the four machineries by reason of the mishandling of the same. It is important to note that the duty of implementing the writ of replevin lies with the sheriff and not with herein plaintiff-appellant bank.

With respect to the award of damages in favor of defendants-appellees, the law clearly states that one may only recover moral damages if they are the proximate result of the other party's wrongful act or omission[36]. Two elements are required to be entitled to the award of moral damages. First, the act or omission must be the proximate result of the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Second, the act must be wrongful[37].

According to the defendants-appellees, Mitsuboshi's good name had been destroyed when it was dragged into litigation and was deprived of the opportunity to operate. However, that could have been avoided had Mitsuboshi been faithful and prompt in paying its indebtedness with Asia United. It was the defendants-appellees which brought the situation upon themselves, thus, they cannot now complain that Asia United is liable for the besmirched reputation of defendant-appellee corporation, as well as the humiliation, wounded feelings and sleepless nights suffered by Ngo.

Furthermore, when Asia United filed the complaint, it did so only to exercise a legal right, believing that it had a meritorious cause of action clearly borne out by a mere perusal of the loan agreement and chattel mortgage. To constitute malicious prosecution, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person and that it was initiated deliberately, knowing that the charges were false and groundless[38]. Such was not the case when the instant complaint was filed. The rule has always been that moral damages cannot be recovered from a person who has filed a complaint against another in good faith[39]. The law always presumes good faith such that any person who seeks to be awarded damages due to acts of another has the burden of proving that the latter acted in bad faith or with ill motive[40].

The award of exemplary damages to defendants-appellees has likewise no factual basis. It is a requisite that the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner[41], circumstances which are wanting in this case. In addition, exemplary damages cannot be awarded as the requisite element of

compensatory damages was not present[42].

As to the award of attorney's fees in favor of the defendants-appellees, it should be noted that the right to litigate should not be penalized by holding the plaintiff liable for damages[43]. This is especially true when the filing of the case is to enforce what the plaintiff believes to be its rightful claim against another[44]. In this case, Asia United precisely instituted the replevin case against defendants-appellees based on the latter's own challenge to the former when, despite Mitsuboshi's default in the payment of its indebtedness, it still refused to surrender possession over the chattels which were used as collateral for the loan. When Asia United did sue defendants-appellees, it cannot be said that the institution of the replevin suit was tainted with gross and evident bad faith or was done maliciously to harass, embarrass, annoy or ridicule the defendants-appellees.

On the other hand, since the Loan Agreement carried a stipulation for attorney's fees at the rate of 20% of the sum sought to be recovered which, in no case, shall be less than Twenty Thousand Pesos (P20,000.00)[45], the award of the same to plaintiff-appellant bank is warranted. Strictly speaking, this covenant on attorney's fees is different from that mentioned in and regulated by the Rules of Court[46]. Rather, the attorney's fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause[47]. Under the foregoing circumstances, the award of the same in favor of Asia United Bank is in order.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the appeal that was filed by plaintiff-appellant Asia United Bank Corporation. The Decision dated August 5, 2013 rendered by Branch 96 of the Regional Trial Court in Quezon City in Civil Case No. Q-07-61650 is hereby REVERSED and SET ASIDE and, in lieu thereof, a new one is hereby rendered DECLARING as valid the foreclosure sale of machineries conducted by the sheriff of the RTC in Quezon City on January 14, 2008 and confirming the acquisition of said machineries by the plaintiff-appellant as highest bidder thereof to be in order, ORDERING the defendants-appellees Mitsuboshi Appliance Corporation and Anthony C. Ngo to pay, jointly and severally, to plaintiff-appellant Asia United Bank Corporation the total amount of Two Million Eight Hundred Seventy Seven Thousand Nine Hundred Eighty Seven and 42/100 Pesos (P2,877,987.42), plus accrued stipulated interest and penalty charge, representing the deficiency amount owing to the plaintiff-appellant. Said amount shall bear interest at 6% per annum reckoned from the finality of this decision until the satisfaction thereof and ORDERING the defendants-appellees to pay to the plaintiff-appellant attorney's fee equivalent to twenty percent (20%) of the amount recoverable from the former, with interest thereon at the rate of six percent (6%) per annum to be reckoned from the finality of this decision until the same shall have been fully paid.

SO ORDERED.

Ybañez, and Paredes, JJ., concur.

[1] Record, Civil Case No. Q-07-61650, Volume II, pp. 101-112.

[2] Ibid, pp. 7-10.

[3] Ibid, pp. 17-20.

[4] Ibid, pp. 11-14.

[5] Ibid, p. 320.

[6] Ibid, pp. 21-22.

[7] Ibid, p. 23.

- [8] Ibid, p. 24.
- [9] Ibid, pp. 1-6.
- [10] Ibid, pp. 5-6.
- [11] Ibid, Order, pp. 30-32.
- [12] Ibid, pp. 33-37.
- [13] Ibid, Writ of Replevin, pp. 84-85.
- [14] Ibid, pp. 40-44.
- [15] Ibid, pp. 74-84.
- [16] Ibid, pp. 90-91.
- [17] Ibid, pp. 104-110.
- [18] Ibid, Order, p. 152.
- [19] Ibid, pp. 184-200.
- [20] Ibid, pp. 217-223.
- [21] Ibid, Order, p. 562.
- [22] Act No. 1508, as amended.
- [23] 42 Phil. 3. See also Papa vs. Banaag, 31 Aug. 1966, 17 SCRA 1083.
- [24] Citing 11 C.J. 560-15 R.C.L. 462.
- [25] Section 9, Rule 60 of the Revised Rules of Court.
- [26] Record, p. 24.
- [27] Ibid, pp. 17-20.
- [28] Ibid, pp. 21-22.
- [29] Record, p. 18.
- [30] Bank of the Philippine Islands vs. Olutanga Lumber Co., 47 Phil. 20 ; Manila Trading & Supply Co. vs. Tamaraw Plantation Co., 47 Phil. 513 .
- [31] PNB v. Court of Appeals, 308 SCRA 229 (1999).
- [32] Record, Section 3 of the Chattel Mortgage, p. 17.
- [33] TSN, June 16, 2011, p. 4.
- [34] Ibid, pp. 90-91.
- [35] Record, Amended Answer with Counterclaim, p. 189.
- [36] New Civil Code, Art. 2217.
- [37] Ibid.

- [38] Drilon, et al. v. Court of Appeals, et al., 270 SCRA 211 (1997).
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- [42] Ibid.
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