

**DANILO D. MENDOZA, ALSO DOING BUSINESS UNDER THE NAME AND STYLE OF ATLANTIC EXCHANGE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS, PHILIPPINE NATIONAL BANK, FERNANDO MARAMAG, J...**

*G.R. No. 116710. June 25, 2001*

Ponente: DE LEON, JR., J.

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**DE LEON, JR., J.:**

Before us is a petition for review on certiorari of the Decision[1] dated August 8, 1994 of the respondent Court of Appeals (Tenth Division) in CA-G.R. CV No. 38036 reversing the judgment[2] of the Regional Trial Court (RTC) and dismissing the complaint therein.

Petitioner Danilo D. Mendoza is engaged in the domestic and international trading of raw materials and chemicals. He operates under the business name Atlantic Exchange Philippines (Atlantic), a single proprietorship registered with the Department of Trade and Industry (DTI). Sometime in 1978 he was granted by respondent Philippine National Bank (PNB) a Five Hundred Thousand Pesos (P500,000.00) credit line and a One Million Pesos (P1,000,000.00) Letter of Credit/Trust Receipt (LC/TR) line.

As security for the credit accommodations and for those which may thereafter be granted, petitioner mortgaged to respondent PNB the following: 1) three (3) parcels of land[3] with improvements in F. Pasco Avenue, Santolan, Pasig; 2) his house and lot in Quezon City; and 3) several pieces of machinery and equipment in his Pasig coco-chemical plant.

The real estate mortgage[4] provided the following escalation clause:

(f) The rate of interest charged on the obligation secured by this mortgage as well as the interest on the amount which may have been advanced by the Mortgagee in accordance with paragraph (d) of the conditions herein stipulated shall be subject during the life of this contract to such increase within the rates allowed by law, as the Board of Directors of the Mortgagee may prescribe for its debtors.

Petitioner executed in favor of respondent PNB three (3) promissory notes covering the Five Hundred Thousand Pesos (P500,000.00) credit line, one dated March 8, 1979 for Three Hundred Ten Thousand Pesos (P310,000.00); another dated March 30, 1979 for Forty Thousand Pesos (P40,000.00); and the last dated September 27, 1979 for One Hundred Fifty Thousand Pesos (P150,000.00). The said 1979 promissory notes uniformly stipulated: "with interest thereon at the rate of 12% per annum, until paid, which interest rate the Bank may, at any time, without notice, raise within the limits allowed by law xxx." [5]

Petitioner made use of his LC/TR line to purchase raw materials from foreign importers. He signed a total of eleven (11) documents denominated as "Application and Agreement for Commercial Letter of Credit," [6] on various dates from February 8 to September 11, 1979, which uniformly contained the following clause: "Interest shall be at the rate of 9% per annum from the date(s) of the draft(s) to the date(s) of arrival of payment therefor in

New York. The Bank, however, reserves the right to raise the interest charges at any time depending on whatever policy it may follow in the future."[7]

In a letter dated January 3, 1980 and signed by Branch Manager Fil S. Carreon Jr., respondent PNB advised petitioner Mendoza that effective December 1, 1979, the bank raised its interest rates to 14% per annum, in line with Central Bank's Monetary Board Resolution No. 2126 dated November 29, 1979.

On March 9, 1981, he wrote a letter to respondent PNB requesting for the restructuring of his past due accounts into a five-year term loan and for an additional LC/TR line of Two Million Pesos (P2,000,000.00).[8] According to the letter, because of the shut-down of his end-user companies and the huge amount spent for the expansion of his business, petitioner failed to pay to respondent bank his LC/TR accounts as they became due and demandable.

Ceferino D. Cura, Branch Manager of PNB Mandaluyong replied on behalf of the respondent bank and required petitioner to submit the following documents before the bank would act on his request: 1) Audited Financial Statements for 1979 and 1980; 2) Projected cash flow (cash in - cash out) for five (5) years detailed yearly; and 3) List of additional machinery and equipment and proof of ownership thereof. Cura also suggested that petitioner reduce his total loan obligations to Three Million Pesos (P3,000,000.00) "to give us more justification in recommending a plan of payment or restructuring of your accounts to higher authorities of the Bank." [9]

On September 25, 1981, petitioner sent another letter addressed to PNB Vice-President Jose Salvador, regarding his request for restructuring of his loans. He offered respondent PNB the following proposals: 1) the disposal of some of the mortgaged properties, more particularly, his house and lot and a vacant lot in order to pay the overdue trust receipts; 2) capitalization and conversion of the balance into a 5-year term loan payable semi-annually or on annual installments; 3) a new Two Million Pesos (P2,000,000.00) LC/TR line in order to enable Atlantic Exchange Philippines to operate at full capacity; 4) assignment of all his receivables to PNB from all domestic and export sales generated by the LC/TR line; and 5) maintenance of the existing Five Hundred Thousand Pesos (P500,000.00) credit line.

The petitioner testified that respondent PNB Mandaluyong Branch found his proposal favorable and recommended the implementation of the agreement. However, Fernando Maramag, PNB Executive Vice-President, disapproved the proposed release of the mortgaged properties and reduced the proposed new LC/TR line to One Million Pesos (P1,000,000.00).[10] Petitioner claimed he was forced to agree to these changes and that he was required to submit a new formal proposal and to sign two (2) blank promissory notes.

In a letter dated July 2, 1982, petitioner offered the following revised proposals to respondent bank: 1) the restructuring of past due accounts including interests and penalties into a 5-year term loan, payable semi-annually with one year grace period on the principal; 2) payment of Four Hundred Thousand Pesos (P400,000.00) upon the approval of the proposal; 3) reduction of penalty from 3% to 1%; 4) capitalization of the interest component with interest rate at 16% per annum; 5) establishment of a One Million Pesos (P1,000,000.00) LC/TR line against the mortgaged properties; 6) assignment of all his export proceeds to respondent bank to guarantee payment of his loans.

According to petitioner, respondent PNB approved his proposal. He further claimed that he and his wife were asked to sign two (2) blank promissory note forms. According to petitioner, they were made to believe that the blank promissory notes were to be filled out by respondent PNB to conform with the 5-year restructuring plan allegedly agreed upon. The first Promissory Note,[11] No. 127/82, covered the principal while the second Promissory Note,[12] No. 128/82, represented the accrued interest.

Petitioner testified that respondent PNB allegedly contravened their verbal agreement by 1) affixing dates on the

two (2) subject promissory notes to make them mature in two (2) years instead of five (5) years as supposedly agreed upon; 2) inserting in the first Promissory Note No. 127/82 an interest rate of 21% instead of 18%; 3) inserting in the second Promissory Note No. 128/82, the amount stated therein representing the accrued interest as One Million Five Hundred Thirty Six Thousand Four Hundred Ninety Eight Pesos and Seventy Three Centavos (P1,536,498.73) when it should only be Seven Hundred Sixty Thousand Three Hundred Ninety Eight Pesos and Twenty Three Centavos (P760,398.23) and pegging the interest rate thereon at 18% instead of 12%.

The subject Promissory Notes Nos. 127/82 and 128/82 both dated December 29, 1982 in the principal amounts of Two Million Six Hundred Fifty One Thousand One Hundred Eighteen Pesos and Eighty Six Centavos (P2,651,118.86) and One Million Five Hundred Thirty Six Thousand Seven Hundred Ninety Eight and Seventy Three Centavos (P1,536,798.73) respectively and marked Exhibits "BB" and "CC" respectively, were payable on equal semi-annual amortization and contained the following escalation clause:

x x x which interest rate the BANK may increase within the limits allowed by law at any time depending on whatever policy it may adopt in the future; Provided, that, the interest rate on this note shall be correspondingly decreased in the event that the applicable maximum interest rate is reduced by law or by the Monetary Board. In either case, the adjustment in the interest rate agreed upon shall take effect on the effectivity date of the increase or decrease in the maximum interest rate. x x x

It appears from the record that the subject Promissory Notes Nos. 127/82 and 128/82 superseded and novated the three (3) 1979 promissory notes and the eleven (11) 1979 "Application and Agreement for Commercial Letter of Credit" which the petitioner executed in favor of respondent PNB.

According to the petitioner, sometime in June 1983 the new PNB Mandaluyong Branch Manager Bayani A. Bautista suggested that he sell the coco-chemical plant so that he could keep up with the semi-annual amortizations. On three (3) occasions, Bautista even showed up at the plant with some unidentified persons who claimed that they were interested in buying the plant.

Petitioner testified that when he confronted the PNB management about the two (2) Promissory Notes Nos. 127/82 and 128/82 (marked Exhibits "BB" and "CC" respectively) which he claimed were improperly filled out, Bautista and Maramag assured him that the five-year restructuring agreement would be implemented on the condition that he assigns 10% of his export earnings to the Bank.[13] In a letter dated August 22, 1983, petitioner Mendoza consented to assign 10% of the net export proceeds of a Letter of Credit covering goods amounting to One Hundred Fourteen Thousand Dollars (\$114,000.00).[14] However, petitioner claimed that respondent PNB subsequently debited 14% instead of 10% from his export proceeds.[15]

Pursuant to the escalation clauses of the subject two (2) promissory notes, the interest rate on the principal amount in Promissory Note No. 127/82 was increased from 21% to 29% on May 28, 1984, and to 32% on July 3, 1984 while the interest rate on the accrued interest per Promissory Note No. 128/82 was increased from 18% to 29% on May 28, 1984, and to 32% on July 3, 1984.

Petitioner failed to pay the subject two (2) Promissory Notes Nos. 127/82 and 128/82 (Exhibits "BB" and "CC") as they fell due. Respondent PNB extra-judicially foreclosed the real and chattel mortgages, and the mortgaged properties were sold at public auction to respondent PNB, as highest bidder, for a total of Three Million Seven Hundred Ninety Eight Thousand Seven Hundred Nineteen Pesos and Fifty Centavos (P3,798,719.50).

The petitioner filed in the RTC in Pasig, Rizal a complaint for specific performance, nullification of the extra-judicial foreclosure and damages against respondents PNB, Fernando Maramag Jr., Ricardo C. Decepida, Vice-President for Metropolitan Branches, and Bayani A. Bautista. He alleged that the Extrajudicial Foreclosure Sale of the mortgaged properties was null and void since his loans were restructured to a five-year term loan;

hence, it was not yet due and demandable; that the escalation clauses in the subject two (2) Promissory Notes Nos. 127/82 and 128/82 were null and void, that the total amount presented by PNB as basis of the foreclosure sale did not reflect the actual loan obligations of the plaintiff to PNB; that Bautista purposely delayed payments on his exports and caused delays in the shipment of materials; that PNB withheld certain personal properties not covered by the chattel mortgage; and that the foreclosure of his mortgages was premature so that he was unable to service his foreign clients, resulting in actual damages amounting to Two Million Four Thousand Four Hundred Sixty One Pesos (P2,004,461.00).

On March 16, 1992, the trial court rendered judgment in favor of the petitioner and ordered the nullification of the extrajudicial foreclosure of the real estate mortgage, the Sheriff's sale of the mortgaged real properties by virtue of consolidation thereof and the cancellation of the new titles issued to PNB; that PNB vacate the subject premises in Pasig and turn the same over to the petitioner; and also the nullification of the extrajudicial foreclosure and sheriff's sale of the mortgaged chattels, and that the chattels be returned to petitioner Mendoza if they were removed from his Pasig premises or be paid for if they were lost or rendered unserviceable.

The trial court also ordered respondent PNB to restructure to five-years petitioner's principal loan of Two Million Six Hundred Fifty One Thousand One Hundred Eighteen Pesos and Eighty Six Centavos (P2,651,118.86) and the accumulated capitalized interest on the same in the amount of Seven Hundred Sixty Thousand Three Hundred Eighty Nine Pesos and Twenty Three Centavos (P760,389.23) as of December 1982, and that respondent PNB should compute the additional interest from January 1983 up to October 15, 1984 only when respondent PNB took possession of the said properties, at the rate of 12% and 9% respectively.

The trial court also ordered respondent PNB to grant petitioner Mendoza an additional Two Million Pesos (P2,000,000.00) loan in order for him to have the necessary capital to resume operation. It also ordered respondents PNB, Bayani A. Bautista and Ricardo C. Decepida to pay to petitioner actual damages in the amount of Two Million One Hundred Thirteen Thousand Nine Hundred Sixty One Pesos (P2,113,961.00) and the peso equivalent of Six Thousand Two Hundred Fifteen Dollars (\$6,215.00) at the prevailing foreign exchange rate on October 11, 1983; and exemplary damages in the amount of Two Hundred Thousand Pesos (P200,000.00).

Respondent PNB appealed this decision of the trial court to the Court of Appeals. And the Court of Appeals reversed the decision of the trial court and dismissed the complaint. Hence, this petition.

It is the petitioner's contention that the PNB management restructured his existing loan obligations to a five-year term loan and granted him another Two Million Pesos (P2,000,000.00) LC/TR line; that the Promissory Notes Nos. 127/82 and 128/82 evidencing a 2-year restructuring period or with the due maturity date "December 29, 1984" were filled out fraudulently by respondent PNB, and contrary to his verbal agreement with respondent PNB; hence, his indebtedness to respondent PNB was not yet due and the extrajudicial foreclosure of his real estate and chattel mortgages was premature. On the other hand, respondent PNB denies that petitioner's loan obligations were restructured to five (5) years and maintains that the subject two (2) Promissory Notes Nos. 127/82 and 128/82 were filled out regularly and became due as of December 29, 1984 as shown on the face thereof.

Respondent Court of Appeals held that there is no evidence of a promise from respondent PNB, admittedly a banking corporation, that it had accepted the proposals of the petitioner to have a five-year restructuring of his overdue loan obligations. It found and held, on the basis of the evidence adduced, that "appellee's (Mendoza) communications were mere proposals while the bank's responses were not categorical that the appellee's request had been favorably accepted by the bank."

Contending that respondent PNB had allegedly approved his proposed five-year restructuring plan, petitioner

presented three (3) documents executed by respondent PNB officials. The first document is a letter dated March 16, 1981 addressed to the petitioner and signed by Ceferino D. Cura, Branch Manager of PNB Mandaluyong, which states:

x x x In order to study intelligently the feasibility of your above request, please submit the following documents/papers within thirty (30) days from the date thereof, viz:

- Audited Financial Statements for 1979 and 1980;
- Projected cash flow (cash in - cash out) for five years detailed yearly; and
- List of additional machinery and equipment and proof of ownership thereof.

We would strongly suggest, however, that you reduce your total obligations to at least P3 million (principal and interest and other charges) to give us more justification in recommending a plan of payment or restructuring of your accounts to higher authorities of this bank.

The second document is a letter dated May 11, 1981 addressed to Mr. S. Pe Benito, Jr., Managing Director of the Technological Resources Center and signed by said PNB Branch Manager, Ceferino D. Cura. According to petitioner, this letter showed that respondent PNB seriously considered the restructuring of his loan obligations to a five-year term loan, to wit:

x x x

At the request of our client, we would like to furnish you with the following information pertinent to his accounts with us:

x x x

We are currently evaluating the proposal of the client to re-structure his accounts with us into a five-year plan.

We hope that the above information will guide you in evaluating the proposals of Mr. Danilo Mendoza.

x x x

The third document is a letter dated July 8, 1981 addressed to petitioner and signed by PNB Assistant Vice-President Apolonio B. Francisco.

x x x

Considering that your accounts/accommodations were granted and carried in the books of our Mandaluyong Branch, we would suggest that your requests and proposals be directed to Ceferino Cura, Manager of our said Branch.

We feel certain that Mr. Cura will be pleased to discuss matters of mutual interest with you.

x x x

Petitioner also presented a letter which he addressed to Mr. Jose Salvador, Vice-President of the Metropolitan Branches of PNB, dated September 24, 1981, which reads:

Re: Restructuring of our Account into a 5-year Term Loan and Request for the Establishment of a P2.0 Million LC/TR Line

Dear Sir:

In compliance with our discussion last September 17, we would like to formalize our proposal to support our

above requested assistance from the Philippine National Bank.

x x x

Again we wish to express our sincere appreciation for your open-minded approach towards the solution of this problem which we know and will be beneficial and to the best interest of the bank and mutually advantageous to your client.

x x x

Petitioner argues that he submitted the requirements according to the instructions given to him and that upon submission thereof, his proposed five-year restructuring plan was deemed automatically approved by respondent PNB.

We disagree.

Nowhere in those letters is there a categorical statement that respondent PNB had approved the petitioner's proposed five-year restructuring plan. It is stretching the imagination to construe them as evidence that his proposed five-year restructuring plan has been approved by the respondent PNB which is admittedly a banking corporation. Only an absolute and unqualified acceptance of a definite offer manifests the consent necessary to perfect a contract.[16] If anything, those correspondences only prove that the parties had not gone beyond the preparation stage, which is the period from the start of the negotiations until the moment just before the agreement of the parties.[17]

There is nothing in the record that even suggests that respondent PNB assented to the alleged five-year restructure of petitioner's overdue loan obligations to PNB. However, the trial court ruled in favor of petitioner Mendoza, holding that since petitioner has complied with the conditions of the alleged oral contract, the latter may not renege on its obligation to honor the five-year restructuring period, under the rule of promissory estoppel. Citing *Ramos v. Central Bank*,[18] the trial court said:

The broad general rule to the effect that a promise to do or not to do something in the future does not work an estoppel must be qualified, since there are numerous cases in which an estoppel has been predicated on promises or assurances as to future conduct. The doctrine of 'promissory estoppel' is by no means new, although the name has been adopted only in comparatively recent years. According to that doctrine, an estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice. In this respect, the reliance by the promisee is generally evidenced by action or forbearance on his part, and the idea has been expressed that such action or forbearance would reasonably have been expected by the promisor. xxx

The doctrine of promissory estoppel is an exception to the general rule that a promise of future conduct does not constitute an estoppel. In some jurisdictions, in order to make out a claim of promissory estoppel, a party bears the burden of establishing the following elements: (1) a promise reasonably expected to induce action or forbearance; (2) such promise did in fact induce such action or forbearance, and (3) the party suffered detriment as a result.[19]

It is clear from the forgoing that the doctrine of promissory estoppel presupposes the existence of a promise on the part of one against whom estoppel is claimed. The promise must be plain and unambiguous and sufficiently specific so that the Judiciary can understand the obligation assumed and enforce the promise according to its terms.[20] For petitioner to claim that respondent PNB is estopped to deny the five-year restructuring plan, he must first prove that respondent PNB had promised to approve the plan in exchange for the submission of the

proposal. As discussed earlier, no such promise was proven, therefore, the doctrine does not apply to the case at bar. A cause of action for promissory estoppel does not lie where an alleged oral promise was conditional, so that reliance upon it was not reasonable.[21] It does not operate to create liability where it does not otherwise exist.[22]

Since there is no basis to rule that petitioner's overdue loan obligations were restructured to mature in a period of five (5) years, we see no other option but to respect the two-year period as contained in the two (2) subject Promissory Notes Nos. 127/82 and 128/82, marked as Exhibits "BB" and "CC" respectively which superseded and novated all prior loan documents signed by petitioner in favor of respondent PNB. Petitioner argues, in his memorandum, that "respondent Court of Appeals had no basis in saying that the acceptance of the five-year restructuring is totally absent from the record." [23] On the contrary, the subject Promissory Notes Nos. 127/82 and 128/82 are clear on their face that they were due on December 29, 1984 or two (2) years from the date of the signing of the said notes on December 29, 1982.

Petitioner claims that the two (2) subject Promissory Notes Nos. 127/82 and 128/82 were signed by him in blank with the understanding that they were to be subsequently filled out to conform with his alleged oral agreements with PNB officials, among which is that they were to become due only after five (5) years. If petitioner were to be believed, the PNB officials concerned committed a fraudulent act in filling out the subject two (2) promissory notes in question. Private transactions are presumed to be fair and regular.[24] The burden of presenting evidence to overcome this presumption falls upon petitioner. Considering that petitioner imputes a serious act of fraud on respondent PNB, which is a banking corporation, this court will not be satisfied with anything but the most convincing evidence. However, apart from petitioner's self-serving verbal declarations, we find no sufficient proof that the subject two (2) Promissory Notes Nos. 127/82 and 128/82 were completed irregularly. Therefore, we rule that the presumption has not been rebutted.

Besides, it could be gleaned from the record that the petitioner is an astute businessman who took care to reduce in writing his business proposals to the respondent bank. It is unthinkable that the same person would commit the careless mistake of leaving his subject two (2) promissory notes in blank in the hands of other persons. As the respondent Court of Appeals correctly pointed out:

Surely, plaintiff-appellee who is a C.P.A and a Tax Consultant (p. 3 TSN, January 9, 1990) will insist that the details of the two promissory notes he and his wife executed in 1982 should be specific to enable them to make the precise computation in the event of default as in the case at bench. In fact, his alleged omission as a C.P.A. and a Tax Consultant to insist that the two promissory notes be filled up on important details like the rates of interest is inconsistent with the legal presumption of a person who takes ordinary care of his concerns (Section 3 (c), Rule 131, Revised Rules on Evidence).

As pointed out by the Court of Appeals, Orlando Montecillo, Chief, Loans and Discounts, PNB Mandaluyong Branch, testified that the said Promissory Notes Nos. 127/82 and 128/82 were completely filled out when Danilo Mendoza signed them (Rollo, p. 14).

In a last-ditch effort to save his five-year loan restructuring theory, petitioner contends that respondent PNB's action of withholding 10% from his export proceeds is proof that his proposal had been accepted and the contract had been partially executed. He claims that he would not have consented to the additional burden if there were no corresponding benefit. This contention is not well taken. There is no credible proof that the 10% assignment of his export proceeds was not part of the conditions of the two-year restructuring deal. Considering that the resulting amount obtained from this assignment of export proceeds was not even enough to cover the interest for the corresponding month,[25] we are hard-pressed to construe it as the required proof that respondent PNB allegedly approved the proposed five-year restructuring of petitioner's overdue loan obligations.

It is interesting to note that in his Complaint, petitioner made no mention that the assignment of his export proceeds was a condition for the alleged approval of his proposed five-year loan restructuring plan. The Complaint merely alleged that "plaintiff in a sincere effort to make payments on his obligations agreed to assign 10% of his export proceeds to defendant PNB." This curious omission leads the court to believe that the alleged link between the petitioner's assignment of export proceeds and the alleged five-year restructuring of his overdue loans was more contrived than real.

It appears that respondent bank increased the interest rates on the two (2) subject Promissory Notes Nos. 127/82 and 128/82 without the prior consent of the petitioner. The petitioner did not agree to the increase in the stipulated interest rate of 21% per annum on Promissory Note No. 127/82 and 18% per annum on Promissory Note No. 128/82. As held in several cases, the unilateral determination and imposition of increased interest rates by respondent bank is violative of the principle of mutuality of contracts ordained in Article 1308 of the Civil Code.[26] As held in one case:[27]

It is basic that there can be no contract in the true sense in the absence of the element of agreement, or of mutual assent of the parties. If this assent is wanting on the part of one who contracts, his act has no more efficacy than if it had been done under duress or by a person of unsound mind.

Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, it cannot be gainsaid that the rate of interest is always a vital component, for it can make or break a capital venture.

It has been held that no one receiving a proposal to change a contract to which he is a party is obliged to answer the proposal, and his silence per se cannot be construed as an acceptance.[28] Estoppel will not lie against the petitioner regarding the increase in the stipulated interest on the subject Promissory Notes Nos. 127/82 and 128/82 inasmuch as he was not even informed beforehand by respondent bank of the change in the stipulated interest rates. However, we also note that the said two (2) subject Promissory Notes Nos. 127/82 and 128/82 expressly provide for a penalty charge of 3% per annum to be imposed on any unpaid amount when due.

Petitioner prays for the release of some of his movables[29] being withheld by respondent PNB, alleging that they were not included among the chattels he mortgaged to respondent bank. However, petitioner did not present any proof as to when he acquired the subject movables and hence, we are not disposed to believe that the same were "after-acquired" chattels not covered by the chattel and real estate mortgages.

In asserting its rights over the subject movables, respondent PNB relies on a common provision in the two (2) subject Promissory Notes Nos. 127/82 and 128/82 which states:

In the event that this note is not paid at maturity or when the same becomes due under any of the provisions hereof, we hereby authorized the BANK at its option and without notice, to apply to the payment of this note, any and all moneys, securities and things of value which may be in its hands on deposit or otherwise belonging to me/us and for this purpose. We hereby, jointly and severally, irrevocably constitute and appoint the BANK to be our true Attorney-in-Fact with full power and authority for us in our name and behalf and without prior notice to negotiate, sell and transfer any moneys securities and things of value which it may hold, by public or private sale and apply the proceeds thereof to the payment of this note.

It is clear, however, from the above-quoted provision of the said promissory notes that respondent bank is authorized, in case of default, to sell "things of value" belonging to the mortgagor "which may be on its hands for deposit or otherwise belonging to me/us and for this purpose." Besides the petitioner executed not only a chattel mortgage but also a real estate mortgage to secure his loan obligations to respondent bank.

A stipulation in the mortgage, extending its scope and effect to after-acquired property is valid and binding where the after-acquired property is in renewal of, or in substitution for, goods on hand when the mortgage was executed, or is purchased with the proceeds of the sale of such goods.[30] As earlier pointed out, the petitioner did not present any proof as to when the subject movables were acquired.

More importantly, respondent bank makes a valid argument for the retention of the subject movables. Respondent PNB asserts that those movables were in fact "immovables by destination" under Art. 415 (5) of the Civil Code.[31] It is an established rule that a mortgage constituted on an immovable includes not only the land but also the buildings, machinery and accessories installed at the time the mortgage was constituted as well as the buildings, machinery and accessories belonging to the mortgagor, installed after the constitution thereof.[32]

Petitioner also contends that respondent PNB's bid prices for this foreclosed properties in the total amount of Three Million Seven Hundred Ninety Eight Thousand Seven Hundred Nineteen Pesos and Fifty Centavos (P3,798,719.50), were allegedly "unconscionable and shocking to the conscience of men". He claims that the fair market appraisal of his foreclosed plant site together with the improvements thereon located in Pasig, Metro Manila amounted to Five Million Four Hundred Forty One Thousand Six Hundred Fifty Pesos (P5,441,650.00) while that of his house and lot in Quezon City amounted to Seven Hundred Twenty Two Thousand Pesos (P722,000.00) per the appraisal report dated September 20, 1990 of Cuervo Appraisers, Inc.[33] That contention is not well taken considering that:

- The total of the principal amounts alone of petitioner's subject Promissory Notes Nos. 127/82 and 128/82 which are both overdue amounted to Four Million One Hundred Eighty Seven Thousand Nine Hundred Seventeen Pesos and Fifty Nine Centavos (P4,187,917.59).
- While the appraisal of Cuervo Appraisers, Inc. was undertaken in September 1990, the extrajudicial foreclosure of petitioner's real estate and chattel mortgages have been effected way back on October 15, 1984, October 23, 1984 and December 21, 1984.[34] Common experience shows that real estate values especially in Metro Manila tend to go upward due to developments in the locality.
- In the public auction/foreclosure sales, respondent PNB, as mortgagee, was not obliged to bid more than its claims or more than the amount of petitioner's loan obligations which are all overdue. The foreclosed real estate and chattel mortgages which petitioner earlier executed are accessory contracts covering the collaterals or security of his loans with respondent PNB. The principal contracts are the Promissory Notes Nos. 127/82 and 128/82 which superseded and novated the 1979 promissory notes and the 1979 eleven (11) Applications and Agreements for Commercial Letter of Credit.

Finally, the record shows that petitioner did not even attempt to tender any redemption price to respondent PNB, as highest bidder of the said foreclosed real estate properties, during the one-year redemption period.

In view of all the foregoing, it is our view and we hold that the extrajudicial foreclosure of petitioner's real estate and chattel mortgages was not premature and that it was in fact legal and valid.

WHEREFORE, the petition is hereby DENIED. The challenged Decision of the Court of Appeals in CA-G.R. CV No. 38036 is AFFIRMED with modification that the increase in the stipulated interest rates of 21% per annum and 18% per annum appearing on Promissory Notes Nos. 127/82 and 128/82 respectively is hereby declared null and void.

### **SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

- [1] Decision penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justice Emeterio C. Cui and Associate Justice Fermin A. Martin, Jr.
- [2] Decision penned by Judge Benjamin V. Pelayo, RTC-Br. 168, Pasig City, docketed as Civil Case No. 55331.
- [3] Covered by TCT Nos. 5994, 6411 and 7623.
- [4] Exh "B", Original Records, p. 653.
- [5] Exhs. "D"--"F", Original Records, pp. 659-664.
- [6] Exhs. "H"--"S", Original Records, pp. 666-688.
- [7] Exhs. "H-2", -- "S-2", Original Records, pp. 666-688.
- [8] Exh. "T", Original Records, pp. 689-691.
- [9] Exh. "V", Original Records, pp. 701-702.
- [10] TSN, 1 February 1990, pp. 30-31.
- [11] Exh. "BB", Original Records, p. 727.
- [12] Exh. "CC", Original Records, p. 728.
- [13] TSN, February 1, 1990, p. 43.
- [14] Exh. "DD", Original Records, p. 729.
- [15] TSN, February 1, 1990. p. 47.
- [16] Weldon Construction Corporation v.. Court of Appeals, 154 SCRA 618 (1987).
- [17] Caguioa, Comments and Cases on Civil Law, Vol. IV, (1968), p. 322.

**[18] 41 SCRA 565, 588, 636 (1971).**

- [19] 28 Am Jur 2d 481.
- [20] Id., p. 482.
- [21] Ibid.
- [22] Id., p. 483.
- [23] Rollo, p. 281.
- [24] Sec. 3 (p), Rule 131, Rules of Court.
- [25] TSN, May 22, 1991, p. 10.
- [26] Spouses Mariano and Gilda Florendo v.. Court of Appeals, et al. 265 SCRA 678 (1996); Philippine National Bank v.. Court of Appeals, 196 SCRA 536 (1991).
- [27] Philippine National Bank v.. Court of Appeals, 238 SCRA 20 (1994).
- [28] Philippine National Bank v.. Court of Appeals, et al., 258 SCRA 549 (1996); Philippine National Bank v.. Court of Appeals, et al., 238 SCRA 20 (1994).

[29] Petitioner prayed for the release of the following items:

- 1 set glass and chrome executive desk with narra side drawers;
- 1 set conference table with 12 units swivel chairs with black leather upholstery;
- 4 units steel cabinets painted black and green with office records, accounting papers, engineering files, and other personal and confidential documents;
- 5 sets narra executive desks with front and side drawers.
- 1 lot structural steel;
- 1 lot laboratory equipment and supplies;
- 1 lot plant supplies and maintenance equipment;
- 1 unit electric transformer 50 HP;
- 1 unit stainless steel tank with motor, agitator and electrical connections;
- 1 unit centrifugal separator;
- 3 units Dean Bros. pumps with motors;
- 1 unit second hand Vauxhall car.

[30] *Torres v.. Limjap*, 56 Phil 141 (1931).

[31] Art. 415. The following are immovable property: x x x

(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;

[32] See *Cu Unjieng e Hijos v.. Mabalacat Sugar Company*, 58 Phil 439 (1933); *Bischoff v.. Pomar, et al.*, 12 Phil 690 (1909).

[33] Original Records, pp. 760-802.

[34] Rollo, p. 19, Petition, p. 10.

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