BANK OF AMERICA, NT AND SA, PETITIONER, VS. AMERICAN REALTY CORPORATION AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 133876. December 29, 1999

Ponente: BUENA, J.

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BUENA, J.:

Does a mortgage-creditor waive its remedy to foreclose the real estate mortgage constituted over a third party mortgagor's property situated in the Philippines by filing an action for the collection of the principal loan before foreign courts?

Sought to be reversed in the instant petition for review on certiorari under Rule 45 of the Rules of Court are the decision[1] of public respondent Court of Appeals in CA G.R. CV No. 51094, promulgated on 30 September 1997 and its resolution,[2] dated 22 May 1998, denying petitioner's motion for reconsideration.

Petitioner Bank of America NT & SA (BANTSA) is an international banking and financing institution duly licensed to do business in the Philippines, organized and existing under and by virtue of the laws of the State of California, United States of America while private respondent American Realty Corporation (ARC) is a domestic corporation.

Bank of America International Limited (BAIL), on the other hand, is a limited liability company organized and existing under the laws of England.

As borne by the records, BANTSA and BAIL on several occasions granted three major multi-million United States (US) Dollar loans to the following corporate borrowers: (1) Liberian Transport Navigation, S.A.; (2) El Challenger S.A. and (3) Eshley Compania Naviera S.A. (hereinafter collectively referred to as "borrowers"), all of which are existing under and by virtue of the laws of the Republic of Panama and are foreign affiliates of private respondent.[3]

Due to the default in the payment of the loan amortizations, BANTSA and the corporate borrowers signed and entered into restructuring agreements. As additional security for the restructured loans, private respondent ARC as third party mortgagor executed two real estate mortgages,[4] dated 17 February 1983 and 20 July 1984, over its parcels of land including improvements thereon, located at Barrio Sto. Cristo, San Jose Del Monte, Bulacan, and which are covered by Transfer Certificate of Title Nos. T-78759, T-78760, T-78761, T-78762 and T-78763.

Eventually, the corporate borrowers defaulted in the payment of the restructured loans prompting petitioner BANTSA to file civil actions[5] before foreign courts for the collection of the principal loan, to wit:

> "a) In England, in its High Court of Justice, Queen's Bench Division, Commercial Court (1992-Folio No. 2098) against Liberian Transport Navigation S.A., Eshley Compania Naviera S.A., El Challenger S.A., Espriona Shipping Company S.A., Eddie Navigation Corp., S.A., Eduardo Katipunan Litonjua and Aurelio Katipunan Litonjua on June 17, 1992.
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> b) In England, in its High Court of Justice, Queen's Bench Division, Commercial Court (1992-Folio No. 2245)

against El Challenger S.A., Espriona Shipping Company S.A., Eduardo Katipuan Litonjua & Aurelio Katipunan Litonjua on July 2, 1992;

c) In Hongkong, in the Supreme Court of Hongkong High Court (Action No. 4039 of 1992) against Eshley Compania Naviera S.A., El Challenger S.A., Espriona Shipping Company S.A. Pacific Navigators Corporation, Eddie Navigation Corporation S.A., Litonjua Chartering (Edyship) Co., Inc., Aurelio Katipunan Litonjua, Jr. and Eduardo Katipunan Litonjua on November 19, 1992; and

d) In Hongkong, in the Supreme Court of Hongkong High Court (Action No. 4040 of 1992) against Eshley Compania Naviera S.A., El Challenger S.A., Espriona Shipping Company, S.A., Pacific Navigators Corporation, Eddie Navigation Corporation S.A., Litonjua Chartering (Edyship) Co., Jr. and Eduardo Katipunan Litonjua on November 21, 1992."

In the civil suits instituted before the foreign courts, private respondent ARC, being a third party mortgagor, was not impleaded as party-defendant.

On 16 December 1992, petitioner BANTSA filed before the Office of the Provincial Sheriff of Bulacan, Philippines, an application for extrajudicial foreclosure[6] of real estate mortgage.

On 22 January 1993, after due publication and notice, the mortgaged real properties were sold at public auction in an extrajudicial foreclosure sale, with Integrated Credit and Corporation Services Co. (ICCS) as the highest bidder for the sum of Twenty Four Million Pesos (P24,000,000.00).[7]

On 12 February 1993, private respondent filed before the Pasig Regional Trial Court, Branch 159, an action for damages[8] against the petitioner, for the latter's act of foreclosing extrajudicially the real estate mortgages despite the pendency of civil suits before foreign courts for the collection of the principal loan.

In its answer[9] petitioner alleged that the rule prohibiting the mortgagee from foreclosing the mortgage after an ordinary suit for collection has been filed, is not applicable in the present case, claiming that:

"a) The plaintiff, being a mere third party mortgagor and not a party to the principal restructuring agreements, was never made a party defendant in the civil cases filed in Hongkong and England;

"b) There is actually no civil suit for sum of money filed in the Philippines since the civil actions were filed in Hongkong and England. As such, any decisions (sic) which may be rendered in the abovementioned courts are not (sic) enforceable in the Philippines unless a separate action to enforce the foreign judgments is first filed in the Philippines, pursuant to Rule 39, Section 50 of the Revised Rules of Court.

"c) Under English Law, which is the governing law under the principal agreements, the mortgagee does not lose its security interest by filing civil actions for sums of money."

On 14 December 1993, private respondent filed a motion for suspension[10] of the redemption period on the ground that "it cannot exercise said right of redemption without at the same time waiving or contradicting its contentions in the case that the foreclosure of the mortgage on its properties is legally improper and therefore invalid."

In an order[11] dated 28 January 1994, the trial court granted the private respondent's motion for suspension after which a copy of said order was duly received by the Register of Deeds of Meycauayan, Bulacan.

On 07 February 1994, ICCS, the purchaser of the mortgaged properties at the foreclosure sale, consolidated its ownership over the real properties, resulting to the issuance of Transfer Certificate of Title Nos. T-18627, T-186272, T-186273, T-16471 and T-16472 in its name.

On 18 March 1994, after the consolidation of ownership in its favor, ICCS sold the real properties to Stateland

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Investment Corporation for the amount of Thirty Nine Million Pesos (P39,000,000.00).[12] Accordingly, Transfer Certificate of Title Nos. T-187781(m), T-187782(m), T-187783(m), T-16653P(m) and T-16652P(m) were issued in the latter's name.

After trial, the lower court rendered a decision[13] in favor of private respondent ARC dated 12 May 1993, the decretal portion of which reads:

> "WHEREFORE, judgment is hereby rendered declaring that the filing in foreign courts by the defendant of collection suits against the principal debtors operated as a waiver of the security of the mortgages. Consequently, the plaintiff's rights as owner and possessor of the properties then covered by Transfer Certificates of Title Nos. T-78759, T-78762, T-78763, T-78760 and T-78761, all of the Register of Deeds of Meycauayan, Bulacan, Philippines, were violated when the defendant caused the extrajudicial foreclosure of the mortgages constituted thereon.
>
> "Accordingly, the defendant is hereby ordered to pay the plaintiff the following sums, all with legal interest thereon from the date of the filing of the complaint up to the date of actual payment:
>
> "1) Actual or compensatory damages in the amount of Ninety Nine Million Pesos (P99,000,000.00);
>
> "2) Exemplary damages in the amount of Five Million Pesos (P5,000,000.00); and
>
> "3) Costs of suit.
>
> "SO ORDERED."

On appeal, the Court of Appeals affirmed the assailed decision of the lower court prompting petitioner to file a motion for reconsideration which the appellate court denied.

Hence, the instant petition for review[14] on certiorari where herein petitioner BANTSA ascribes to the Court of Appeals the following assignment of errors:

> 1. The Honorable Court of Appeals disregarded the doctrines laid down by this Hon. Supreme Court in the cases of Caltex Philippines, Inc. vs. Intermediate Appellate Court docketed as G.R. No. 74730 promulgated on August 25, 1989 and Philippine Commercial International Bank vs. IAC, 196 SCRA 29 (1991 case), although said cases were duly cited, extensively discussed and specifically mentioned, as one of the issues in the assignment of errors found on page 5 of the decision dated September 30, 1997.
>
> 2. The Hon. Court of Appeals acted with grave abuse of discretion when it awarded the private respondent actual and exemplary damages totalling P171,600,000.00, as of July 12, 1998 although such huge amount was not asked nor prayed for in private respondent's complaint, is contrary to law and is totally unsupported by evidence (sic).

In fine, this Court is called upon to resolve two main issues:

> 1. Whether or not the petitioner's act of filing a collection suit against the principal debtors for the recovery of the loan before foreign courts constituted a waiver of the remedy of foreclosure.
>
> 2. Whether or not the award by the lower court of actual and exemplary damages in favor of private respondent ARC, as third-party mortgagor, is proper.

The petition is bereft of merit.

First, as to the issue of availability of remedies, petitioner submits that a waiver of the remedy of foreclosure requires the concurrence of two requisites: an ordinary civil action for collection should be filed and subsequently a final judgment be correspondingly rendered therein.

According to petitioner, the mere filing of a personal action to collect the principal loan does not suffice; a final judgment must be secured and obtained in the personal action so that waiver of the remedy of foreclosure may be appreciated. To put it differently, absent any of the two requisites, the mortgagee-creditor is deemed not to have waived the remedy of foreclosure.

We do not agree.

Certainly, this Court finds petitioner's arguments untenable and upholds the jurisprudence laid down in Bachrach[15] and similar cases adjudicated thereafter, thus:

> "In the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for a deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election. On the other hand, a rule that would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice (Soriano vs. Enriques, 24 Phil. 584) and obnoxious to law and equity (Osorio vs. San Agustin, 25 Phil., 404), but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies."

In Danao vs. Court of Appeals,[16] this Court, reiterating jurisprudence enunciated in Manila Trading and Supply Co. vs. Co Kim[17]and Movido vs. RFC,[18] invariably held:

> "x x x The rule is now settled that a mortgage creditor may elect to waive his security and bring, instead, an ordinary action to recover the indebtedness with the right to execute a judgment thereon on all the properties of the debtor, including the subject matter of the mortgage x x x, subject to the qualification that if he fails in the remedy by him elected, he cannot pursue further the remedy he has waived. (Underscoring Ours)

Anent real properties in particular, the Court has laid down the rule that a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage.[19]

In our jurisdiction, the remedies available to the mortgage creditor are deemed alternative and not cumulative. Notably, an election of one remedy operates as a waiver of the other. For this purpose, a remedy is deemed chosen upon the filing of the suit for collection or upon the filing of the complaint in an action for foreclosure of mortgage, pursuant to the provision of Rule 68 of the 1997 Rules of Civil Procedure. As to extrajudicial foreclosure, such remedy is deemed elected by the mortgage creditor upon filing of the petition not with any court of justice but with the Office of the Sheriff of the province where the sale is to be made, in accordance with the provisions of Act No. 3135, as amended by Act No. 4118.

In the case at bench, private respondent ARC constituted real estate mortgages over its properties as security for the debt of the principal debtors. By doing so, private respondent subjected itself to the liabilities of a third party mortgagor. Under the law, third persons who are not parties to a loan may secure the latter by pledging or mortgaging their own property.[20]

Notwithstanding, there is no legal provision nor jurisprudence in our jurisdiction which makes a third person who

secures the fulfillment of another‘s obligation by mortgaging his own property, to be solidarily bound with the principal obligor. The signatory to the principal contract"loan"remains to be primarily bound. It is only upon default of the latter that the creditor may have recourse on the mortgagors by foreclosing the mortgaged properties in lieu of an action for the recovery of the amount of the loan.[21]

In the instant case, petitioner’s contention that the requisites of filing the action for collection and rendition of final judgment therein should concur, is untenable.

Thus, in Cerna vs. Court of Appeals,[22] we agreed with the petitioner in said case, that the filing of a collection suit barred the foreclosure of the mortgage:

> "A mortgagee who files a suit for collection abandons the remedy of foreclosure of the chattel mortgage constituted over the personal property as security for the debt or value of the promissory note when he seeks to recover in the said collection suit."
>
> "x x x When the mortgagee elects to file a suit for collection, not foreclosure, thereby abandoning the chattel mortgage as basis for relief, he clearly manifests his lack of desire and interest to go after the mortgaged property as security for the promissory note x x x."

Contrary to petitioner’s arguments, we therefore reiterate the rule, for clarity and emphasis, that the mere act of filing of an ordinary action for collection operates as a waiver of the mortgage-creditor’s remedy to foreclose the mortgage. By the mere filing of the ordinary action for collection against the principal debtors, the petitioner in the present case is deemed to have elected a remedy, as a result of which a waiver of the other necessarily must arise. Corollarily, no final judgment in the collection suit is required for the rule on waiver to apply.

Hence, in Caltex Philippines, Inc. vs. Intermediate Appellate Court,[23] a case relied upon by petitioner, supposedly to buttress its contention, this Court had occasion to rule that the mere act of filing a collection suit for the recovery of a debt secured by a mortgage constitutes waiver of the other remedy of foreclosure.

In the case at bar, petitioner BANTSA only has one cause of action which is non-payment of the debt. Nevertheless, alternative remedies are available for its enjoyment and exercise. Petitioner then may opt to exercise only one of two remedies so as not to violate the rule against splitting a cause of action.

As elucidated by this Court in the landmark case of Bachrach Motor Co., Inc. vs. Icarangal.[24]

> "For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the non-payment of the debt, and for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one cause of action for a single breach of that obligation. Plaintiff, then, by applying the rules above stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor."

Petitioner further faults the Court of Appeals for allegedly disregarding the doctrine enunciated in Caltex, wherein this High Court relaxed the application of the general rules to wit:

> "In the present case, however, we shall not follow this rule to the letter but declare that it is the collection suit

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> which was waived and/or abandoned. This ruling is more in harmony with the principles underlying our judicial system. It is of no moment that the collection suit was filed ahead, what is determinative is the fact that the foreclosure proceedings ended even before the decision in the collection suit was rendered. x x x"

Notably, though, petitioner took the Caltex ruling out of context. We must stress that the Caltex case was never intended to overrule the well-entrenched doctrine enunciated in Bachrach, which to our mind still finds applicability in cases of this sort. To reiterate, Bachrach is still good law.

We then quote the decision[25]of the trial court, in the present case, thus:

> "The aforequoted ruling in Caltex is the exception rather than the rule, dictated by the peculiar circumstances obtaining therein. In the said case, the Supreme Court chastised Caltex for making - x x x a mockery of our judicial system when it initially filed a collection suit then, during the pendency thereof, foreclosed extrajudicially the mortgaged property which secured the indebtedness, and still pursued the collection suit to the end." Thus, to prevent a mockery of our judicial system", the collection suit had to be nullified because the foreclosure proceedings have already been pursued to their end and can no longer be undone.
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> x x x x x x x x x
>
> "In the case at bar, it has not been shown whether the defendant pursued to the end or are still pursuing the collection suits filed in foreign courts. There is no occasion, therefore, for this court to apply the exception laid down by the Supreme Court in Caltex, by nullifying the collection suits. Quite obviously, too, the aforesaid collection suits are beyond the reach of this Court. Thus the only way the court may prevent the spector of a creditor having "plural redress for a single breach of contract" is by holding, as the Court hereby holds, that the defendant has waived the right to foreclose the mortgages constituted by the plaintiff on its properties originally covered by Transfer Certificates of Title Nos. T-78759, T-78762, T-78760 and T-78761." (RTC Decision pp., 10-11)

In this light, the actuations of Caltex are deserving of severe criticism, to say the least.[26]

Moreover, petitioner attempts to mislead this Court by citing the case of PCIB vs. IAC.[27] Again, petitioner tried to fit a square peg in a round hole. It must be stressed that far from overturning the doctrine laid down in Bachrach, this Court in PCIB buttressed its firm stand on this issue by declaring:

> "While the law allows a mortgage creditor to either institute a personal action for the debt or a real action to foreclosure the mortgage, he cannot pursue both remedies simultaneously or successively as was done by PCIB in this case."
>
> x x x x x x x x x
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> "Thus, when the PCIB filed Civil Case No. 29392 to enforce payment of the 1.3 million promissory note secured by real estate mortgages and subsequently filed a petition for extrajudicial foreclosure, it violates the rule against splitting a cause of action."

Accordingly, applying the foregoing rules, we hold that petitioner, by the expediency of filing four civil suits before foreign courts, necessarily abandoned the remedy to foreclose the real estate mortgages constituted over the properties of third-party mortgagor and herein private respondent ARC. Moreover, by filing the four civil actions and by eventually foreclosing extrajudicially the mortgages, petitioner in effect transgressed the rules against splitting a cause of action well-enshrined in jurisprudence and our statute books.

In Bachrach, this Court resolved to deny the creditor the remedy of foreclosure after the collection suit was filed, considering that the creditor should not be afforded "plural redress for a single breach of contract." For cause of action should not be confused with the remedy created for its enforcement.[28]

Notably, it is not the nature of the redress which is crucial but the efficacy of the remedy chosen in addressing the creditor's cause. Hence, a suit brought before a foreign court having competence and jurisdiction to entertain the action is deemed, for this purpose, to be within the contemplation of the remedy available to the mortgagee-creditor. This pronouncement would best serve the interest of justice and fair play and further discourage the noxious practice of splitting up a lone cause of action.

Incidentally, BANTSA alleges that under English Law, which according to petitioner is the governing law with regard to the principal agreements, the mortgagee does not lose its security interest by simply filing civil actions for sums of money.[29]

We rule in the negative.

This argument shows desperation on the part of petitioner to rivet its crumbling cause. In the case at bench, Philippine law shall apply notwithstanding the evidence presented by petitioner to prove the English law on the matter.

In a long line of decisions, this Court adopted the well-imbedded principle in our jurisdiction that there is no judicial notice of any foreign law. A foreign law must be properly pleaded and proved as a fact.[30] Thus, if the foreign law involved is not properly pleaded and proved, our courts will presume that the foreign law is the same as our local or domestic or internal law.[31] This is what we refer to as the doctrine of processual presumption.

In the instant case, assuming arguendo that the English Law on the matter were properly pleaded and proved in accordance with Section 24, Rule 132 of the Rules of Court and the jurisprudence laid down in Yao Kee, et al. vs. Sy-Gonzales,[32] said foreign law would still not find applicability.

Thus, when the foreign law, judgment or contract is contrary to a sound and established public policy of the forum, the said foreign law, judgment or order shall not be applied.[33]

Additionally, prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.[34]

The public policy sought to be protected in the instant case is the principle imbedded in our jurisdiction proscribing the splitting up of a single cause of action.

Section 4, Rule 2 of the 1997 Rules of Civil Procedure is pertinent -

> "If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others."

Moreover, foreign law should not be applied when its application would work undeniable injustice to the citizens or residents of the forum. To give justice is the most important function of law; hence, a law, or judgment or contract that is obviously unjust negates the fundamental principles of Conflict of Laws.[35]

Clearly then, English Law is not applicable.

As to the second pivotal issue, we hold that the private respondent is entitled to the award of actual or compensatory damages inasmuch as the act of petitioner BANTSA in extrajudicially foreclosing the real estate mortgages constituted a clear violation of the rights of herein private respondent ARC, as third-party mortgagor.

Actual or compensatory damages are those recoverable because of pecuniary loss in business, trade, property, profession, job or occupation and the same must be proved, otherwise if the proof is flimsy and non-substantial, no damages will be given.[36] Indeed, the question of the value of property is always a difficult one to settle as

valuation of real property is an imprecise process since real estate has no inherent value readily ascertainable by an appraiser or by the court.[37] The opinions of men vary so much concerning the real value of property that the best the courts can do is hear all of the witnesses which the respective parties desire to present, and then, by carefully weighing that testimony, arrive at a conclusion which is just and equitable.[38]

In the instant case, petitioner assails the Court of Appeals for relying heavily on the valuation made by Philippine Appraisal Company. In effect, BANTSA questions the act of the appellate court in giving due weight to the appraisal report composed of twenty three pages, signed by Mr. Lauro Marquez and submitted as evidence by private respondent. The appraisal report, as the records would readily show, was corroborated by the testimony of Mr. Reynaldo Flores, witness for private respondent.

On this matter, the trial court observed:

> "The record herein reveals that plaintiff-appellee formally offered as evidence the appraisal report dated March 29, 1993 (Exhibit J, Records, p. 409), consisting of twenty three (23) pages which set out in detail the valuation of the property to determine its fair market value (TSN, April 22, 1994, p. 4), in the amount of P99,986,592.00 (TSN, ibid., p. 5), together with the corroborative testimony of one Mr. Reynaldo F. Flores, an appraiser and director of Philippine Appraisal Company, Inc. (TSN, ibid., p. 3). The latter's testimony was subjected to extensive cross-examination by counsel for defendant-appellant (TSN, April 22, 1994, pp. 6-22)."[39]

In the matter of credibility of witnesses, the Court reiterates the familiar and well-entrenched rule that the factual findings of the trial court should be respected.[40] The time-tested jurisprudence is that the findings and conclusions of the trial court on the credibility of witnesses enjoy a badge of respect for the reason that trial courts have the advantage of observing the demeanor of witnesses as they testify.[41]

This Court will not alter the findings of the trial court on the credibility of witnesses, principally because they are in a better position to assess the same than the appellate court.[42] Besides, trial courts are in a better position to examine real evidence as well as observe the demeanor of witnesses.[43]

Similarly, the appreciation of evidence and the assessment of the credibility of witnesses rest primarily with the trial court.[44] In the case at bar, we see no reason that would justify this Court to disturb the factual findings of the trial court, as affirmed by the Court of Appeals, with regard to the award of actual damages.

In arriving at the amount of actual damages, the trial court justified the award by presenting the following ratiocination in its assailed decision[45], to wit:

> "Indeed, the Court has its own mind in the matter of valuation. The size of the subject real properties are (sic) set forth in their individual titles, and the Court itself has seen the character and nature of said properties during the ocular inspection it conducted. Based principally on the foregoing, the Court makes the following observations:
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> "1. The properties consist of about 39 hectares in Bo. Sto. Cristo, San Jose del Monte, Bulacan, which is (sic) not distant from Metro Manila - the biggest urban center in the Philippines - and are easily accessible through well-paved roads;
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> "2. The properties are suitable for development into a subdivision for low cost housing, as admitted by defendant's own appraiser (TSN, May 30, 1994, p. 31);
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> "3. The pigpens which used to exist in the property have already been demolished. Houses of strong materials are found in the vicinity of the property (Exhs. 2, 2-1 to 2-7), and the vicinity is a growing community. It has even been shown that the house of the Barangay Chairman is located adjacent to the property in question (Exh. 27), and the only remaining piggery (named Cherry Farm) in the vicinity is about 2 kilometers away from the western boundary of the property in question (TSN, November 19, p. 3);

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> "4. It will not be hard to find interested buyers of the property, as indubitably shown by the fact that on March 18, 1994, ICCS (the buyer during the foreclosure sale) sold the consolidated real estate properties to Stateland Investment Corporation, in whose favor new titles were issued, i.e., TCT Nos. T-187781(m); T-187782(m), T-187783(m); T-16653P(m) and T-166521(m) by the Register of Deeds of Meycauayan (sic), Bulacan;
>
> "5. The fact that ICCS was able to sell the subject properties to Stateland Investment Corporation for Thirty Nine Million (P39,000,000.00) Pesos, which is more than triple defendant's appraisal (Exh. 2) clearly shows that the Court cannot rely on defendant's aforesaid estimate (Decision, Records, p. 603)."

It is a fundamental legal aphorism that the conclusions of the trial judge on the credibility of witnesses command great respect and consideration especially when the conclusions are supported by the evidence on record.[46] Applying the foregoing principle, we therefore hold that the trial court committed no palpable error in giving credence to the testimony of Reynaldo Flores, who according to the records, is a licensed real estate broker, appraiser and director of Philippine Appraisal Company, Inc. since 1990.[47] As the records show, Flores had been with the company for 26 years at the time of his testimony.

Of equal importance is the fact that the trial court did not confine itself to the appraisal report dated 29 March 1993, and the testimony given by Mr. Reynaldo Flores, in determining the fair market value of the real property. Above all these, the record would likewise show that the trial judge in order to appraise himself of the characteristics and condition of the property, conducted an ocular inspection where the opposing parties appeared and were duly represented.

Based on these considerations and the evidence submitted, we affirm the ruling of the trial court as regards the valuation of the property -

> "x x x a valuation of Ninety Nine Million Pesos (P99,000,000.00) for the 39-hectare properties (sic) translates to just about Two Hundred Fifty Four Pesos (P254.00) per square meter. This appears to be, as the court so holds, a better approximation of the fair market value of the subject properties. This is the amount which should be restituted by the defendant to the plaintiff by way of actual or compensatory damages x x x."[48]

Further, petitioner ascribes error to the lower court for awarding an amount allegedly not asked nor prayed for in private respondent's complaint.

Notwithstanding the fact that the award of actual and compensatory damages by the lower court exceeded that prayed for in the complaint, the same is nonetheless valid, subject to certain qualifications.

On this issue, Rule 10, Section 5 of the Rules of Court is pertinent:

> "SEC. 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgement; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made."

The jurisprudence enunciated in Talisay-Silay Milling Co., Inc. vs. Asociacion de Agricultures de Talisay-Silay, Inc.[49] citing Northern Cement Corporation vs. Intermediate Appellate Court [50] is enlightening:

> "There have been instances where the Court has held that even without the necessary amendment, the amount proved at the trial may be validly awarded, as in Tuazon v. Bolanos (95 Phil. 106), where we said that if the

> facts shown entitled plaintiff to relief other than that asked for, no amendment to the complaint was necessary, especially where defendant had himself raised the point on which recovery was based. The appellate court could treat the pleading as amended to conform to the evidence although the pleadings were actually not amended. Amendment is also unnecessary when only clerical error or non substantial matters are involved, as we held in Bank of the Philippine Islands vs. Laguna (48 Phil. 5). In Co Tiamco vs. Diaz (75 Phil. 672), we stressed that the rule on amendment need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party. And in the recent case of National Power Corporation vs. Court of Appeals (113 SCRA 556), we held that where there is a variance in the defendant's pleadings and the evidence adduced by it at the trial, the Court may treat the pleading as amended to conform with the evidence.
>
> "It is the view of the Court that pursuant to the above-mentioned rule and in light of the decisions cited, the trial court should not be precluded from awarding an amount higher than that claimed in the pleading notwithstanding the absence of the required amendment. But it is upon the condition that the evidence of such higher amount has been presented properly, with full opportunity on the part of the opposing parties to support their respective contentions and to refute each other's evidence.
>
> "The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude an adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings, or serve as a basis for a higher award of damages. Although the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the basis of issues discussed and the assertions of fact proved in the course of trial. The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually so amended. Former Chief Justice Moran put the matter in this way:
>
> `When evidence is presented by one party, with the expressed or implied consent of the adverse party, as to issues not alleged in the pleadings, judgment may be rendered validly as regards those issues, which shall be considered as if they have been raised in the pleadings. There is implied consent to the evidence thus presented when the adverse party fails to object thereto.'
>
> "Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, so long as the basis requirements of fair play had been met, as where litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it."

In the instant case, inasmuch as the petitioner was afforded the opportunity to refute and object to the evidence, both documentary and testimonial, formally offered by private respondent, the rudiments of fair play are deemed satisfied. In fact, the testimony of Reynaldo Flores was put under scrutiny during the course of the cross-examination. Under these circumstances, the court acted within the bounds of its jurisdiction and committed no reversible error in awarding actual damages the amount of which is higher than that prayed for. Verily, the lower court's actuations are sanctioned by the Rules and supported by jurisprudence.

Similarly, we affirm the grant of exemplary damages although the amount of Five Million Pesos (P5,000,000.00) awarded, being excessive, is subject to reduction. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.[51] Considering its purpose, it must be fair and reasonable in every case and should not be awarded to unjustly enrich a prevailing party.[52] In our view, an award of P50,000.00 as exemplary damages in the present case qualifies the test of reasonableness.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit. The decision of the Court

of Appeals is hereby AFFIRMED with MODIFICATION of the amount awarded as exemplary damages. Accordingly, petitioner is hereby ordered to pay private respondent the sum of P99,000,000.00 as actual or compensatory damages; P50,000.00 as exemplary damage and the costs of suit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] CA Decision in CA-G.R. CV No. 51094, penned by Justice Ricardo P. Galvez and concurred in by Justice Fidel V. Purisima and Justice B.A. Adefuin-De la Cruz; Rollo, pp. 38-58.

[2] CA Resolution in CA G.R. CV No. 51094, dated 22 May 1998; Rollo, p. 60.

[3] Rollo, p. 38.

[4] Ibid., p. 39.

[5] Ibid.

[6] Ibid., p. 40.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Rollo, p. 41.

[11] Ibid.

[12] Ibid.

[13] Rollo,, pp. 41-42.

[14] Rollo, pp. 10-36.

[15] Bachrach Motor Co., Inc. vs. Esteban Icarangal, 68 Phil. 287.

[16] 154 SCRA 446.

[17] 71 Phil. 448.

[18] 105 Phil. 886.

[19] Danao vs. Court of Appeals 154 SCRA 446.

[20] Article 2085, Civil Code; Lustan vs. Court of Appeals, 266 SCRA 663.

[21] Cerna vs. Court of Appeals 220 SCRA 517.

[22] Ibid.

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[23] 176 SCRA 741.

[24] 68 Phil. 287.

[25] Rollo, p.94.

[26] Caltex Philippines, Inc. vs. Intermediate Appellate Court, 176 SCRA 741.

[27] 196 SCRA 29.

[28] Bachrach Motor vs. Icarangal, 68 Phil. 287.

[29] Rollo, p.16.7

[30] Adong vs. Cheong Seng Gee, 43 Phil. 43; Sy Joc Lieng vs. Syquia, 16 Phil. 137.

[31] Lim vs. Collector, 36 Phil. 472.

[32] 167 SCRA 736.

[33] Philippine Conflict of Laws, Eighth Edition, 1996, Paras, page 46.

[34] Article 17, par. 3, Civil Code.

[35] Philippine Conflict of Laws, Eight Edition, 1996, Paras, p. 60.

[36] Perfecto vs. Gonzales, 128 SCRA 640, as cited in Danao vs. Court of Appeals, 154 SCRA 447.

[37] City of Manila vs. Corrales, 32 Phil. 85, 96.

[38] 22 Am. Jur. 2d 193.

[39] Rollo, p. 103.

[40] People vs. Morales, 241 SCRA 267.

[41] People vs. Gamiao, 240 SCRA 254.

[42] People vs. Cascalla, 240 SCRA 482.

[43] Lee Eng Hong vs. Court of Appeals, 241 SCRA 392.

[44] Ibid.

[45] Rollo, pp. 46-47.

[46] People vs. Asoy, 251 SCRA 682.

[47] TSN, April 22, 1994, p. 6.

[48] Decision, Records, ibid.

[49] 247 SCRA 361, 377-378.

[50] 158 SCRA 408.

[51] Article 2229, Civil Code.

[52] Philtranco Service Exporters, Inc. vs. Court of Appeals, 273 SCRA 562.

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