DEVELOPMENT BANK OF THE PHILIPPINES AND PRIVATIZATION AND MANAGEMENT OFFICE (FORMERLY ASSET PRIVATIZATION TRUST), PETITIONERS, VS. HON. COURT OF APPEALS, PHILIPPINE UNITED FOUND...

G.R. NO. 138703. June 30, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court of the decision of the Court of Appeals (CA) dated May 7, 1999 in CA-G.R. CV No. 49239 entitled "Philippine United Foundry and Machinery Corp. and Philippine Iron Manufacturing Co., Inc. v. Development Bank of the Philippines and Asset Privatization Trust" which upheld the decision of the Regional Trial Court (RTC), Branch 98 of Quezon City in Civil Case No. Q-49650.

Sometime in March 1968, the Development Bank of the Philippines (DBP) granted to respondents Philippine United Foundry and Machineries Corporation and Philippine Iron Manufacturing Company, Inc. an industrial loan in the amount of P2,500,000 consisting of P500,000 in cash and P2,000,000 in DBP Progress Bonds. The loan was evidenced by a promissory note[2] dated June 26, 1968 and secured by a mortgage[3] executed by respondents over their present and future properties such as buildings, permanent improvements, various machineries and equipment for manufacture.

Subsequently, DBP granted to respondents another loan in the form of a five-year revolving guarantee amounting to P1,700,000 which was reflected in the amended mortgage contract[4] dated November 20, 1968. According to respondents, the loan guarantee was extended to them when they encountered difficulty in negotiating the DBP Progress Bonds. Respondents were only able to sell the bonds in 1972 or about five years from its issuance for an amount that was 25% less than its face value.[5]

On September 10, 1975, the outstanding accounts of respondents with DBP were restructured in view of their failure to pay. Thus, the outstanding principal balance of the loans and advances amounting to P4,655,992.35 were consolidated into a single account. The restructured loan was evidenced by a new promissory note[6] dated November 12, 1975 payable within seven years, with partial payments on the principal to be made beginning on the third year plus a 12% interest per annum payable every month. The following paragraph appears at the bottom portion of the note:

> This promissory note represents the consolidation into one account of the outstanding principal balance of PHILIMCO and PHUMACO's account, and is prepared pursuant to Res. No. 228, dated September 10, 1975, approved by the Executive Committee pursuant to Bd. Res. No. 3577, s. of 1975. This note is secured by mortgages on the existing assets of the firms.[7]

On the other hand, all accrued interest and charges due amounting to P3,074,672.21 were denominated as "Notes Taken for Interests" and evidenced by a separate promissory note[8] dated November 12, 1975. The following

annotation appears at the bottom portion of the note:

> This promissory note represents all accrued interests and charges which are taken up as "NOTES TAKEN FOR INTEREST" due on the accounts of PHILIMCO and PHUMACO approved under Bd. Res. No. 3577, s. of 1975. This note is secured by (a) mortgage on the existing assets of the firm.[9]

Both notes provided for the following additional charges and penalties:

> (1)
>
> 12% interest per annum on unpaid amortizations[10];
>
> (2)
>
> 10% penalty charge per annum on the total amortizations past due effective 30 days from the date respondents failed to comply with any of the terms stipulated in the notes[11]; and,
>
> (3)
>
> Bank advances for insurance premiums, taxes, rentals, litigation and acquired assets expenses, collection and other out-of-pocket expenses not covered by inspection and processing fees subject to the following charges[12]:
>
> (a)
>
> One time service charge of ½% on the amount advanced to be included in the receivable account;
>
> (b)
>
> Penalty charge of 8% per annum on past due advances; and
>
> (c)
>
> Interest at 12% per annum.

Notwithstanding the restructuring, respondents were still unable to comply with the terms and conditions of the new promissory notes. As a result, respondents requested DBP to refinance the matured obligation. The request was granted by DBP, pursuant to which three foreign currency denominated loans sourced from DBP's own foreign borrowings were extended to respondents on various dates between 1980 and 1981.[13] These loans were secured by mortgages[14] on the properties of respondents and were evidenced by the following promissory notes:

Face Value
Maturity Date

Interest Rate Per Annum

(1) Promissory Note[15] dated December 11, 1980 $661,330
December 15, 1990 3% over DBP's borrowing rate[16]

(2) Promissory Note[17] dated June 5, 1981 $666,666
June 23, 1991 3% over DBP's borrowing rate[18]

(3) Promissory Note[19] dated December 16, 1981
$486,472.37
December 31, 1982 4% over DBP's borrowing cost

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Apart from the interest, the promissory notes imposed additional charges and penalties if respondents defaulted on their payments. The notes dated December 11, 1980 and June 5, 1981 specifically provided for a 2% annual service fee computed on the outstanding principal balance of the loans as well as the following additional interest and penalty charges on the loan amortizations or portions in arrears:

(a) If in arrears for thirty (30) days or less:

- Additional interest at the basic loan interest rate per annum computed on total amortizations past due, irrespective of age.

- No penalty charge

(b) If in arrears for more than thirty (30) days:

- Additional interest at the basic loan interest rate per annum computed on total amortizations past due, irrespective of age, plus,

- Penalty charge of 16% per annum computed on amortizations or portions thereof in arrears for more than thirty (30) days counted from the date the amount in arrears becomes liable to this charge.[20]

Under these two notes, respondents also bound themselves to pay bank advances for insurance premiums, taxes, litigation and acquired assets expenses and other out-of-pocket expenses not covered by inspection and processing fees as follows:

(a)

One-time service charge of 2% of the amount advanced, same to be included in the receivable account.

(b)

Interest at 16% per annum.

(c)

Penalty charge from date of advance at 16% per annum.

The note dated December 16, 1981, on the other hand, provided for the interest and penalty charges on loan amortizations or portions of it in arrears as follows:

(a)

Additional interest at the basic loan interest per annum computed on total amortizations past due irrespective of age; plus

(b)

Penalty charges of 8% per annum computed on total amortizations in arrears, irrespective of age.[21]

Respondents were likewise bound to pay bank advances for insurance premiums, taxes, litigation and acquired assets expenses and other out-of-pocket expenses not covered by inspection and processing fees as follows:

(a)

One-time service charge of 2% of (the) amount advanced, same to be included and debited to the advances account;

(b)

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Interest at the basic loan interest rate; and

(c)

Penalty charge from date of advance at 8% per annum.[22]

Sometime in October 1985, DBP initiated foreclosure proceedings upon its computation that respondents' loans were in arrears by P62,954,473.68.[23] According to DBP, this figure already took into account the intermittent payments made by respondents between 1968 and 1981 in the aggregate amount of P5,150,827.71.[24]

However, the foreclosure proceedings were suspended on twelve separate occasions from October 1985 to December 1986 upon the representations of respondents that a financial rehabilitation fund arising from a contract with the military was forthcoming. On December 23, 1986, before DBP could proceed with the foreclosure proceedings, respondents instituted the present suit for injunction.

On January 6, 1987, the complaint was amended to include the annulment of mortgage. On December 15, 1987, the complaint was amended a second time to implead the Asset Privatization Trust (APT) (now the Privatization and Management Office [PMO])[25] as a party defendant.

Respondents' cause of action arose from their claim that DBP was collecting from them an unconscionable if not unlawful or usurious obligation of P62,954,473.68 as of September 30, 1985, out of a mere P6,200,000 loan. Primarily, respondents contended that the amount claimed by DBP is erroneous since they have remitted to DBP approximately P5,300,000 to repay their original debt. Additionally, respondents assert that since the loans were procured for the Self-Reliant Defense Posture Program of the Armed Forces of the Philippines (AFP), the latter's breach of its commitment to purchase military armaments and equipment from respondents amounts to a failure of consideration that would justify the annulment of the mortgage on respondents' properties.[26]

On December 24, 1986, the RTC issued a temporary restraining order. A Writ of Preliminary Injunction was subsequently issued on May 4, 1987. After trial on the merits, the court rendered a decision in favor of respondents,[27] the dispositive portion of which reads:

WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered in favor of the [respondents] and against the defendants [DBP and APT], ordering that:

(1) The Writ of Preliminary Injunction already issued be made permanent;

(2) The [respondents] be made to pay the original loans in the aggregate amount of Six Million Two Hundred Thousand (P6,200,000) Pesos;

(3) The [respondents'] payment in the amount of Five Million Three Hundred Thirty-Five Thousand, Eight Hundred Twenty-seven Pesos and Seventy-one Centavos (P5,335,827.71) be applied to payment for interest and penalties; and

(4) No further interest and/or penalties on the aforementioned principal obligation of P6.2 million shall be imposed/charged upon the [respondents] for failure of the military establishment to honor their commitment to a valid and consummated contract with the former. Costs against the defendants.

SO ORDERED.

Both DBP and PMO appealed the decision to the CA. The CA, however, affirmed the decision of the RTC. Aggrieved, DBP filed with the CA a motion for a reconsideration[28] dated May 26, 1999, which motion has not been resolved by the CA to date. PMO, on the other hand, sought relief directly with the Court by filing this present petition upon the following grounds:

- THE CA DISREGARDED THE BINDING AND OBLIGATORY FORCE OF CONTRACTS WHICH IS THE LAW BETWEEN THE PARTIES.

x x x

- HE CA VIOLATED THE PRINCIPLE OF LAW THAT CONTRACTS TAKE EFFECT ONLY BETWEEN THE PARTIES AS IT LINKED RESPONDENTS' CONTRACTS WITH THE AFP WITH RESPONDENTS' LOANS WITH DBP.

x x x

- THE CA ERRED IN PERMANENTLY ENJOINING THE DBP AND APT FROM FORECLOSING THE MORTGAGES ON RESPONDENTS' PROPERTIES THEREBY VIOLATING THE PROVISIONS OF P[RESIDENTIAL] D[ECREE NO.] 385 AND PROCLAMATION NO. 50.[29]

On the first issue, PMO asserts that the CA erred in declaring that the interest rate on the loans had been unilaterally increased by DBP despite the evidence on record (consisting of promissory notes and testimonies of witnesses for DBP) showing otherwise. PMO also claims that the CA failed to take into account the effect of the restructuring and refinancing of the loans granted by DBP upon the request of respondents.

Anent the second issue, PMO argues that the failure of the AFP to honor its commitment to respondents should have had no bearing on respondents' loan obligations to DBP as DBP was not a party to their contract. Hence, PMO contends that the CA ran afoul of the principle of relativity of contracts when it ruled that no further interest could be imposed on the loans.

Finally, PMO claims that DBP, being a government financial institution, could not be enjoined by any restraining order or injunction, whether permanent or temporary, from proceeding with the foreclosure proceedings mandated under Section 1 of Presidential Decree No. 385.

For their part, respondents moved for the denial of the petition in their comment dated October 27, 1999,[30] stating that (1) the petition merely raises questions of fact and not of law; (2) PMO is engaged in forum shopping considering that the motion for reconsideration filed by its co-defendant, DBP, against the CA decision was still pending before the appellate court; and, (3) the petition is fatally defective because the attached certification against non-forum shopping does not conform to the requirements set by law. After PMO filed its reply denying the foregoing allegations, the parties submitted their respective memoranda.

The petition is partly meritorious.

Prefatorily, it bears stressing that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. This Court is not a trier of facts, its jurisdiction in such a proceeding being limited to reviewing only errors of law that may have been committed by the lower courts. Consequently, findings of fact of the trial court and the CA are final and conclusive, and cannot be reviewed on appeal.[31] It is not the function of the Court to reexamine or reevaluate evidence, whether testimonial or documentary, adduced by the parties in the proceedings below.[32] Nevertheless, the rule admits of certain exceptions and has, in the past, been relaxed when the lower courts' findings were not supported by the evidence on record or were based on a misapprehension of facts,[33] or when certain relevant and undisputed facts were manifestly overlooked that, if properly considered, would justify a different conclusion.[34]

The resolution of the present controversy turns on the issue regarding the precise amount of respondents' principal obligation under the series of mortgages which DBP, as mortgagee-creditor, attempted to foreclose. In this case, the total amount of respondents' indebtedness is not simply a question of fact but is a question of law, one requiring the application of legal principles for the computation of the amount owed, and is thus a matter that can

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be properly brought up for the Court's determination.[35]

PMO claims that the total outstanding obligation of respondents reached P62.9 Million on September 30, 1985. This amount was purportedly the peso equivalent of the foreign-currency denominated loans granted to respondents to refinance the original loans they procured, and is inclusive of interest, penalties and other surcharges incurred from that date as a result of respondents' past defaults. Respondents contend, on the other hand, that DBP grossly misstated the extent of their obligation, and insist that they should be made liable only for the amount of P6.2 Million which they actually received from DBP.

As mentioned, the RTC ultimately sustained respondents and made permanent the writ of preliminary injunction it issued to enjoin the foreclosure proceedings. Respondents were directed to pay only the amount of the original loans, that is, P6.2 Million, with the P5.3 Million which they previously paid to be applied as interest and penalties. The RTC did not find respondents culpable for defaulting on their loan obligations and passed the blame to the AFP for not fulfilling its contractual obligations to respondents.

The CA affirmed the RTC decision and agreed that DBP cannot be allowed to foreclose on the mortgage securing respondents' loan. The CA surmised that since DBP failed to adequately explain how it arrived at P62.9 Million, the original loan amount of P6.2 Million could only have been "blatantly enlarged or erroneously computed" by DBP through the imposition of an "unconscionable rate of interest and charges." The CA also agreed with the trial court that there was no consideration for the mortgage contracts executed by respondents considering the proceeds from the alleged foreign currency loans were never actually received by the latter. This view is untenable and lacks foundation.

As correctly pointed out by PMO, the original loans alluded to by respondents had been refinanced and restructured in order to extend their maturity dates. Refinancing is an exchange of an old debt for a new debt, as by negotiating a different interest rate or term or by repaying the existing loan with money acquired from a new loan.[36] On the other hand, restructuring, as applied to a debt, implies not only a postponement of the maturity[37] but also a modification of the essential terms of the debt (e.g., conversion of debt into bonds or into equity,[38] or a change in or amendment of collateral security) in order to make the account of the debtor current.[39]

In this instance, it is important to note that DBP accommodated respondents' request to restructure and refinance their account twice in view of the financial difficulties the latter were experiencing. The first restructuring/refinancing was granted in 1975 while the second one was undertaken sometime in the early 1980s. Pursuant to the restructuring schemes, respondents executed promissory notes and mortgage contracts in favor of DBP,[40] the second restructuring being evidenced by three promissory notes dated December 11, 1980, June 5, 1981 and December 16, 1981 in the total amount of $1.8 Million. The reason respondents seek to be excused from fulfilling their obligation under the second batch of promissory notes is that first, they allegedly had "no choice" but to sign the documents in order to have the loan restructured[41] and thus avert the foreclosure of their properties, and second, they never received any proceeds from the same. This reasoning cannot be sustained.

Respondents' allegation that they had no "choice" but to sign is tantamount to saying that DBP exerted undue influence upon them. The Court is mindful that the law grants an aggrieved party the right to obtain the annulment of a contract on account of factors such as mistake, violence, intimidation, undue influence and fraud which vitiate consent.[42] However, the fact that the representatives were "forced" to sign the promissory notes and mortgage contracts in order to have respondents' original loans restructured and to prevent the foreclosure of their properties does not amount to vitiated consent.

The financial condition of respondents may have motivated them to contract with DBP, but undue influence

cannot be attributed to DBP simply because the latter had lent money. The concept of undue influence is defined as follows:

> There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress.[43]

While respondents were purportedly financially distressed, there is no clear showing that those acting on their behalf had been deprived of their free agency when they executed the promissory notes representing respondents' refinanced obligations to DBP. For undue influence to be present, the influence exerted must have so overpowered or subjugated the mind of a contracting party as to destroy the latter's free agency, making such party express the will of another rather than its own. The alleged lingering financial woes of a debtor per se cannot be equated with the presence of undue influence.[44]

Corollarily, the threat to foreclose the mortgage would not in itself vitiate consent as it is a threat to enforce a just or legal claim through competent authority.[45] It bears emphasis that the foreclosure of mortgaged properties in case of default in payment of a debtor is a legal remedy given by law to a creditor.[46] In the event of default by the mortgage debtor in the performance of the principal obligation, the mortgagee undeniably has the right to cause the sale at public auction of the mortgaged property for payment of the proceeds to the mortgagee.[47]

It is likewise of no moment that respondents never physically received the proceeds of the foreign currency loans. When the loan was refinanced and restructured, the proceeds were understandably not actually given by DBP to respondents since the transaction was but a renewal of the first or original loan and the supposed proceeds were applied as payment for the latter.

It also bears emphasis that the second set of promissory notes executed by respondents must govern the contractual relation of the parties for they unequivocally express the terms and conditions of the parties' loan agreement, which are binding and conclusive between them. Parties are free to enter into stipulations, clauses, terms and conditions they may deem convenient; that is, as long as these are not contrary to law, morals, good customs, public order or public policy.[48] With the signatures of their duly authorized representatives on the subject notes and mortgage contracts, the genuineness and due execution of which having been admitted,[49] respondents in effect freely and voluntarily affirmed all the concurrent rights and obligations flowing therefrom. Accordingly, respondents are barred from claiming the contrary without transgressing the principle of estoppel and mutuality of contracts. Contracts must bind both contracting parties; their validity or compliance cannot be left to the will of one of them.[50]

The significance of the promissory notes should not have been overlooked by the trial court and the CA. By completely disregarding the promissory notes, the lower courts unilaterally modified the contractual obligations of respondents after the latter already benefited from the extension of the maturity date on their original loans, to the damage and prejudice of PMO which steps into the shoes of DBP as mortgagee-creditor.

At this juncture, it must be emphasized that a party to a contract cannot deny its validity after enjoying its benefits without outrage to one's sense of justice and fairness. Where parties have entered into a well-defined contractual relationship, it is imperative that they should honor and adhere to their rights and obligations as stated in their contracts because obligations arising from it have the force of law between the contracting parties and should be complied with in good faith.[51]

As a rule, a court in such a case has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written. Courts, whether trial or appellate, generally have no power to relieve parties

from obligations voluntarily assumed simply because their contract turned out to be disastrous or unwise investments.[52]

Thus, respondents cannot be absolved from their loan obligations on the basis of the failure of the AFP to fulfill its commitment under the manufacturing agreement[53] entered by them allegedly upon the prompting of certain AFP and DBP officials. While it is true that the DBP representatives appear to have been aware that the proceeds from the sale to the AFP were supposed to be applied to the loan, the records are bereft of any proof that would show that DBP was a party to the contract itself or that DBP would condone respondents' credit if the contract did not materialize. Even assuming that the AFP defaulted in its obligations under the manufacturing agreement, respondents' cause of action lies with the AFP, and not with DBP or PMO. The loan contract of respondents is separate and distinct from their manufacturing agreement with the AFP.

Incidentally, the CA sustained the validity of a loan obligation but annulled the mortgage securing it on the ground of failure of consideration. This is erroneous. A mortgage is a mere accessory contract and its validity would depend on the validity of the loan secured by it.[54] Hence, the consideration of the mortgage contract is the same as that of the principal contract from which it receives life, and without which it cannot exist as an independent contract. [55] The debtor cannot escape the consequences of the mortgage contract once the validity of the loan is upheld.

Again, as a rule, courts cannot intervene to save parties from disadvantageous provisions of their contracts if they consented to the same freely and voluntarily.[56] Thus, respondents cannot now protest against the fact that the loans were denominated in foreign currency and were to be paid in its peso equivalent after they had already given their consent to such terms.[57] There is no legal impediment to having obligations or transactions paid in a foreign currency as long as the parties agree to such an arrangement. In fact, obligations in foreign currency may be discharged in Philippine currency based on the prevailing rate at the time of payment.[58] For this reason, it was improper for the CA to reject outright DBP's claim that the conversion of the remaining balance of the foreign currency loans into peso accounted for the considerable differential in the total indebtedness of respondents mainly because the exchange rates at the time of demand had been volatile and led to the depreciation of the peso.[59]

PMO also denies that a unilateral increase in the interest rates on the loans caused the substantial increase in the indebtedness of respondents and points out that the promissory notes themselves specifically provided for the rates of interest as well as penalty and other charges which were merely applied on respondents' outstanding obligations. It should be noted, however, that at the time of the transaction, Act No. 2655, as amended by Presidential Decree No. 116 (Usury Law), was still in full force and effect. Basic is the rule that the laws in force at the time the contract is made governs the effectivity of its provisions.[60] Section 2 of the Usury Law specifically provides as follows:

> Sec. 2. No person or corporation shall directly or indirectly take or receive in money or other property, real or personal, or choses in action, a higher rate of interest or a greater sum or value, including commissions, premiums, fines and penalties, for the loan or renewal thereof or forbearance of money, goods, or credits, where such loan or renewal or forbearance is secured in whole or in part by a mortgage upon real estate the title to which is duly registered, or by any document conveying such real estate or interest therein, than twelve per centum per annum or the maximum rate prescribed by the Monetary Board and in force at the time the loan or renewal thereof or forbearance is granted: Provided, that the rate of interest under this section or the maximum rate of interest that may be prescribed by the monetary board under this section may likewise apply to loans secured by other types of security as may be specified by the Monetary Board.

A perusal of the promissory notes reveals that the interest charged upon the notes is dependent upon the

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borrowing cost of DBP which, however, would be pegged at a fixed rate assuming certain factors. The notes dated December 11, 1980 and June 5, 1981, for example, had a per annum interest rate of 3% over DBP's borrowing rate that will become 1 ½% per annum in the event the loan is drawn under the Central Bank's Jumbo Loan. These were further subject to the condition that should the loan from where they were drawn be fully repaid, the interest to be charged on respondents' remaining dollar obligation would be pegged at 16% per annum.[61] The promissory note dated December 16, 1981, on the other hand, had a per annum interest rate of 4% over DBP's borrowing rate. This rate would also become 1 ½% per annum in the event the loan is drawn under the Central Bank's Jumbo Loan. However, should the loan from where respondents' foreign currency loan was drawn be fully repaid, the interest to be charged on their remaining dollar obligation would be pegged at 18% per annum.[62]

Due to the variable factors mentioned above, it cannot be determined whether DBP did in fact apply an interest rate higher than what is prescribed under the law. It appears on the records, however, that DBP attempted to explain how it arrived at the amount stated in the Statement of Account[63] it submitted in support of its claim but was not allowed by the trial court to do so citing the rule that the best evidence of the same is the document itself.[64] DBP should have been given the opportunity to explain its entries in the Statement of Account in order to place the figures that were cited in the proper context. Assuming the interest applied to the principal obligation did, in fact, exceed 12%, in addition to the other penalties stipulated in the note, this should be stricken out for being usurious.

In usurious loans, the entire obligation does not become void because of an agreement for usurious interest; the unpaid principal debt still stands and remains valid but the stipulation as to the interest is void. The debt is then considered to be without stipulation as to the interest. In the absence of an express stipulation as to the rate of interest, the legal rate of 12% per annum shall be imposed.[65]

As to the issue raised by PMO that the injunction issued by the lower courts violated Presidential Decree No. 385, the Court agrees with the ruling of the CA. Presidential Decree No. 385 was issued primarily to see to it that government financial institutions are not denied substantial cash inflows which are necessary to finance development projects all over the country, by large borrowers who, when they become delinquent, resort to court actions in order to prevent or delay the government's collection of their debts and loans.[66]

The government, however, is bound by basic principles of fairness and decency under the due process clause of the Bill of Rights. Presidential Decree No. 385 does not provide the government blanket authority to unqualifiedly impose the mandatory provisions of the decree without due regard to the constitutional rights of the borrowers. In fact, it is required that a hearing first be conducted to determine whether or not 20% of the outstanding arrearages has been paid, as a prerequisite for the issuance of a temporary restraining order or a writ of preliminary injunction. Hence, the trial court can, on the basis of the evidence then in its possession, make a provisional determination on the matter of the actual existence of the arrearages and the amount on which the 20% requirement is to be computed. Consequently, Presidential Decree No. 385 cannot be invoked where the extent of the loan actually received by the borrower is still to be determined.[67]

Finally, respondents' allegation that PMO is engaged in forum shopping is untenable. Forum shopping is the act of a party, against whom an adverse judgment has been rendered in one forum, of seeking another and possibly favorable opinion in another forum by appeal or a special civil action of certiorari.[68] As correctly pointed out by PMO, the present petition is merely an appeal from the adverse decision rendered in the same action where it was impleaded as co-defendant with DBP. That DBP opted to file a motion for reconsideration with the CA rather than a direct appeal to this Court does not bar PMO from seeking relief from the judgment by taking the latter course of action.

It must be remembered that PMO was impleaded as party defendant through the amended complaint[69] dated November 25, 1987. Persons made parties-defendants via a supplemental complaint possess locus standi or legal personality to seek a review by the Court of the decision by the CA which they assail even if their co-defendants did not appeal the said ruling of the appellate court.[70] Even assuming that separate actions have been filed by two different parties involving essentially the same subject matter, no forum shopping is committed where the parties did not resort to multiple judicial remedies. [71]

In any event, the Court deems it fit to put an end to this controversy and to finally adjudicate the rights and obligations of the parties in the interest of a speedy dispensation of justice, taking into account the length of time this action has been pending with the courts as well as in light of the fact that PMO is the real party-in-interest in this case, being the successor-in-interest of DBP.

WHEREFORE, the petition is PARTLY GRANTED and the assailed Decision dated May 7, 1999 rendered by the Court of Appeals in CA-G.R. CV No. 49239 is REVERSED AND SET ASIDE. The case is hereby remanded to the trial court for determination of the total amount of the respondents' obligation based on the promissory notes dated December 11, 1980, June 5, 1981 and December 16, 1981 according to the interest rate agreed upon by the parties or the interest rate of 12% per annum, whichever is lower.

No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on official business.

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[1] Based on the records, only the Privatization and Management Office (PMO) filed the present petition for review on certiorari. DBP, for its part, moved for reconsideration of the CA decision instead.

[2] Exhibit "F," p. 42.

[3] Exhibit "1," pp. 115-132.

[4] Exhibit "2," pp. 133-146.

[5] TSN, October 26, 1990, pp. 17-24; TSN, March 22, 1991, pp. 28-37.

[6] Exhibit "8," pp. 202-203.

[7] Exhibit "8," p. 203.

[8] Exhibit "9," pp. 204-205.

[9] Id. at 205.

[10] Exhibit "8," pp. 202, 204.

[11] Id.

[12] Id.

[13] TSN, March 22, 1991, pp. 41-43.

[14] Exhibits "4" and "5," pp. 152-200.

[15] Exhibit "10," pp. 206-207.

[16] It was agreed that this rate will become 1 ½% per annum in the event the loan is drawn under the Central Bank's Jumbo Loan. However, should the loan from where respondents' foreign currency loan was drawn be fully repaid, the interest to be charged on their remaining dollar obligation would be pegged at 16% per annum. See Exhibit "10," p. 206.

[17] Exhibit "11," pp. 208-209.

[18] It was agreed that this rate will become 1 ½% per annum in the event the loan is drawn under the Central Bank's Jumbo Loan. However, should the loan from where respondents' foreign currency loan was drawn be fully repaid, the interest to be charged on their remaining dollar obligation would be pegged at 18% per annum. See Exhibit "11," p. 208.

[19] Exhibit "12," pp. 210-211.

[20] Exhibit "10," pp. 206-207, Exhibit "11," pp. 208-209.

[21] Exhibit "12," p. 210.

[22] Id.

[23] Exhibit "15," pp. 215-216.

[24] TSN, May 13, 1994, pp. 18-23.

[25] Former President Corazon C. Aquino issued Proclamation No. 50 which created the Asset Privatization Trust (APT). APT was mandated to take title to and possess, manage and dispose of the non-performing assets of the national government. Pursuant to the proclamation, DBP transferred and assigned its rights and interests in the mortgage to APT by virtue of a Deed of Transfer dated February 27, 1987 (Records, pp. 215-234). Because of the expiration of APT's term of existence on December 31, 2000, Executive Order No. 323 was issued on December 6, 2000 which created the PMO. PMO assumed the functions, duties and responsibilities of the now defunct APT.

[26] CA Rollo, p. 202.

[27] Records, pp. 512-527.

[28] CA Rollo, pp. 241-250.

[29] Rollo, pp. 37-38.

[30] Id. at 93-110.

[31] Donato C. Cruz Trading Corp. v. CA, G.R. No. 129189, December 5, 2000, 347 SCRA 13; Baylon v. CA, G.R. No. 109941, August 17, 1999, 312 SCRA 502.

[32] Kwok v. Philippine Carpet Manufacturing Corp., G.R. No. 149252, April 28, 2005, 457 SCRA 465.

[33] Swagman Hotels and Travel, Inc. v. CA, G.R. No. 161135, April 8, 2005, 455 SCRA 175.

[34] New Sampaguita Builders Construction, Inc. v. Philippine National Bank, G.R. No. 148753, July 30, 2004, 435 SCRA 565.

[35] Landl & Company (Phil.), Inc. v. Metropolitan Bank & Trust Co., G.R. No. 159622, July 30, 2004, 435 SCRA 639.

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[36] Black's Law Dictionary, 8[th] edition.

[37] Development Bank of the Philippines v. Perez, G.R. No. 148541, November 11, 2004, 442 SCRA 238.

[38] Garcia v. CA, G.R. No. 80201, November 20, 1990, 191 SCRA 493.

[39] Ajax Marketing and Development Corporation v. CA, G.R. No. L-118585, September 14, 1995, 248 SCRA 222.

[40] TSN, March 22, 1991, pp. 37-42.

[41] TSN, September 18, 1992, pp. 3-4; TSN, October 2, 1992, p. 15.

[42] CIVIL CODE, Article 1391, in relation to Article 1390.

[43] CIVIL CODE, Article 1337.

[44] Carpo v. Chua, G.R. Nos. 150773 and 153599, September 30, 2005, 471 SCRA 471.

[45] CIVIL CODE, Article 1335.

[46] BPI Family Savings Bank, Inc. v. Veloso, G.R. No. 141974, August 9, 2004, 436 SCRA 1.

[47] CIVIL CODE, Art. 2087; RULES OF COURT, Rule 68, Sec. 5; Act 3135, Sec. 4.

[48] CIVIL CODE, Article 1306.

[49] TSN, September 18, 1992, pp. 3-10.

[50] Asian Construction & Dev't. Corp. v. Tulabut, G.R. No. 161904, April 26, 2005, 457 SCRA 317.

[51] CIVIL CODE, Article 1159; Premiere Development Bank v. CA, G.R. No. 159352, April 14, 2004, 427 SCRA 686.

[52] Lim v. Queensland Tokyo Commodities, Inc., G.R. No. 136031, January 4, 2002, 373 SCRA 31.

[53] Exhibit "Q," pp. 50-64.

[54] Naguiat v. CA, G.R. No. 118375, October 3, 2003, 412 SCRA 591.

[55] Carpo v. Chua, G.R. Nos. 150773 and 153599, September 30, 2005, 471 SCRA 471.

[56] Pryce Corporation v. PAGCOR, G.R. No. 157480, May 6, 2005, 458 SCRA 164.

[57] The following paragraphs appear in the promissory notes:

> (a) Promissory note dated December 11, 1980 -
>
> "x x x Borrower's obligation shall remain denominated in US Dollars or in any foreign currency available for relending by DBP. In case of default in the payment of any installment above, we bind ourselves to pay DBP for advances made on the installment in equivalent pesos computed at commercial bank's selling rate as of [the] date DBP paid for [the] installment or as of [the] date of [the] borrower's payment to DBP, whichever is higher. x x x" (Exhibit "10," p. 206)
>
> (b) Promissory notes dated June 5, 1981 and December 31, 1981-
>
> "x x x In case of default in the payment of any installment above, we bind ourselves to pay DBP for advances made on the installment in equivalent pesos computed at commercial bank's selling rate as of [the] date DBP paid for [the] installment or as of [the] date of [the] borrower's payment to DBP, whichever is higher. x x x"

(Exhibits "11" and "12" pp. 208, 210)

[58] CF Sharp & Co., Inc. v. Northwest Airlines, Inc., G.R. No. 133498, April 18, 2002, 381 SCRA 314.

[59] TSN, July 18, 1994, p. 38.

[60] Puerto v. CA, G.R. No. 138210, June 6, 2002, 383 SCRA 185.

[61] Supra, note 16.

[62] Supra, note 18.

[63] Exhibit "15," pp. 215-216.

[64] TSN, April 4, 1994, p. 17.

[65] Development Bank of the Philippines v. Perez, G.R. No. 148541, November 11, 2004, 442 SCRA 238.

[66] Republic v. CA, G.R. No. 107943, February 3, 2000, 324 SCRA 569.

[67] Polysterene Manufacturing Co., Inc. v. CA, G.R. No. 77631, May 9, 1990, 185 SCRA 207.

[68] Heirs of Trinidad de Leon Vda. De Roxas v. CA, G.R. No. 138660, February 5, 2004, 422 SCRA 101; Velasquez v. Hernandez, G.R. No. 138660, February 5, 2004, 437 SCRA 357.

[69] Records, pp. 244-257.

[70] Tan v. Mandap, G.R. No. 150925, May 27, 2004, 429 SCRA 711.

[71] Republic v. Express Telecommunications Co., Inc., G.R. No. 147096, January 15, 2002, 373 SCRA 316.

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