

**SPS. CESAR A. LARROBIS, JR. AND VIRGINIA S. LARROBIS,
PETITIONERS, VS. PHILIPPINE VETERANS BANK, RESPONDENT.**

G.R. No. 135706. October 01, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review of the decision of the Regional Trial Court (RTC), Cebu City, Branch 24, dated April 17, 1998,[1] and the order denying petitioner's motion for reconsideration dated August 25, 1998, raising pure questions of law.[2]

The following facts are uncontroverted:

On March 3, 1980, petitioner spouses contracted a monetary loan with respondent Philippine Veterans Bank in the amount of P135,000.00, evidenced by a promissory note, due and demandable on February 27, 1981, and secured by a Real Estate Mortgage executed on their lot together with the improvements thereon.

On March 23, 1985, the respondent bank went bankrupt and was placed under receivership/liquidation by the Central Bank from April 25, 1985 until August 1992.[3]

On August 23, 1985, the bank, through Francisco Go, sent the spouses a demand letter for "accounts receivable in the total amount of P6,345.00 as of August 15, 1984,"[4] which pertains to the insurance premiums advanced by respondent bank over the mortgaged property of petitioners.[5]

On August 23, 1995, more than fourteen years from the time the loan became due and demandable, respondent bank filed a petition for extrajudicial foreclosure of mortgage of petitioners' property.[6] On October 18, 1995, the property was sold in a public auction by Sheriff Arthur Cabigon with Philippine Veterans Bank as the lone bidder.

On April 26, 1996, petitioners filed a complaint with the RTC, Cebu City, to declare the extra-judicial foreclosure and the subsequent sale thereof to respondent bank null and void.[7]

In the pre-trial conference, the parties agreed to limit the issue to whether or not the period within which the bank was placed under receivership and liquidation was a fortuitous event which suspended the running of the ten-year prescriptive period in bringing actions.[8]

On April 17, 1998, the RTC rendered its decision, the fallo of which reads:

WHEREFORE, premises considered judgment is hereby rendered dismissing the complaint for lack of merit. Likewise the compulsory counterclaim of defendant is dismissed for being unmeritorious.[9]

It reasoned that:

...defendant bank was placed under receivership by the Central Bank from April 1985 until 1992. The defendant bank was given authority by the Central Bank to operate as a private commercial bank and became

fully operational only on August 3, 1992. From April 1985 until July 1992, defendant bank was restrained from doing its business. Doing business as construed by Justice Laurel in 222 SCRA 131 refers to: “...a continuity of commercial dealings and arrangements and contemplates to that extent, the performance of acts or words or the exercise of some of the functions normally incident to and in progressive prosecution of the purpose and object of its organization.”

The defendant bank’s right to foreclose the mortgaged property prescribes in ten (10) years but such period was interrupted when it was placed under receivership. Article 1154 of the New Civil Code to this effect provides:

“The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him.”

In the case of Provident Savings Bank vs. Court of Appeals, 222 SCRA 131, the Supreme Court said.

“Having arrived at the conclusion that a foreclosure is part of a bank’s activity which could not have been pursued by the receiver then because of the circumstances discussed in the Central Bank case, we are thus convinced that the prescriptive period was legally interrupted by fuerza mayor in 1972 on account of the prohibition imposed by the Monetary Board against petitioner from transacting business, until the directive of the Board was nullified in 1981. Indeed, the period during which the obligee was prevented by a caso fortuito from enforcing his right is not reckoned against him. (Art. 1154, NCC) When prescription is interrupted, all the benefits acquired so far from the possession cease and when prescription starts anew, it will be entirely a new one. This concept should not be equated with suspension where the past period is included in the computation being added to the period after the prescription is presumed (4 Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines 1991 ed. pp. 18-19), consequently, when the closure of the petitioner was set aside in 1981, the period of ten years within which to foreclose under Art. 1142 of the N.C.C. began to run and, therefore, the action filed on August 21, 1986 to compel petitioner to release the mortgage carried with it the mistaken notion that petitioner’s own suit for foreclosure has prescribed.”

Even assuming that the liquidation of defendant bank did not affect its right to foreclose the plaintiffs’ mortgaged property, the questioned extrajudicial foreclosure was well within the ten (10) year prescriptive period. It is noteworthy to mention at this point in time, that defendant bank through authorized Deputy Francisco Go made the first extrajudicial demand to the plaintiffs on August 1985. Then on March 24, 1995 defendant bank through its officer-in-charge Llanto made the second extrajudicial demand. And we all know that a written extrajudicial demand wipes out the period that has already elapsed and starts anew the prescriptive period. (Ledesma vs. C.A., 224 SCRA 175.)[10]

Petitioners filed a motion for reconsideration which the RTC denied on August 25, 1998.[11] Thus, the present petition for review where petitioners claim that the RTC erred:

I

...IN RULING THAT THE PERIOD WITHIN WHICH RESPONDENT BANK WAS PUT UNDER RECEIVERSHIP AND LIQUIDATION WAS A FORTUITOUS EVENT THAT INTERRUPTED THE RUNNING OF THE PRESCRIPTIVE PERIOD.

II

...IN RULING THAT THE WRITTEN EXTRA-JUDICIAL DEMAND MADE BY RESPONDENT ON PETITIONERS WIPED OUT THE PERIOD THAT HAD ALREADY ELAPSED.

III

...IN DENYING PETITIONERS’ MOTION FOR RECONSIDERATION OF ITS HEREIN ASSAILED

DECISION.[12]

Petitioners argue that: since the extra-judicial foreclosure of the real estate mortgage was effected by the bank on October 18, 1995, which was fourteen years from the date the obligation became due on February 27, 1981, said foreclosure and the subsequent sale at public auction should be set aside and declared null and void ab initio since they are already barred by prescription; the court a quo erred in sustaining the respondent's theory that its having been placed under receivership by the Central Bank between April 1985 and August 1992 was a fortuitous event that interrupted the running of the prescriptive period;[13] the court a quo's reliance on the case of Provident Savings Bank vs. Court of Appeals[14] is misplaced since they have different sets of facts; in the present case, a liquidator was duly appointed for respondent bank and there was no judgment or court order that would legally or physically hinder or prohibit it from foreclosing petitioners' property; despite the absence of such legal or physical hindrance, respondent bank's receiver or liquidator failed to foreclose petitioners' property and therefore such inaction should bind respondent bank;[15] foreclosure of mortgages is part of the receiver's/liquidator's duty of administering the bank's assets for the benefit of its depositors and creditors, thus, the ten-year prescriptive period which started on February 27, 1981, was not interrupted by the time during which the respondent bank was placed under receivership; and the Monetary Board's prohibition from doing business should not be construed as barring any and all business dealings and transactions by the bank, otherwise, the specific mandate to foreclose mortgages under Sec. 29 of R.A. No. 265 as amended by Executive Order No. 65 would be rendered nugatory.[16] Said provision reads:

Section 29. Proceedings upon Insolvency – Whenever, upon examination by the head of the appropriate supervising or examining department or his examiners or agents into the condition of any bank or non-bank financial intermediary performing quasi-banking functions, it shall be disclosed that the condition of the same is one of insolvency, or that its continuance in business would involve probable loss to its depositors or creditors, it shall be the duty of the department head concerned forthwith, in writing, to inform the Monetary Board of the facts. The Board may, upon finding the statements of the department head to be true, forbid the institution to do business in the Philippines and designate the official of the Central Bank or a person of recognized competence in banking or finance, as receiver to immediately take charge its assets and liabilities, as expeditiously as possible, collect and gather all the assets and administer the same for the benefit of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing and foreclosing mortgages in the name of the bank.

Petitioners further contend that: the demand letter, dated March 24, 1995, was sent after the ten-year prescriptive period, thus it cannot be deemed to have revived a period that has already elapsed; it is also not one of the instances enumerated by Art. 1115 of the Civil Code when prescription is interrupted;[17] and the August 23, 1985 letter by Francisco Go demanding P6,345.00, refers to the insurance premium on the house of petitioners, advanced by respondent bank, thus such demand letter referred to another obligation and could not have the effect of interrupting the running of the prescriptive period in favor of herein petitioners insofar as foreclosure of the mortgage is concerned.[18]

Petitioners then prayed that respondent bank be ordered to pay them P100,000.00 as moral damages, P50,000.00 as exemplary damages and P100,000.00 as attorney's fees.[19]

Respondent for its part asserts that: the period within which it was placed under receivership and liquidation was a fortuitous event that interrupted the running of the prescriptive period for the foreclosure of petitioners' mortgaged property; within such period, it was specifically restrained and immobilized from doing business which includes foreclosure proceedings; the extra-judicial demand it made on March 24, 1995 wiped out the period that has already lapsed and started anew the prescriptive period; respondent through its authorized deputy

Francisco Go made the first extra-judicial demand on the petitioners on August 23, 1985; while it is true that the first demand letter of August 1985 pertained to the insurance premium advanced by it over the mortgaged property of petitioners, the same however formed part of the latter's total loan obligation with respondent under the mortgage instrument and therefore constitutes a valid extra-judicial demand made within the prescriptive period.[20]

In their Reply, petitioners reiterate their earlier arguments and add that it was respondent that insured the mortgaged property thus it should not pass the obligation to petitioners through the letter dated August 1985.[21]

To resolve this petition, two questions need to be answered: (1) Whether or not the period within which the respondent bank was placed under receivership and liquidation proceedings may be considered a fortuitous event which interrupted the running of the prescriptive period in bringing actions; and (2) Whether or not the demand letter sent by respondent bank's representative on August 23, 1985 is sufficient to interrupt the running of the prescriptive period.

Anent the first issue, we answer in the negative.

One characteristic of a fortuitous event, in a legal sense and consequently in relations to contract, is that its occurrence must be such as to render it impossible for a party to fulfill his obligation in a normal manner.[22]

Respondent's claims that because of a fortuitous event, it was not able to exercise its right to foreclose the mortgage on petitioners' property; and that since it was banned from pursuing its business and was placed under receivership from April 25, 1985 until August 1992, it could not foreclose the mortgage on petitioners' property within such period since foreclosure is embraced in the phrase "doing business," are without merit.

While it is true that foreclosure falls within the broad definition of "doing business," that is:

...a continuity of commercial dealings and arrangements and contemplates to that extent, the performance of acts or words or the exercise of some of the functions normally incident to and in progressive prosecution of the purpose and object of its organization.[23]

it should not be considered included, however, in the acts prohibited whenever banks are "prohibited from doing business" during receivership and liquidation proceedings.

This we made clear in *Banco Filipino Savings & Mortgage Bank vs. Monetary Board, Central Bank of the Philippines*[24] where we explained that:

Section 29 of the Republic Act No. 265, as amended known as the Central Bank Act, provides that when a bank is forbidden to do business in the Philippines and placed under receivership, the person designated as receiver shall immediately take charge of the bank's assets and liabilities, as expeditiously as possible, collect and gather all the assets and administer the same for the benefit of its creditors, and represent the bank personally or through counsel as he may retain in all actions or proceedings for or against the institution, exercising all the powers necessary for these purposes including, but not limited to, bringing and foreclosing mortgages in the name of the bank.[25]

This is consistent with the purpose of receivership proceedings, i.e., to receive collectibles and preserve the assets of the bank in substitution of its former management, and prevent the dissipation of its assets to the detriment of the creditors of the bank.[26]

When a bank is declared insolvent and placed under receivership, the Central Bank, through the Monetary Board, determines whether to proceed with the liquidation or reorganization of the financially distressed bank. A receiver, who concurrently represents the bank, then takes control and possession of its assets for the benefit of

the bank's creditors. A liquidator meanwhile assumes the role of the receiver upon the determination by the Monetary Board that the bank can no longer resume business. His task is to dispose of all the assets of the bank and effect partial payments of the bank's obligations in accordance with legal priority. In both receivership and liquidation proceedings, the bank retains its juridical personality notwithstanding the closure of its business and may even be sued as its corporate existence is assumed by the receiver or liquidator. The receiver or liquidator meanwhile acts not only for the benefit of the bank, but for its creditors as well.[27]

In *Provident Savings Bank vs. Court of Appeals*,[28] we further stated that:

When a bank is prohibited from continuing to do business by the Central Bank and a receiver is appointed for such bank, that bank would not be able to do new business, i.e., to grant new loans or to accept new deposits. However, the receiver of the bank is in fact obliged to collect debts owing to the bank, which debts form part of the assets of the bank. The receiver must assemble the assets and pay the obligation of the bank under receivership, and take steps to prevent dissipation of such assets. Accordingly, the receiver of the bank is obliged to collect pre-existing debts due to the bank, and in connection therewith, to foreclose mortgages securing such debts.[29] (Emphasis supplied.)

It is true that we also held in said case that the period during which the bank was placed under receivership was deemed *fuerza mayor* which validly interrupted the prescriptive period.[30] This is being invoked by the respondent and was used as basis by the trial court in its decision. Contrary to the position of the respondent and court *quo* however, such ruling does not find application in the case at bar.

A close scrutiny of the *Provident* case, shows that the Court arrived at said conclusion, which is an exception to the general rule, due to the peculiar circumstances of *Provident Savings Bank* at the time. In said case, we stated that:

Having arrived at the conclusion that a foreclosure is part of a bank's business activity which could not have been pursued by the receiver then because of the circumstances discussed in the *Central Bank* case, we are thus convinced that the prescriptive period was legally interrupted by *fuerza mayor* in 1972 on account of the prohibition imposed by the Monetary Board against petitioner from transacting business, until the directive of the Board was nullified in 1981.[31] (Emphasis supplied.)

Further examination of the *Central Bank* case reveals that the circumstances of *Provident Savings Bank* at the time were peculiar because after the Monetary Board issued MB Resolution No. 1766 on September 15, 1972, prohibiting it from doing business in the Philippines, the bank's majority stockholders immediately went to the Court of First Instance of Manila, which prompted the trial court to issue its judgment dated February 20, 1974, declaring null and void the resolution and ordering the Central Bank to desist from liquidating *Provident*. The decision was appealed to and affirmed by this Court in 1981. Thus, the Superintendent of Banks, which was instructed to take charge of the assets of the bank in the name of the Monetary Board, had no power to act as a receiver of the bank and carry out the obligations specified in Sec. 29 of the Central Bank Act.[32]

In this case, it is not disputed that *Philippine Veterans Bank* was placed under receivership by the Monetary Board of the Central Bank by virtue of Resolution No. 364 on April 25, 1985, pursuant to Section 29 of the Central Bank Act on insolvency of banks. [33]

Unlike *Provident Savings Bank*, there was no legal prohibition imposed upon herein respondent to deter its receiver and liquidator from performing their obligations under the law. Thus, the ruling laid down in the *Provident* case cannot apply in the case at bar.

There is also no truth to respondent's claim that it could not continue doing business from the period of April 1985 to August 1992, the time it was under receivership. As correctly pointed out by petitioner, respondent was

even able to send petitioners a demand letter, through Francisco Go, on August 23, 1985 for “accounts receivable in the total amount of P6,345.00 as of August 15, 1984” for the insurance premiums advanced by respondent bank over the mortgaged property of petitioners. How it could send a demand letter on unpaid insurance premiums and not foreclose the mortgage during the time it was “prohibited from doing business” was not adequately explained by respondent.

Settled is the principle that a bank is bound by the acts, or failure to act of its receiver.[34] As we held in *Philippine Veterans Bank vs. NLRC*,[35] a labor case which also involved respondent bank,

... all the acts of the receiver and liquidator pertain to petitioner, both having assumed petitioner’s corporate existence. Petitioner cannot disclaim liability by arguing that the non-payment of MOLINA’s just wages was committed by the liquidators during the liquidation period.[36]

However, the bank may go after the receiver who is liable to it for any culpable or negligent failure to collect the assets of such bank and to safeguard its assets.[37]

Having reached the conclusion that the period within which respondent bank was placed under receivership and liquidation proceedings does not constitute a fortuitous event which interrupted the prescriptive period in bringing actions, we now turn to the second issue on whether or not the extra-judicial demand made by respondent bank, through Francisco Go, on August 23, 1985 for the amount of P6,345.00, which pertained to the insurance premiums advanced by the bank over the mortgaged property, constitutes a valid extra-judicial demand which interrupted the running of the prescriptive period. Again, we answer this question in the negative.

Prescription of actions is interrupted when they are filed before the court, when there is a written extra-judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.[38]

Respondent’s claim that while its first demand letter dated August 23, 1985 pertained to the insurance premium it advanced over the mortgaged property of petitioners, the same formed part of the latter’s total loan obligation with respondent under the mortgage instrument, and therefore, constitutes a valid extra-judicial demand which interrupted the running of the prescriptive period, is not plausible.

The real estate mortgage signed by the petitioners expressly states that:

This mortgage is constituted by the Mortgagor to secure the payment of the loan and/or credit accommodation granted to the spouses Cesar A. Larrobis, Jr. and Virginia S. Larrobis in the amount of ONE HUNDRED THIRTY FIVE THOUSAND (P135,000.00) PESOS ONLY Philippine Currency in favor of the herein Mortgagee.[39]

The promissory note, executed by the petitioners, also states that:

...FOR VALUE RECEIVED, I/WE, JOINTLY AND SEVERALLY, PROMISE TO PAY THE PHILIPPINE VETERANS BANK, OR ORDER, AT ITS OFFICE AT CEBU CITY THE SUM OF ONE HUNDRED THIRTY FIVE THOUSAND PESOS (P135,000.00), PHILIPPINE CURRENCY WITH INTEREST AT THE RATE OF FOURTEEN PER CENT (14%) PER ANNUM FROM THIS DATE UNTIL FULLY PAID.[40]

Considering that the mortgage contract and the promissory note refer only to the loan of petitioners in the amount of P135,000.00, we have no reason to hold that the insurance premiums, in the amount of P6,345.00, which was the subject of the August 1985 demand letter, should be considered as pertaining to the entire obligation of petitioners.

In *Quirino Gonzales Logging Concessionaire vs. Court of Appeals*,[41] we held that the notices of foreclosure sent by the mortgagee to the mortgagor cannot be considered tantamount to written extrajudicial demands, which

may validly interrupt the running of the prescriptive period, where it does not appear from the records that the notes are covered by the mortgage contract.[42]

In this case, it is clear that the advanced payment of the insurance premiums is not part of the mortgage contract and the promissory note signed by petitioners. They pertain only to the amount of P135,000.00 which is the principal loan of petitioners plus interest. The arguments of respondent bank on this point must therefore fail.

As to petitioners' claim for damages, however, we find no sufficient basis to award the same. For moral damages to be awarded, the claimant must satisfactorily prove the existence of the factual basis of the damage and its causal relation to defendant's acts.[43] Exemplary damages meanwhile, which are imposed as a deterrent against or as a negative incentive to curb socially deleterious actions, may be awarded only after the claimant has proven that he is entitled to moral, temperate or compensatory damages.[44] Finally, as to attorney's fees, it is demanded that there be factual, legal and equitable justification for its award.[45] Since the bases for these claims were not adequately proven by the petitioners, we find no reason to grant the same.

WHEREFORE, the decision of the Regional Trial Court, Cebu City, Branch 24, dated April 17, 1998, and the order denying petitioners' motion for reconsideration dated August 25, 1998 are hereby REVERSED and SET ASIDE. The extra-judicial foreclosure of the real estate mortgage on October 18, 1995, is hereby declared null and void and respondent is ordered to return to petitioners their owner's duplicate certificate of title.

Costs against respondent.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.

Chico-Nazario, J., on leave.

[1] Penned by Judge Priscila S. Agana; Rollo, pp. 29-37.

[2] Rollo, pp. 38-42.

[3] Rollo, pp. 29, 82.

[4] Records, p. 14.

[5] Rollo, pp. 62-63.

[6] Records, pp. 15-16.

[7] Id., pp. 11-12.

[8] Rollo, pp. 12, 35, 58.

Art. 1144 of the Civil Code provides:

The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment.

[9] Id., p. 37.

[10] Rollo, pp. 35-37.

[11] *Id.*, p. 42.

[12] *Id.*, p. 13.

[13] G.R. No., *Id.*, p. 14.

[14] G.R. No. 97218, May 17, 1993, 222 SCRA 125.

[15] *Rollo*, pp. 13-14.

[16] *Id.*, pp. 17-18.

[17] Art. 1115. The prescription of actions is interrupted when they are filed before the court, when there is a written extra-judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

[18] *Rollo*, pp. 19-22.

[19] *Id.*, p. 23.

[20] *Id.*, pp. 58-59, 62-63.

[21] *Rollo*, p. 72.

[22] *National Power Corporation vs. Philipp Brothers Oceanic Inc.*, G.R. No. 126204, November 20, 2001, 369 SCRA 629, 643.

[23] *Provident Savings Bank vs. Court of Appeals*, G.R. No. 97218, May 17, 1993, 222 SCRA 125, 131, citing *Mentholatum Co., Inc., et al. vs. Mangaliman, et al.*, 72 Phil 524 (1941).

[24] G.R. No. 70054, December 11, 1991, 204 SCRA 767.

[25] *Id.*, p. 788.

[26] *Banco Filipino Savings and Mortgage Bank vs. Monetary Board, Central Bank of the Philippines*, G.R. No. 70054, December 11, 1991, 204 SCRA 767, 789-790.

[27] *Philippine Veterans Bank vs. NLRC*, G.R. No. 130439, October 26, 1999, 317 SCRA 510, 519.

[28] G.R. No. 97218, May 17, 1993, 222 SCRA 125.

[29] *Id.*, pp. 131-132.

[30] *Id.*, p. 132.

[31] *Id.*

[32] *Central Bank vs. Court of Appeals*, Nos. L-50031-32, July 27, 1981, 106 SCRA 143, pp. 149-157.

[33] *Philippine Veterans Bank vs. Intermediate Appellate Court*, G.R. No. 73162, October 23, 1989, 178 SCRA 645, 651.

[34] *Philippine Trust Co. vs. HSBC*, 67 Phil 204 (1939).

[35] G.R. No. 130439, October 26, 1999, 317 SCRA 510.

[36] *Id.*, p. 520.

[37] *Philippine Trust Co. vs. HSBC*, 67 Phil 204 (1939).

[38] Civil Code, Art. 1155.

[39] Records, p. 13.

[40] Id., p. 11.

[41] G.R. No. 126568, April 30, 2003, 402 SCRA 181.

[42] Id., p. 191

[43] Development Bank of the Philippines vs. Emerald Resort Hotel Corp., G.R. No. 125838, June 10, 2003, 403 SCRA 460.

[44] Del Rosario vs. Court of Appeals, G.R. No. 118325, January 29, 1997, 267 SCRA 158, 172.

[45] Id., p. 173.

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