SUICO RATTAN & BURI INTERIORS, INC. AND SPOUSES ESMERALDO AND ELIZABETH D. SUICO, PETITIONERS, VS. COURT OF APPEALS AND METROPOLITAN BANK AND TRUST CO., INC., RESPONDENTS.

G.R. NO. 138145. June 15, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) dated January 14, 1999 in CA-G.R. CV No. 48320, which reversed and set aside the Decision[2] of the Regional Trial Court (RTC) of Cebu in Civil Case No. CEB-13156; and the CA Resolution dated April 6, 1999, denying petitioners' motion for reconsideration.[3]

The facts of the case are as follows:

Suico Rattan & Buri Interiors, Inc. (SRBII) is a domestic corporation engaged in the business of export of rattan and buri products. Spouses Esmeraldo and Elizabeth Suico (Suico spouses) are officers of SRBII. On the other hand, Metropolitan Bank and Trust Co., Inc. (Metrobank) is a commercial banking corporation duly organized and existing under the laws of the Philippines.

In the course of its business, SRBII applied for a credit line with Metrobank. On September 5, 1991, SRBII and Metrobank, Mandaue branch, entered into a Credit Line Agreement (Agreement) wherein the latter granted the former a discounting line amounting to P7,000,000.00 and an export bills purchase or draft against payment line (EBP/DP line) P10,000,000.00 for a maximum aggregate principal amount of P17,000,000.00.[4] As provided for under the Agreement, drawings on the credit line are secured by a Continuing Surety Agreement for the sum of P17,500,000.00 executed by the Suico spouses,[5] a Real Estate Mortgage executed on September 5, 1991 by SRBII and the Suico spouses over properties located at Brgy. Tabok, Mandaue City, Cebu and covered by Transfer Certificate of Title (TCT) Nos. 21663 and 21665, and Fire Insurance policies over the properties duly endorsed in favor of Metrobank. The Agreement expressly provides that the EBP/DP line is "clean".[6]

Previous to the execution of the Agreement, the Suico spouses had already incurred loan obligations from Metrobank which are secured by separate Real Estate Mortgages executed on May 8, 1986,[7] March 23, 1987[8] and August 24, 1987[9] over the same properties which are the subject of the Real Estate Mortgage executed on September 5, 1991. Between June 13, 1991 and July 11, 1991, SRBII also incurred obligations with Metrobank by entering into twelve negotiations for the purchase of export bills by the former from the latter. These obligations are evidenced by drafts drawn by SRBII in favor of Metrobank for a sum amounting to US$441,279.25 which has a peso equivalent of P12,218,866.23.[10] As a consequence of these negotiations, Metrobank issued various checks in favor of petitioners totaling P12,194,443.23,[11] the last one of which was dated July 24, 1991.[12]

Subsequently, SRBII and the Suico spouses were unable to pay their obligations prompting Metrobank to

extra-judicially foreclose the four mortgages constituted over the subject properties. Metrobank, being the lone and highest bidder, acquired the said properties during the auction sale. A Certificate of Sale dated November 18, 1992 was then issued in its favor.[13]

On November 5, 1992, Metrobank filed an action for the recovery of a sum of money arising from the obligations of SRBII and the Suico spouses on their export bills purchases incurred between June and July, 1991.[14] SRBII and the Suico spouses filed their Answer contending that their indebtedness are secured by a real estate mortgage and that the value of the mortgaged properties is more than enough to answer for all their obligations to Metrobank.[15]

On June 8, 1993, the RTC issued a pre-trial order enumerating the parties' claims, testimonial and documentary evidence to be presented and the issues raised.[16] Thereafter, trial ensued.

After trial, the RTC rendered judgment on September 26, 1994 with the following dispositive portion:

> WHEREFORE, foregoing premises considered, the Complaint is hereby dismissed. All obligations of defendants to plaintiffs incurred by the former either as principal, surety or guarantor, which matured and had become due and demandable on the date of the foreclosure of the Real Estate Mortgage are hereby declared already fully paid by the mortgage security.
>
> SO ORDERED.[17]

Aggrieved by the decision of the RTC, Metrobank filed an appeal with the CA.

On January 14, 1999, the CA rendered a Decision disposing as follows:

> WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE, and a new one rendered ordering appellees, jointly and severally, to pay appellant the sum of P16,585,286.27 representing the principal obligations and interests as of October 31, 1992, plus interest on the principal sum of P12,218,866.23 at the rate of P26% per annum from November 1, 1992 until the said amounts are fully paid, the sum equivalent to two percent (2%) of the total amount due as and for attorney's fees, and to pay the costs.
>
> SO ORDERED.[18]

While the CA affirmed the trial court's ruling that under the provisions of the real estate mortgage contracts executed by herein petitioners, the clear intent of the contracting parties is that the mortgages shall not be limited to the amount secured under the said contracts but shall extend to other obligations that they may obtain from Metrobank, including renewals or extensions thereof, the CA ruled that since the proceeds from the foreclosure sale of the mortgaged properties amounted only to P10,383,141.63, the same is not sufficient to answer for the entire obligation of petitioners to Metrobank and that the latter may still recover the deficiency of P16,585,286.27 representing the value of the export bills purchased by herein petitioners.

SRBII and the Suico spouses filed a Motion for Reconsideration but the same was denied by the CA through its Resolution issued on April 6, 1999.[19]

Hence, the present petition with the following Assignment of Errors:

> I
>
> THE RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING THAT THE REAL ESTATE MORTGAGE DATED SEPTEMBER 5, 1991 SERVED AS THE COLLATERAL FOR ALL THE OBLIGATIONS OF THE PETITIONERS.
>
> II

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THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DECIDING THE CASE BASED ON AN ISSUE NOT RAISED IN THE PLEADINGS OR ADMISSIONS OF THE PARTIES.

III

THE RESPONDENT COURT OF APPEALS ERRED IN NOT TAKING COGNIZANCE THAT RES JUDICATA HAD ALREADY SET IN, IN VIEW OF THE TERMINATION OF THE PROCEEDINGS IN EXTRAJUDICIAL FORECLOSURE SALE.

IV

THE RESPONDENT COURT OF APPEALS ERRED IN ORDERING THE PETITIONERS TO PAY SOLIDARILY THE AMOUNT OF P16,585,286.27 REPRESENTING THE PRINCIPAL OBLIGATION AND INTEREST AS OF OCTOBER 31, 1992 AND TO PAY AN INTEREST ON THE PRINCIPAL SUM OF P12,218,866,23 AT THE RATE OF 26% PER ANNUM FROM NOVEMBER 1, 1992 UNTIL THE SAID AMOUNTS ARE FULLY PAID.

V

THE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS SUICO SPOUSES ARE SOLIDARILY LIABLE WITH PETITIONER CORPORATION FOR PAYMENT OF INTEREST PRIOR TO THE FILING OF THE COMPLAINT.

VI

THE RESPONDENT COURT OF APPEALS ERRED IN ORDERING PETITIONERS TO PAY THE SUM EQUIVALENT TO TWO PERCENT (2%) OF THE TOTAL AMOUNT DUE AS AND FOR ATTORNEY'S FEES AND TO PAY THE COSTS.[20]

As to the first assigned error, petitioners claim that the Real Estate Mortgage executed on September 5, 1991 answered for all their obligations to Metrobank. Petitioners contend that the language of the subject mortgage contract is explicit in that it shall secure all other obligations of petitioners of whatever kind or nature, whether direct or indirect, principal or secondary and whether said obligations have been contracted before, during or after the execution of the said mortgage contract. Petitioners also contend that the secured obligations shall include those which were incurred by petitioners from other branches of Metrobank because the properties covered by the subject mortgage contract had earlier been mortgaged to the other branches of Metrobank. Petitioners argue that despite the existence of prior mortgages, Metrobank's acceptance of the mortgaged properties as collateral for their Credit Line Agreement only means that the value of the said properties is sufficient to answer for the previous and present obligations of petitioners and that Metrobank accepts the said properties as continuing collaterals. Petitioners argue that Metrobank is now estopped from claiming that the subject mortgage contract does not answer for all of petitioners' obligations in its favor.

With respect to the second assigned error, petitioners contend that the CA erred in ruling that the bank's cause of action is based on its claim for a deficiency judgment arising from insufficient proceeds of the foreclosure sale of the mortgaged properties; Metrobank's cause of action is for a sum of money; at the time of the filing of the complaint, there is no deficiency judgment to speak of because the complaint was filed on November 5, 1992 while the foreclosure sale was only held on November 18, 1992; the complaint was not amended to include recovery of the deficiency as part of its cause of action.

Anent the third assignment of error, petitioners assert that Metrobank is guilty of splitting a single cause of action when it filed its complaint for a sum of money on November 5, 1992 and, thereafter, on November 18, 1992, foreclosed the properties subject matter of the mortgage. Petitioners contend that in the event that a mortgage

debtor fails to pay his obligation, the mortgage creditor has the option to file an action to collect the indebtedness or to foreclose the property subject matter of the mortgage. However, the creditor may not pursue both remedies. Petitioners contend that the present action for a sum of money is already barred by res judicata by reason of the extrajudicial foreclosure sale of the mortgaged properties, as evidenced by the execution of the Definite Deed of Sale in favor of Metrobank on January 21, 1994.

As to the fourth assigned error, petitioners contend that the CA erred in holding that they are still liable to pay the deficiency in their obligation which was not covered by the proceeds of the sale of the foreclosed mortgaged properties. Petitioners assert that in bidding and in subsequently buying the subject mortgaged properties during the foreclosure sale for a price which is much lower than their market value, Metrobank effectively prevented petitioners from paying their entire obligation. Petitioners claim that they are not interested in the redemption of the foreclosed properties, rather they are more concerned with the payment of their obligation considering that these properties are the only ones with which they expect to settle their indebtedness. Hence, since Metrobank, in buying the foreclosed properties at a very low price, prevented petitioners from paying their entire obligation, it is already barred by the principle of estoppel, equity and fair play from recovering the remaining balance of petitioners' obligation to it.

With respect to the fifth assigned error, the Suico spouses contend that the CA committed error in holding them solidarily liable with SRBII for the payment of the remaining balance of the latter's obligation plus interest on the ground that they are mere sureties and as such they can only be held liable if the principal does not pay. Absent any showing that SRBII cannot pay, petitioners contend that they are not liable to pay. The Suico spouses also contend that, as sureties, they are liable to pay interest only at the time of the filing of the complaint.

As to the last assigned error, petitioners contend that the CA erred in awarding attorney's fees equivalent to 2% of the total amount due because petitioners did not act in bad faith nor did they willfully refuse to pay their obligation, which allegedly prompted Metrobank to litigate. Moreover, petitioners argue that the award of attorney's fees by the CA is contrary to the general rule that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.

In its Comment, respondent bank contends that the export bills purchases made by petitioners are not secured by any real estate mortgage. To support its argument respondent bank cites the stipulation contained in the Credit Line Agreement that the export bills purchases are clean or unsecured. Respondent bank further argues that the export bills purchases were availed of by petitioners through the bank's Cebu Downtown Center Branch (otherwise referred to in the records as the Plaridel Branch) while the other loan obligations of petitioners, which were secured by real estate mortgages, were obtained from its Mandaue City Branch. Moreover, respondent bank asserts that petitioners' obligations with the former's Mandaue City Branch are evidenced by documents which are distinct and separate from the documents representing petitioners' export bills purchases with the Metrobank Cebu Downtown Center Branch. In any case, respondent bank contends that even if the real estate mortgage contracts executed by petitioners be considered as securing all of the latter's obligations, including their export bills purchases, the fact remains that the foreclosure of the mortgaged properties generated an amount which is insufficient to answer for all the obligations of petitioners to respondent bank. Respondent bank contends that under the law, it is not prevented from claiming the balance of petitioners' obligation which was not covered by the proceeds of the foreclosure sale. Respondent bank also argues that it is erroneous for petitioners to claim that just because it (Metrobank) did not require petitioners to put up additional security when they availed of subsequent loans, the previous mortgages are already sufficient to secure all their subsequent obligations.

Respondent bank further contends that the CA is correct in ruling that it (Metrobank) is entitled to deficiency judgment considering that petitioners themselves raised the issue that the real estate mortgages they executed

secured all their obligations with respondent bank. Respondent argues that the issue on deficiency judgment necessarily arose because the proceeds of the foreclosure sale are not sufficient to answer for all the obligations of petitioners to respondent bank. In any case, respondent bank contends that the CA is clothed with ample authority to resolve an issue even if it is not raised if such resolution is necessary in arriving at a just decision.

Respondent bank asserts that there is no splitting of cause of action because the complaint it filed against petitioners is simply for the purpose of collecting the balance of the latter's obligation which was not covered by the proceeds of the sale of the mortgaged properties.

Respondent bank also contends that the Suico spouses are solidarily liable with SRBII because by reason of their execution of the Continuing Surety Agreement, the spouses' liability became direct, primary and absolute.

As to the attorney's fees awarded by the CA, respondent bank counters that petitioners are guilty of fraud and misrepresentation when they gave their assurance and warranty that documents such as letters of credit and commercial invoices are valid and existing when, in fact, they are not, thereby inducing respondent bank to grant and approve its transactions with petitioners involving the export bills purchases. By reason of such fraud and misrepresentation, respondent bank contends that it was compelled to incur expenses to protect its interest and enforce its claims.

The Court finds the petition partly meritorious.

The issues raised boil down to two basic questions: first, whether the mortgage contract executed on September 5, 1991 serves as security for all the obligations of petitioners to respondent bank; and second, whether the foreclosure of the mortgaged properties precludes respondent bank from claiming the sum of P16,585,286.27 representing the amount covered by the export bills purchased by herein petitioners between June and July 1991.

As to the first question, the Court agrees with petitioners that all their obligations, including their indebtedness arising from their purchase of export bills, are secured by the Real Estate Mortgage contract executed on September 5, 1991. We are not persuaded by respondent bank's contention that the export bills purchases of petitioners from June 13, 1991 to July 11, 1991 were not secured by any real estate mortgage because of the stipulation in the Agreement that the export bill purchase/draft against payment (EBP/DP) line is clean, which means that it is unsecured.

The following provisions appear in the Agreement:

> ...
>
> WHEREAS, the CLIENT is desirous of obtaining credit accommodations from the BANK and the latter is willing to extend such credit accommodations to the CLIENT upon the terms and conditions hereinafter stipulated.
>
> NOW, THEREFORE, the CLIENT and the BANK, in consideration of the following terms and conditions have agreed and covenanted as follows:
>
> - The BANK hereby grants and shall make available to the CLIENT a credit line up to the aggregate principal amount of PESOS: SEVENTEEN MILLION ONLY (P17,000,000.00) PESOS in lawful currency of the Republic of the Philippines, to be availed as follows:P 7,000,000.00- DISCOUNTING LINE (REM) for one (1)year, interest at prevailing rate, available by way of PNs not more than 360 days, discounted.
>
> 10,000,000.00- EBP/DP LINE (CLEAN) for one (1) year,interest at prevailing rate.

- Drawings on the line shall be secured by:

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- Continuing Suretyship of Spouses Esmeraldo Suico and Elizabeth D. Suico.

- REM for P7.0 MM over TCT Nos. 21663 & 21665 w/ an aggregate area of 10,318 sq. m. and situated at Brgy. Tabok, Mandaue City, for item 1 only

- Fire Insurance policy(ies) duly endorsed in bank's favor.

...[21] (Emphasis supplied)

It is true that the terms contained in the Agreement provide that the EBP/DP LINE is "clean" and that it is only those drawings made on the DISCOUNTING LINE which are secured by the mortgage constituted by petitioners spouses Suico over the subject properties. However, a perusal of the entire Agreement shows that the credit line extended to petitioners refers only to transactions that the latter may enter into after the execution of the said Agreement. There is nothing in the said document which shows that the credit line covered the export bill purchases incurred prior to the execution of the Agreement. In other words, the provision that the EBP/DP LINE is clear or not covered by real estate mortgage simply refers to credit accommodations which petitioners may avail from respondent bank subsequent to the execution of the Agreement. It does not, in any way, refer to credit accommodations which were already extended by respondent bank to petitioners prior to September 5, 1991, the date the Agreement was constituted. The parties could not have intended that the Agreement shall also pertain to the export bills purchases made by petitioners prior to its execution, that is, between June and July 1991, considering that the maximum amount covered by the EBP/DP LINE under the Agreement is only P10,000,000.00 while the outstanding obligation of petitioners for the export bills purchases as of July 1991 already totaled US$441,279.25 which, at the time of the transactions, had a peso equivalent of P12,218,866.23.

On the other hand, pertinent portions of the Real Estate Mortgage executed on the same date as the Agreement provide as follows:

> ...
>
> That for and in consideration of certain loans and other credit accommodations obtained from the Mortgagee amounting to SIX MILLION TWO HUNDRED FIFTY THOUSAND (P6,250,000.00) PESOS ONLY Philippine Currency, and to secure the payment of the same and those others that the Mortgagee may heretofore have extended or hereafter extend to the Mortgagor and/or SUICO RATTAN & BURI INTERIORS, INC., a domestic corporation with principal office and place of business at Tabok, Mandaue City, Philippines, hereinafter referred to, regardless of number, as the Borrower, including interest at the rate specified in the promissory note(s) or other evidence of indebtedness secured by this mortgage and expenses, and all other obligations of the Mortgagor/Borrower to the Mortgagee of whatever kind or nature, whether direct or indirect, principal or secondary, as appear in the accounts, books and records of the Mortgagee, whether such obligations have been contracted before, during or after the constitution of this mortgage, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its successors or assigns, the parcels of land which are described in the list inserted at the back of this document, or in a supplementary list attached hereto, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon and all easements, sugar quotas, agricultural or land indemnities, aids or subsidies, including all other rights or benefits annexed to or inherent therein, now existing or which may hereafter exist, and also other assets acquired with the proceeds of the loan hereby secured, all of which the Mortgagor declares that he is the absolute owner free from all liens and encumbrances.
>
> ...[22] (emphasis supplied)

From the language of the contract, it is clear that the mortgaged properties were intended to secure all loans, credit accommodations and all other obligations of herein petitioners to Metrobank, whether such obligations have been

contracted before, during or after the constitution of the mortgage.

The Court finds no conflict between the provisions of the Agreement and the Real Estate Mortgage contract both dated September 5, 1991, insofar as the export bills purchases from June 13, 1991 to July 11, 1991 are concerned. The stipulations in the September 5, 1991 Agreement refer only to future export bill purchases, thus excluding those purchases made in June and July, 1991; even as the provisions of the subject Real Estate Mortgage pertain to all obligations of petitioners including those which were constituted even before the execution of the said mortgage. Thus, although the Agreement does not refer to export bill purchases incurred prior to the execution of said Agreement, the Real Estate Mortgage encompasses all obligations incurred by petitioners, including the June and July 1991 export bill purchases but not the purchases made after September 5, 1991 under the Agreement.

Neither is the Court persuaded by respondent bank's contention that petitioners' obligations arising from their purchase of export bills is separate and distinct from their other loan obligations with respondent bank because the export bills purchases were availed by petitioners through the bank's Cebu Downtown Center/Plaridel branch while the other loan obligations of petitioners were obtained from its Mandaue City branch.

The Court quotes, with approval, the trial court's ratiocination on this matter:

> ...
>
> It matters not that the EBP/DP line was availed of by defendants with the Plaridel branch, because the Credit Line Agreement and the Real Estate Mortgages clearly indicate that defendants were indebted to plaintiff bank and not to its Mandaue or Plaridel branch. This is clearly evident in the opening paragraph of the Credit Line Agreement and the Real Estate Mortgages when plaintiff defines itself as a "Commercial Banking Corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal offices and places of business at Metrobank Plaza, Gil. J. Puyat Avenue, Makati, Metro Manila." Clearly therefore, defendants were deemed to be indebted to plaintiff with main office in Makati and not with its Mandaue or Plaridel branch.
>
> ...[23]

It bears to note that the complaint for a sum of money was filed in the name of Metrobank alone, without impleading its Plaridel or Mandaue branches. By not impleading either of these branches, it only goes to show that respondent bank, itself, insofar as the present case is concerned, considers the whole Metrobank corporation as the aggrieved party. Hence, it is now estopped from claiming that the mortagaged properties secure only those transactions entered into with its Mandaue branch simply because the mortgage contracts were entered into through the said branch. It does not matter that the export bills purchases of petitioners were entered into through the facility of respondent bank's Plaridel branch and evidenced by separate and distinct documents because in all these transactions there is only one creditor, which is the corporate entity known as Metrobank.

On the other hand, the Court is not persuaded by petitioners' claim that the foreclosed properties command a market price of P50,000,000.00 at the time of the foreclosure sale. No evidence appears on record to prove this allegation. Granting that the mortgaged properties were sold during the auction for an amount which is way below their market price, the same does not place the petitioners at a disadvantage. On the contrary, the low price works to their advantage because it would be easier for them to redeem the property sold. The Court agrees with the CA when it cited the case of Prudential Bank v. Martinez where the Court held as follows:

> "Moreover, the fact that the mortgaged property is sold at an amount less than its actual market value should not militate against the right to such recovery. We fail to see any disadvantage going for the mortgagor. On the contrary, a mortgagor stands to gain with a reduced price because he possesses the right of redemption. When there is the right to redeem, inadequacy of price should not be material, because the judgment debtor may

> reacquire the property or also sell his right to redeem and thus recover the loss he claims to have suffered by the reason of the price obtained at the auction sale. (De Leon v. Salvador, L-30871, December 28, 1970 and Bernabe v. Cruz, et. al., L-31603, December 28, 1970; 36 SCRA 567). Generally, in forced sales, low prices are usually offered and the mere inadequacy of the price obtained at the sheriff's sale unless shocking to the conscience will not be sufficient to set aside a sale if there is no showing that in the event of a regular sale, a better price can be obtained (Ponce de Leon v. Rehabilitation Finance Corporation, L-24571, December 18, 1970, 36 SCRA 289).[24]

Hence, it is wrong for petitioners to conclude that when respondent bank supposedly bought the foreclosed properties at a very low price, the latter effectively prevented the former from satisfying their whole obligation. Petitioners still had the option of either redeeming the properties and, thereafter, selling the same for a price which corresponds to what they claim as the properties' actual market value or by simply selling their right to redeem for a price which is equivalent to the difference between the supposed market value of the said properties and the price obtained during the foreclosure sale. In either case, petitioners will be able to recoup the loss they claim to have suffered by reason of the inadequate price obtained at the auction sale and, thus, enable them to settle their obligation with respondent bank. Moreover, petitioners are not justified in concluding that they should be considered as having paid their obligations in full since respondent bank was the one who acquired the mortgaged properties and that the price it paid was very inadequate. The fact that it is respondent bank, as the mortgagee, which eventually acquired the mortgaged properties and that the bid price was low is not a valid reason for petitioners to refuse to pay the remaining balance of their obligation. Settled is the rule that a mortgage is simply a security and not a satisfaction of indebtedness.[25]

As to petitioners' contention that they are not liable to pay since there is no showing that the principal debtor cannot pay, the time-honored rule is that the surety obligates himself to pay the debt if the principal debtor will not pay, regardless of whether or not the latter is financially capable to fulfill his obligation.[26] Thus, a creditor can go directly against the surety although the principal debtor is solvent and is able to pay or no prior demand is made on the principal debtor.[27] Although a surety contract is secondary to the principal obligation, the liability of the surety is direct, primary and absolute; or equivalent to that of a regular party to the undertaking.[28] A surety is considered in law to be on the same footing as the principal debtor in relation to whatever is adjudged against the latter.[29]

Equally settled is the principle that contracts have the force of law between the parties and are to be complied with in good faith.[30] From the moment the contract is perfected, the parties are bound to comply with what is expressly stipulated as well as with what is required by the nature of the obligation in keeping with good faith, usage and the law.[31] In the present case, it is clear from the Continuing Surety Agreement[32] executed by the Suico spouses that they hold themselves solidarily liable with SRBII in the payment of the latter's obligations to respondent bank to the extent of P17,500,000.00, plus interests and other incidental charges such as penalties, costs and expenses in collecting their obligation. The same principle applies with respect to the payment of interest. It is clear from the various letters executed by SRBII in favor of respondent bank that it agreed to pay interest in favor of respondent bank at the rate of 26% per annum based on the value of the draft, the same to be reckoned after twelve days from the date of purchase or from the date of dishonor, whichever is earlier, up to the date of final payment.[33] Since the Suico spouses obligated themselves to be solidarily bound with SRBII, it follows that they are also liable to pay interest as stipulated in the above-cited letters.

Having settled that the mortgaged properties served as security for all the petitioners' obligations to Metrobank and that the former's liability is solidary, the next question to be resolved is whether, under the facts and circumstances obtaining in the present case, the respondent bank is precluded from recovering the amount representing the value of the export bills purchased by petitioners from it in June and July, 1991.

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The rule is settled that a mortgage creditor may, in the recovery of a debt secured by a real estate mortgage, institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage.[34] These remedies available to the mortgage creditor are deemed alternative and not cumulative. An election of one remedy operates as a waiver of the other.[35] In sustaining the rule that prohibits mortgage creditors from pursuing both the remedies of a personal action for debt or a real action to foreclose the mortgage, the Court held in the case of Bachrach Motor Co., Inc. v. Esteban Icarangal, et al. that a rule which 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 and obnoxious to law and equity, 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.[36] Hence, 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 provisions of Rule 68 of the Rules of Court.[37] 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.[38]

Records show that the complaint for a sum of money was filed with the RTC on November 5, 1992. On the other hand, there is no direct evidence to show when respondent bank filed a petition with the provincial sheriff of Cebu for the extrajudicial foreclosure of the mortgaged properties. The petition for extrajudicial foreclosure of the mortgaged properties was not presented in evidence. What appears on record is that the auction sale of the foreclosed properties was conducted on November 17, 1992. However, as mentioned earlier, the remedy of extrajudicial foreclosure is deemed chosen not on the date of foreclosure sale but upon the filing of the petition for foreclosure with the office of the sheriff of the province where the sale is to be made. Hence, for purposes of determining which remedy was first elected - the personal action for debt or the real action for foreclosure - there is a need to determine when the respondent bank filed a petition for extrajudicial foreclosure.

The Certificate of Sale executed by the Ex-Officio Provincial Sheriff indicates that the extrajudicial foreclosure sale was conducted on November 17, 1992.[39] In the absence of evidence to the contrary, the Court presumes that the sheriff regularly performed his duties and that the ordinary course of business had been followed in the conduct of the auction sale.[40] Section 3 of Act No. 3135, as amended by Act No. 4118 provides:

> Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city. (Emphasis supplied)

Hence, it is reasonable to assume that the requirements regarding notice and publication prior to the conduct of the sale have been complied with. Going back 20 days from November 17, 1992, which was the date the auction sale was conducted, the petition for extrajudicial foreclosure could have been filed by respondent bank not later than October 27, 1992. Considering that the complaint for a sum of money was only filed on November 5, 1992, the only conclusion that can be arrived at is that respondent bank first elected to avail of the remedy of extrajudicial foreclosure. Thus, by availing of such remedy it is deemed to have waived its right to file an ordinary case for collection.

The question that remains then is: may the complaint for a sum of money filed by respondent bank be considered as a suit for the recovery of deficiency in petitioners' obligation?

The Court rules in the negative.

It is undisputed that the suit filed by respondent bank with the trial court was a personal action for the collection of a sum of money. The complaint was premised on the refusal of herein petitioners' buyers to pay and accept the value of the drafts or bills of exchange and the subsequent failure of petitioners to answer for the value of the said drafts plus interest upon notice and demand sent by respondent bank. There was no mention, either in the body of the complaint or in the prayer, for the recovery of the balance of petitioners' obligations which were not covered by the foreclosure sale. In fact, the foreclosure sale was not even mentioned. In other words, in filing the complaint with the RTC, respondent bank was not suing for any deficiency. Understandably, the respondent bank could not have claimed such deficiency because, as correctly observed by petitioners, at the time of the filing of the complaint on November 5, 1992, the foreclosure sale is yet to be conducted. Hence, the complaint cannot, in any way, be construed as an action for the recovery of deficiency in petitioners' obligation. It is actually an ordinary action for collection which is barred by reason of respondent's prior election of the remedy of foreclosure. Thus, the Court is left with no recourse but to sustain the dismissal of the complaint by the RTC subject to the right of Metrobank to recover the alleged deficiency, as will be discussed forthwith. It must be emphasized that as aptly observed by petitioners, Metrobank did not amend its complaint accordingly.

Given the fact that the proceeds of the auction sale were not sufficient to answer for the entire obligation of petitioners to respondent bank, the latter still has the right to recover the balance due it after applying the proceeds of the sale. We agree with the CA that where the mortgage creditor chooses the remedy of foreclosure and the proceeds of the foreclosure sale are insufficient to cover the debt, the mortgagee is entitled to claim the deficiency from the debtor.[41] The law gives the mortgagee the right to claim for the deficiency resulting from the price obtained in the sale of the property at public auction and the outstanding obligation at the time of the foreclosure proceedings.[42] This rule is based on the principle earlier mentioned that the mortgage is only a security and not a satisfaction of the mortgagor's entire obligation. Moreover, unlike in pledge[43] and chattel mortgage on a thing sold on installment,[44] where the Civil Code expressly forecloses the right of creditors to sue for any deficiency resulting from the sale of the property given as a security for the obligation, there is nothing in Act. No. 3135,[45] the law governing extrajudicial foreclosures, which expressly or impliedly prohibits the recovery of such deficiency. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide.[46] Absent such a provision in Act. No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage.[47] Hence, in the present case, the Court's dismissal of the complaint should be without prejudice to the filing of another action for the recovery of the balance left in petitioners' obligation after the foreclosure sale of the mortgaged properties.

The CA or this Court has no jurisdiction to rule on the amount of deficiency that is yet to be claimed and proved in the proper forum by Metrobank.

WHEREFORE, the petition is partially GRANTED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 48320 are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Cebu, Branch 8 in Civil Case No. CEB-13156 is REINSTATED with MODIFICATION to the effect that the portion of the RTC Decision, declaring that "all obligations of defendants to plaintiffs incurred by the former either as principal, surety or guarantor, which matured and had become due and demandable on the date of the foreclosure of the Real Estate Mortgage are considered fully paid by the mortgage security", is DELETED subject to the right of Metropolitan Bank and Trust Co., Inc. to recover the amount of deficiency in a proper action in the proper court.

No pronouncement as to cost.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Penned by Justice Artemon D. Luna (now retired) and concurred in by Justices Delilah Vidallon-Magtolis (now retired) and Rodrigo V. Cosico.[2] Penned by Judge Victorino U. Montecillo.[3] CA rollo, p. 142.[4] Exhibit "UUUU", records, p. 287; TSN, September 24, 1993, p. 7.[5] Exhibit "GGGG", records, p. 105/Exhibit "2", records, p. 315; "UUUU-1-A", records, p. 287.[6] Exhibit "UUUU", records, p. 287.[7] Exhibit "VVVV", records, p. 288.[8] Exhibit "WWWW", records, p. 291.[9] Exhibit "YYYY", records, p. 296.[10] Exhibits "D", "K", "R", "Y", "FF", "MM", "TT", "AAA", "HHH", "OOO", "VVV", "CCCC", "JJJJ", records, pp. 24, 31, 38, 45, 52, 59, 66, 73, 80, 87, 94, 101, 108.[11] Exhibits "F", "M", "T", "AA", "HH", "OO", "VV", "CCC", "JJJ", "QQQ", "XXX", records, pp. 26, 33, 40, 47, 54, 61, 68, 75, 82, 89, 96.[12] Exhibit "FFFF", records, p. 104.[13] Exhibit "ZZZZ", records, p. 300.[14] Records, p. 1.[15] Id. at 120.[16] Id. at 191.[17] Id. at 389.[18] CA rollo, p. 103.[19] Id. at 142.[20] Rollo, pp. 13-14.[21] Exhibit "UUUU", records, p. 287.[22] Exhibit "XXXX", records, p. 295.[23] Records, pp. 385-386.[24] G.R. No. 51768, September 14, 1990, 189 SCRA 612, 617.[25] Philippine Bank of Commerce v. De Vera, 116 Phil. 1326, 1329 (1962).[26] Ong v. Philippine Commercial International Bank, G.R. No. 160466, January 17, 2005, 448 SCRA 705, 709.[27] Id.[28] International Finance Corporation v. Imperial Textile Mills Inc., G.R. No. 160324, November 15, 2005, 475 SCRA 149, 160.[29] Id. at 161.[30] Twin Towers Condominium Corporation v. Court of Appeals, et. al., 446 Phil. 280, 312 (2003).[31] Id. at 312-313.[32] Exhibit "GGGG", records, p. 105.[33] Exhibits "E", "L", "S", "Z", "GG", "NN", "UU", "BBB", "III", "PPP", "WWW", "DDDD", records, pp. 25, 32, 39, 46, 53, 60, 67, 74, 81, 88, 95, 102.[34] Bank of America NT & SA v. American Realty Corporation and Court of Appeals, 378 Phil. 1279, 1290-1291, (1999), 321 SCRA 659, 668.[35] Id.[36] 68 Phil. 287, 294-295 (1939).[37] Bank of America NT & SA v. American Realty Corporation and Court of Appeals, supra.[38] Id. at 669.[39] Exhibit "ZZZZ", records, p. 300.[40] Sections 3 (m) and (q), Rule131, Rules of Court.[41] Cuñada v. Drilon, G.R. No. 159118, June 28, 2004, 432 SCRA 618, 625.[42] Quirino Gonzales Logging Concessionaire v. Court of Appeals, 450 Phil. 218, 230 (2003), 402 SCRA 181, 190.[43] Article 2115. The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case. If the price of the sale is more than said amount, the debtor shall not be entitled to the excess, unless it is otherwise agreed. If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary.[44] Article 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1) Exact fulfillment of the obligation, should the vendee fail to pay;

(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.(emphasis supplied).

[45] An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages[46] Cuñada v. Drilon, supra.[47] Id.

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