

**SPOUSES GUILLERMO AGBADA AND MAXIMA AGBADA,
PETITIONERS, VS. INTER-URBAN DEVELOPERS, INC., AND REGIONAL
TRIAL COURT-BR. 105, QUEZON CITY, RESPONDENTS.**

G.R. No. 144029. September 19, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a Petition for Review on Certiorari of the Decision of the Court of Appeals in CA-G.R. SP No. 54273, "Spouses Guillermo and Maxima Agbada v. Regional Trial Court, Quezon City, Branch 105, and Inter-Urban Developers, Inc.," which dismissed the Petition for Annulment of Judgment with Preliminary Injunction filed by petitioner-spouses, specifically to nullify and to set aside the Summary Judgment rendered by respondent Regional Trial Court in its Civil Case No. Q-93-18592, "Inter-Urban Developers, Inc. (represented by Philip Tiam Lee) v. Spouses Guillermo and Maxima Agbada," for Foreclosure of Real Estate Mortgage, as well as the Resolution of the appellate court denying reconsideration of the assailed CA Decision.

On 21 February 1991 petitioner-spouses Guillermo Agbada and Maxima Agbada borrowed P1,500,000.00 from respondent Inter-Urban Developers, Inc. through its president, Simeon L. Ong Tiam.[1] To secure the loan, the parties concurrently executed a Deed of Real Estate Mortgage over a parcel of land and the improvements thereon situated in Tandang Sora, Quezon City owned by the spouses.[2] The loan was payable within six (6) months from 21 February 1991 at three percent (3%) interest per month, otherwise, failure to discharge the loan within the stipulated period would entitle Inter-Urban Developers, Inc. to foreclose the mortgage judicially or extra-judicially.[3] The spouses failed to pay the loan within the six-month period despite several out-of-court demands made by respondent Inter-Urban Developers, Inc.[4]

On 10 December 1993 Inter-Urban Developers, Inc. filed with the Regional Trial Court of Quezon City, Branch 105, a complaint for foreclosure of real estate mortgage.[5] On 2 March 1994, without assistance of counsel, the spouses filed their unverified answer admitting that they had borrowed the amount of P1,500,000.00 from respondent and had executed the real estate mortgage to secure the loan but denying that it was payable within six (6) months and at three percent (3%) interest per month.[6] As affirmative defense they alleged in their answer that -

[petitioner-spouses] and Simeon L. Ong Tiam, then acting for and in behalf of [Inter-Urban Developers], were compadre and comadre, for this reason, after the execution of the Real Estate Mortgage Contract x x x [Spouses Guillermo and Maxima Agbada] were only charged with interest at legal rate and the period for the said contract is five (5) years from execution thereof x x x That the said contract is merely simulated and for formality sake only x x x That the claim or demand set forth in the plaintiff's complaint is not yet due and demandable, thus, the complaint states no cause of action against the defendants x x x [7]

The parties filed their respective pre-trial briefs with petitioner-spouses again filing their own and without the assistance of counsel. When the pre-trial was set on 21 April 1994 it had to be postponed on account of

petitioner-spouses' absence. It was reset to 13 May 1994 but it was again postponed upon request of petitioner Guillermo Agbada who had no lawyer yet to assist him. But he submitted a one-page hand written letter addressed to the trial judge asking for continuance of the pre-trial and further admitting liability for the due and demandable loan: "hindi ko po nais makipaglaban dito sa kasong ito dahilan po itong perang ito dapat ko pong bayaran." [8] On 8 June 1994, pre-empting the pre-trial conference, Inter-Urban Developers, Inc. moved for summary judgment alleging that -

1. In [the spouses'] answer which is dated 1 March 1994, they admit the amount of indebtedness as alleged in the Complaint; 2. They likewise admit in their Special and Affirmative Defenses that they have executed the Real Estate Mortgage Contract subject of this Complaint; 3. What [the spouses] are questioning in this Complaint is only the period and their compadre, Simeon Ong Tiam, then President of [Inter-Urban Developers], to be payable after five years and at the legal rate of interest; 4. Their Compadre, Simeon Ong Tiam, and the [Inter-Urban Developers] are not one and the same entity so that their alleged arrangement with their compadre does not in anyway bind [Inter-Urban Developers] who has relied on the subject Deed of Real Estate Mortgage; the said mortgage contract which execution, [the spouses] admit, clearly shows that they contracted with the [Inter-Urban Developers], the amount of P1,500,000.00 payable within six months from execution at the interest rate of three percent per month x x x 5. The [petitioner] Mr. Guillermo Agbada, in one scheduled setting, has written this Honorable Court, as borne by the records of this case, that he is admitting the total amount of indebtedness and is only bidding for time because he has already arranged with a bank to pay the total amount of indebtedness so as to terminate the case once and for all x x x [9]

The motion for summary judgment was supported by an affidavit of the treasurer-cashier of Inter-Urban Developers, Inc. to the effect that she witnessed the execution of the mortgage contract and that she personally gave the check of P1,500,000.00 for the loan. [10] The spouses opposed the motion although they failed to submit supporting counter- affidavits. [11]

On 7 July 1994, this time with the assistance of counsel, petitioner-spouses Agbada moved to amend their answer to allege that the mortgage contract was not reflective of the true intention of the parties since in reality the loan was interest-free and would mature only after five (5) years from execution thereof and that consequently they were denying under oath the due execution and authenticity of the mortgage document, although the proposed answer was still not verified by them. [12] Interestingly, the amended answer departed from the allegation in the original answer that the loan would earn interest at the legal rate. The trial court denied the amendment of the answer holding that the change would substantially alter the gist of the defense. [13]

On 13 January 1995 the trial court promulgated its Summary Judgment in favor of respondent Inter-Urban Developers, Inc. It held that Simeon Ong Tiam, compadre of petitioner-spouses and then president of Inter-Urban Developers, Inc. could not have obligated his principal by contemporaneous agreement amending the maturity of the loan from six (6) months to five (5) years and the interest rate from three percent (3%) per month to the default or statutory rate, much less interest-free, since the undertaking was contrary to the express provisions of the duly executed loan and mortgage contract. [14] The trial court awarded Inter-Urban Developers, Inc. the amounts of "P1.5 million with monthly interest of 3% from February 21, 1991 until fully paid plus attorney's fees of P10,000.00 including the real estate taxes and registration expenses. In case of failure of defendants to do so within ninety (90) days from finality, the decree of foreclosure shall issue." [15]

Petitioner-spouses did not appeal the Summary Judgment nor did they pay the judgment debt. On 31 May 1995 Inter-Urban Developers, Inc. moved for a decree of foreclosure which the spouses did not oppose nor did they attend the hearing on the motion. [16] On 14 July 1995 the trial court granted the motion and issued a decree of foreclosure. [17] On 19 August 1996 respondent moved for an order authorizing the sale of the mortgaged real estate for failure of the spouses to pay the judgment debt. [18] Once again the petitioner-spouses did not oppose

the motion nor did they attend the hearing thereon.[19] On 26 August 1996 the trial court ordered the foreclosure sale of the mortgaged property.[20] On 10 September 1996 Inter-Urban Developers, Inc. moved ex parte for the appointment of a special sheriff to attend to the foreclosure sale since no sheriff was assigned in RTC-Br. 105.[21] On 11 September 1996, acting on the ex parte motion, the trial court ordered the Ex-Oficio Sheriff to designate a special sheriff to carry out the foreclosure sale.[22] On 6 November 1996 the mortgaged real estate was sold at public auction to respondent Inter-Urban Developers, Inc. as highest bidder for P4,637,092.74 which was supposed to be in full satisfaction of the judgment debt.[23]

On 3 April 1997, upon motion of Inter-Urban Developers, Inc. and despite petitioner-spouses' opposition thereto on the ground that the purchase price of the mortgaged property was below its appraised value according to an appraisal report, the trial court confirmed the sale in favor of Inter-Urban Developers, Inc.[24] The trial court ruled that it could not have given weight to the appraisal report since this report was not authenticated nor was the appraiser presented as witness during the hearing of the motion to allow Inter-Urban Developers, Inc. an opportunity to cross-examine on the appraised value of the property.[25]

The spouses moved for reconsideration of the confirmation order insisting on the inadequacy of the purchase price but on 25 September 1997 the trial court denied the motion. On 27 October 1997, for the second time, the spouses moved for reconsideration of the order denying their first motion for reconsideration, calling the attention of the court to their affidavit to the effect that the appraiser deliberately absented himself from the hearing of the motion.[26] On 6 March 1998 the trial court denied the motion.[27] Petitioner-spouses did not appeal the order of confirmation of the sale nor any of the subsequent orders.

On 13 April 1998 petitioner-spouses filed with the Court of Appeals a motion for extension of time to file a petition for review of a subject matter they did not identify.[28] In a Resolution of 16 April 1998 the appellate court granted the motion and docketed the purported petition as CA-G.R. SP No. 47325 under Rule 43 of the 1997 Rules of Civil Procedure as amended.[29] On 24 April 1998 the spouses moved for a second extension of the period to file their petition for review[30] which on 22 May 1998 the Court of Appeals denied with finality and recorded entry of judgment of the denial.[31] On 29 January 1998 Inter-Urban Developers, Inc. moved for the issuance of a writ of possession over the foreclosed real estate.

On 26 February 1999 the petitioner-spouses filed a Motion to Tender the Full Obligation of the Defendant Spouses alleging that they had paid their obligation worth P6,307,532.66[32] in the form of cashier's check which they left with the maid of the counsel of record for Inter-Urban Developers, Inc.[33] On 21 July 1999 the trial court denied the motion.[34] On 23 March 1999 for the first time since Summary Judgment had been rendered against them, petitioner-spouses filed with the trial court a Motion to Cancel Certificate of Sale for being Signed by an Unauthorized Officer/Person and to Recall Summary Judgment for Lack of Jurisdiction[[35]] which was denied on 20 July 1999.[36] On 21 July 1999 the trial court issued a writ of possession in favor of respondent Inter-Urban Developers, Inc. over the subject real property.[37]

On 10 August 1999 petitioner-spouses Guillermo Agbada and Maxima Agbada filed with the Court of Appeals a petition for annulment of judgment with prayer for preliminary injunction. The petition sought the annulment of the Summary Judgment for alleged violation of their right to due process arising from the absence of a full-blown trial on a genuine issue of fact that the loan and mortgage would mature only on the fifth year following its execution on 21 February 1991.[38] The petition did not question compliance with legal requirements of the foreclosure proceedings or any part thereof.

On 21 January 2000 the Court of Appeals dismissed the petition and held that the subject matter thereof was barred by res judicata, referring to CA G.R. SP No. 47325 wherein the appellate court denied with finality

petitioner-spouses' second motion for extension of time to file Petition for Review.[39] The Court of Appeals also ruled that petitioner-spouses were in no position to ask for annulment of the Summary Judgment since their negligence denied them the right to avail of other remedies otherwise open to them, such as appeal, and that the spouses were estopped from assailing the jurisdiction of the trial court after filing several motions to re-evaluate the assessed value of the mortgaged property.[40] On 11 July 2000 the appellate court denied reconsideration of its Decision,[41] hence, the instant petition for review on certiorari.

Petitioner-spouses argue that they were deprived of due process when their defense, i.e., that the real estate mortgage carries a default interest rate and matures only on the fifth year following its execution on 21 February 1991, was considered sham and refused full blown trial, contrary to our ruling in *Paz v. Court of Appeals*.[42] They further allege in their statement of facts that—

On February 2, 1991, plaintiff Guillermo Agbada, being then an official of a security agency which is a sister company of respondent Inter-Urban Developer and because of financial problem faced by the couple, arranged with Simeon Lee Ong Tiam (his close compadre, being the sponsor and god father in the wedding of his daughter and said Ong Tiam being the President of Inter-Urban Development) obtained a loan from respondent corporation under the agreement, in view of their relationship, that the loan would only carry legal interest, and would be payable within a period of 5 years. It is to be noted at this point that Inter-Urban Developers is not a money lending or financial institution but is engaged in real estate development and the granting of loans was not part of its principal business. It was clearly understood by petitioners as well as by the responsible officers of Inter-Urban, particularly, Simeon Lee Ong and the other officers, who, in fact, have close family ties and relationship with petitioners, that the loan was only an accommodation, hence, the charging only of nominal interest and its repayment within a period of 4 (sic) years. Petitioners were convinced to sign what they were then informed was only a formality, a sham deed of mortgage which on its face purported to show that a rate of interest different from that initially agreed upon appeared and the period of maturity of the loan was changed from 5 years to 6 months.[43]

On the other hand, respondent Inter-Urban Developers, Inc. claims that petitioner-spouses did not deny under oath the authenticity and due execution of the real estate mortgage document, hence, were barred from setting up the defense that the interest rate and maturity provisions of the loan and mortgage contract were different from those stipulated in the written agreement.[44] Respondent further argues that the alleged promise made by Simeon Ong Tiam even if true cannot be enforced against Inter-Urban Developers, Inc. since there is nothing to show that he was authorized to enter into the alleged contemporaneous agreement. Finally, respondent asserts that there were other remedies available to petitioners which they failed to exhaust by their own negligence, thus rendering the petition for annulment of judgment clearly unavailing and that they voluntarily submitted to the jurisdiction of the trial court by seeking affirmative relief from the effects of the assailed Summary Judgment.[45]

The petition has no merit. As explained quite frequently, a party may be barred from raising questions of jurisdiction where estoppel by laches has set in.[46] In a general sense, estoppel by laches is failure or neglect for an unreasonable and unexplained length of time to do what, by exercising due diligence, ought to have been done earlier, warranting a presumption that the party entitled to assert it has either abandoned to defend it or has acquiesced to the correctness and fairness of its resolution. The doctrine is based on grounds of public policy which for peace of society requires the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally an issue of inequity or unfairness of permitting a right or claim to be enforced or espoused. Verily, after voluntarily submitting a cause, it is too late for the loser to question the jurisdiction or power of the court just so he could escape an adverse decision on the merits.

In the instant case, the allegation of deprivation of due process took more than four (4) years of hibernation, so to speak, from 13 January 1995 when the trial court promulgated its Summary Judgment only to resurrect after failed

attempts to thwart the transfer of title over the foreclosed real estate in favor of respondent Inter-Urban Developers, Inc. Evidently, petitioner-spouses are barred by laches from assailing the regularity of the Summary Judgment as shown not only by their silence when they should have defended their alleged right to establish their understanding of the interest rate and maturity of the loan and mortgage contract, but also by their full and knowing participation in the proceedings, with the assistance of counsel, leading to the confirmation of the foreclosure sale in favor of respondent Inter-Urban Developers, Inc.

During the period of their obtrusive reticence, instead of pushing for a full-blown trial where they could have ventilated their affirmative defense, petitioner-spouses merely disagreed with the finding of the trial court regarding the appraised value of the foreclosed property, thus strongly implying their acquiescence to the due and demandable loan, and in fact attempted to write off the loan completely and recover the foreclosed lot and improvements thereon by filing a Motion to Tender the Full Obligation of the Defendant Spouses in the form of a cashier's check worth P6,307,532.66 which the trial court denied in due time for obvious lack of merit.

The foregoing circumstances also show that the due process routine vigorously pursued only now by petitioner-spouses is a clear-cut afterthought meant to delay the settlement of an otherwise uncomplicated property dispute. Aside from clogging court dockets, the strategy is deplorably a common curse resorted to by losing litigants in the hope of evading manifest obligations—

A natural question is why anyone should want to plead groundlessly when he should know that he will not be able to make his pleading good when proof is called for. Unfortunately, there are reasons. A defendant from whom payment is sought x x x often wants delay. Indeed, that may well be the very reason why suit had to be brought. And defendant can have delay by the simple device of denying the debt, and perhaps gilding the lily by adding pleas of payment and breach of warranty – a trilogy known in the trade as the last refuge of the deadbeat.[47]

It bears stressing that the proper remedy to seek reversal of judgment in an action for foreclosure of real estate mortgage is not a petition for annulment of judgment but an appeal from the judgment itself or from the order confirming the sale of the foreclosed real estate. Since petitioner-spouses failed to avail of appeal without sufficient justification, they cannot conveniently resort to the action for annulment for otherwise they would benefit from their own inaction and negligence.[48]

Granting arguendo that the assailed Summary Judgment is properly brought before this Court, we nonetheless find nothing irregular in its promulgation to justify its nullification or reversal. Summary judgment or accelerated judgment is a procedural technique to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits on record, or for weeding out sham claims or defenses at an early stage of the litigation to avoid the expense and loss of time involved in a trial.[49] Its object is to separate what is formal or pretended in denial or averment from what is genuine and substantial so that only the latter may subject a party in interest to the burden of trial. In the instant case, it is our conclusion that there is no basis for protesting the Summary Judgment since the trial court faithfully adhered to the proper function of accelerated judgment by adjudicating only the character of the issues raised in the pleadings as genuine, sham or fictitious, and only upon clear determination thereof did the court a quo proceed to render verdict.

Since the civil action before the trial court was for foreclosure of real estate mortgage, the material issues were the existence of the debt and its demandability. Petitioner-spouses admitted the existence of the debt in favor of respondent Inter-Urban Developers, Inc. as well as the authenticity and due execution of the deed of real estate mortgage. The mortgage deed, which the spouses duly signed and acknowledged before a notary public, pegged the loan's maturity date at six (6) months from 21 February 1991 at three percent (3%) interest per month. In effect, by the admission of the due execution of the loan and mortgage deed, petitioner-spouses confessed that

they voluntarily signed it, and by the admission of the genuineness of the document, they also acknowledged that at the time it was signed it was in the words and figures exactly as set out in the pleading of respondent Inter-Urban Developers, Inc.

Petitioner-spouses would however claim that a contemporaneous agreement was entered into between them and Simeon Ong Tiam who was then the president of Inter-Urban Developers, Inc. that the loan was in reality for a period of five (5) years from 21 February 1991 and, as alleged in their amended answer, interest-free or contrarily, as stated in their other pleadings, at statutory rate of interest. The defense would thus not only self-contradict but also appear to override and discard the simultaneous written formal agreement between the parties.

In the instant case, while petitioner-spouses appear to tender a material issue of fact, i.e., demandability and interest rate of the loan, summary judgment would nonetheless be proper where it is shown that issues tendered are sham, fictitious, contrived, set up in bad faith, or patently unsubstantial.[50] To forestall summary judgment, it is essential for the non-moving party to confirm the existence of genuine issues where he has substantial, plausible and fairly arguable defense, i.e., issues of fact calling for the presentation of evidence upon which a reasonable findings of fact could return a verdict for the non-moving party although mere scintilla of evidence in support of the party opposing summary judgment will be insufficient to preclude entry thereof.[51] The proper inquiry would therefore be whether the affirmative defense offered by petitioner-spouses constitutes genuine issue of fact requiring a full-blown trial.

We rule that the affirmative defense sets up a sham issue which justifies summary judgment. For one, petitioner-spouses have not explained how their affirmative defense, since it attempts to vary a written agreement, could be proved by admissible evidence. It would be useless to avail of a complete trial where the issue proposed by petitioner-spouses could not be resolved in any manner other than by referring to the explicit terms of the loan and mortgage agreement. To be sure, where the parties have reduced their agreement in writing, it is presumed that they have made the writing the only repository and memorial of the truth and whatever is not found in the writing must be understood to have been waived and abandoned. Specifically, under Sec. 9, Rule 130, Revised Rules of Evidence, the trial court is barred from admitting evidence which proves or tends to prove the alleged concurrent agreement with Simeon Ong Tiam which alters or varies the terms of the deed between the parties -

Sec. 9 Evidence of written agreements. - When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading: (a) An intrinsic ambiguity, mistake or imperfection in the written agreement; (b) The failure of the written agreement to express the true intent and agreement of the parties thereto; (c) The validity of the written agreement; or (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement x x x x

While it is true that contracting parties may establish stipulations, clauses, terms and conditions as they may deem convenient provided they are not contrary to law, morals, good customs, public order, or public policy, the parole evidence rule forbids any addition to or contradiction of the terms of an agreement reduced into writing by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties. As applied herein, the alleged terms of the contemporaneous agreement between petitioner-spouses and Simeon Ong Tiam cannot be proved for they are not embodied in the mortgage deed but exist only in their faint recollection. Only the terms of the loan and mortgage agreement providing for six (6) months maturity from date of execution thereof and the interest rate of three percent (3%) per month are worth considering and implementing.

The instant case is not unprecedented. In *Tarnate v. Court of Appeals*[52] involving a case of foreclosure of real estate mortgage that was resolved by means of summary judgment where neither the existence of the loans and the mortgage deeds nor the fact of default on the due repayments was disputed, we rejected as genuine issue the contention of petitioners therein that they were misled by respondent bank to believe that the loans were long-term accommodations since the loan documents admittedly executed by the parties clearly contradicted petitioners' asseverations and the parties must have realized that when the terms of the agreement were unequivocally reduced in writing, they could hardly be controverted by oral evidence to the contrary. Similarly, in *Heirs of Amparo del Rosario v. Santos*,[53] where we rejected the alteration of the conditions imposed in the deed of sale, this Court ruled that appellants therein could not be allowed to introduce evidence of conditions allegedly agreed upon by them other than those stipulated in the deed of sale because when they reduced their agreement in writing, it is presumed that they have made the writing the only repository and memorial of truth, and whatever is not found in the writing must be understood to have been waived and abandoned.

Petitioner-spouses cannot invoke any of the exceptions to the parol evidence rule, more particularly, the alleged failure of the writing to express the true intent and agreement of the parties. The exception obtains only where the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument, thus necessitating the reception of relevant extrinsic evidence of the contractual provision in dispute to enable the court to make a proper interpretation of the instrument.[54] However, in the case at bar, the loan and mortgage deed is clear and without ambiguity, mistake or imperfection in specifying the maturity of the loan exactly after six (6) months from date of execution thereof at interest rate of three percent (3%) per month, and certainly these unmistakable terms forbid petitioner-spouses from introducing evidence aliunde of the alleged contemporaneous agreement in violation of the parol evidence rule.

Indeed the literal meaning of the stipulations is bolstered by the intention of the parties as inferred from their contemporaneous and subsequent acts.[55] It is a matter of record that, without hesitation, petitioner Guillermo Agbada asked for the postponement of the pre-trial conference through a one-page handwritten letter addressed to the trial judge admitting liability for the due and demandable loan: "Hindi ko po nais makipaglaban dito sa kasong ito dahil po itong perang ito ay dapat ko pong bayaran"[56] Furthermore, when proceedings had been ongoing in the trial court for more than four (4) years, petitioner-spouses plainly assailed the finding of the trial court vis-à-vis the appraised value of the foreclosed property, without more, thus strongly implying their acquiescence to the due and demandable loan, and in fact attempted to pay the loan completely and recover the foreclosed lot and improvements thereon by tendering a cashier's check worth P6,307,532.66 through a house help.

Furthermore, for purposes of defeating respondent's motion for summary judgment, petitioner-spouses did not avail of any means to prove prima facie that Simeon Ong Tiam had authority to change the terms of the real estate mortgage by a contemporaneous agreement or, at the very least, to corroborate their allegations by means of the verified statements of Simeon Ong Tiam himself. Verily the spouses were not able to adduce even a single explanation why respondent Inter-Urban Developers, Inc. would suddenly and conveniently abandon the formalities which it had gone through in drafting and executing the real estate mortgage in place of an alleged coincidental and plain verbal novation of the original stipulations on interest rate and duration of the loan. In the absence of even prima facie basis for inferring authority on the part of Simeon Ong Tiam or inferring his corroboration of petitioner-spouses' affirmative defense, we cannot bind over Inter-Urban Developers, Inc. to the test of trial to meet the affirmative defense. In *Narra Integrated Corporation v. Court of Appeals*[57] we rejected as genuine issue for lengthy trial the claim that the contractual undertaking of one person was also binding upon another without first showing a plausible and fairly arguable and substantial circumstance indicating privity and consent to the contract by the other person upon whom compliance was also sought.

Other circumstances confirm the sham character of petitioner-spouses' defense. To be sure, they failed to offer any counter-affidavit which would have debunked the allegations in the motion for summary judgment as well as its supporting documents and explained their failure to act swiftly and precisely on the issue. In *Heirs of Amparo Del Rosario v. Santos*,^[58] and *Tiu v. Court of Appeals*,^[59] we noted that the failure to adduce counter-evidence strongly indicated the absence of serious factual issue to prevent summary judgment. It has also been said that while parties are not required to offer affidavits in support of, or in opposition to, summary judgment motions, however, once a properly supported motion for summary judgment has been filed, an adverse party cannot rest upon the mere allegations or denials of his pleadings. As colorfully stated in American jurisprudence, "[the rule on summary judgment] x x x say[s] in effect 'Meet these affidavit facts or judicially die.' The party opposing summary judgment thus must offer either discovery responses or affidavits that set forth specific facts showing that there is a genuine issue for trial."^[60]

The maneuvering of petitioner-spouses before the trial court reinforces our belief that their claim is unfounded. They contradicted themselves when they claimed that the loan was interest-free and then in another vein contended that it bore the statutory rate of interest, only to change their recollection subsequently to a nominal rate of interest. Petitioner-spouses would also vacillate with respect to the alleged reason for respondent Inter-Urban Developers, Inc. to agree to different maturity and interest-rate provisions since the answer filed before the trial court would assign as cause therefor the personal relationship between them and Simeon Ong Tiam although their memorandum before this Court would assert that the preferential treatment was due to petitioner Guillermo Agbada's employment as consultant of a sister company of Inter-Urban Developers, Inc. It is fatal to petitioner-spouses' case, not to mention a misuse of precious court resources, for them not to recall and convey in precise manner the stipulations of the purported concurrent agreement with Simeon Ong Tiam when the alleged side contract is the very defense sought to be heard in a full-blown trial.

Moreover, instead of filing opposing affidavits to support their affirmative defenses, petitioner-spouses absented themselves from the proceedings a quo eventually leading to the foreclosure sale and its confirmation. They did not pay the debt when, according to their own affirmative defense, it was already due and demandable on the fifth year counted from 21 February 1991, that is, in any of the months in 1996. If they indeed believed in the worthiness of their claim, they ought to have offered payment of the loan as it was then already payable according to their own allegations and if refused by respondent Inter-Urban Developers, Inc. consigned the money with the trial court. Quite the reverse, petitioner-spouses resorted to irrelevant legal actions, i.e., a motion for extension of time to file an unspecified petition for review with the Court of Appeals, which they did not even pursue thus manifesting a regrettable intention to delay the adverse effects of their prejudicial admissions and to obscure the fact of finality of the Summary Judgment.^[61]

The case of *Paz v. Court of Appeals*^[62] cited by petitioner-spouses does not square with the instant petition. The Paz case involved an action for quieting of title and recovery of possession, accounting and damages with preliminary mandatory injunction filed by the buyers of several parcels of land against the defendant who was a co-heir of the vendors thereof. In the defendant's answer, he alleged that the sale was void since he was not given the opportunity to exercise his right of pre-emption to buy the property there being no notice of sale having been given to him and that he was ready and willing to buy the property. Thereafter the defendant filed his own complaint seeking to annul the sale of the lots in question again invoking his right of pre-emption which had been denied him as a result of the seemingly deliberate omission of a notice of sale to him. This Court ruled that summary judgment was improper given a plausible ground of substantial defense which was fairly arguable -

In the case at bar, not only did petitioner herein and defendant in Civil Case No. 54158 assert genuine issues of fact and law which must be heard and tried, but he even filed Civil Case No. 54408 for the annulment of sale of the controversial lots in favor of the Nepomucenos and also opposed the survey of the controversial lots in

LRC Case No. R-3730. The court a quo failed to consider that the affidavits of the two vendors Ramon and Luzonica Paz presented to the court by private respondent only stated that they merely informed their brother Bienvenido of the sale by way of showing their deeds of sale. The deeds of sale in favor of the Nepomucenos were already fait accompli when they were shown to the petitioner, hence does not justify a summary judgment. Petitioner asserts that he was unjustly denied as a co-heir of his right of legal pre-emption or redemption provided for under Art. 1623 of the Civil Code by the failure of his co-heirs to give him notice in writing of their intended desire to sell their shares, as well as the terms/consideration thereof, in order to enable him to match private respondents - Nepomuceno's offer to buy or his co-heirs' selling price at P450.00 per square meter. Petitioner's allegation of the lack of written notification to him by all his co-heirs is a factual and legal issue which cannot justify dispensation of a trial on the merits.[63]

Clearly, Paz differs from the case at bar. Herein petitioner-spouses were grossly negligent in failing to pursue an affirmative defense which if true would have certainly impelled them to raise hell the moment that the trial court refused evidence of such allegation. Moreover, the spouses faced an impenetrable wall barring the alteration of the specific and unambiguous terms of the real estate mortgage which was not the case in Paz. Indeed, while the defendant in Paz could have proved the deprivation of his right to legal pre-emption, the petitioners in the instant case could not do so upon veritable rules of evidence. Lastly, the representations of the defendant in Paz were fairly arguable since the very evidence offered by the movant for summary judgment showed the absence of the relevant notice to him. In contrast, we cannot say that the petitioner-spouses here have adequate basis for claiming an alleged contemporaneous agreement affecting the contractual right of respondent Inter-Urban Developers, Inc. absent any reasonable showing of the latter's consent to the alteration of the real estate mortgage contract it had earlier executed. All in all, Paz presented genuine and material issues of fact while the instant case proffered only one issue which could properly be characterized as sham.

Finally, we find no merit in petitioner-spouses' claim that the purchase price of the mortgaged real property was way below its appraised value. To begin with, they deliberately withheld the presentation of their own evidence which might have proved this matter and thus unfortunately deprived respondent Inter-Urban Developers, Inc. the opportunity to cross-examine whatever such evidence would tend to establish. Equally significant, the low purchase price could have worked in the petitioner-spouses' favor if they promptly exercised their equity of redemption. As held in *Tarnate v. Court of Appeals*,[64] "[a]nent the contention that the property has been sold at an extremely low price, suffice it to say that, if correct, it would have, in fact, favored an easy redemption of the property. That remedy could have well been availed of but petitioners did not."

With respect to the award of attorneys fees and the reimbursement of advances for real estate taxes and registration expenses allegedly incurred by respondent Inter-Urban Developers, Inc. we rule that the determination thereof was done arbitrarily since the evidence on record, particularly the receipts proving payment of real estate taxes and registration expenses in the names of petitioner-spouses as payor, does not support the finding.[65] In *Warner Barnes & Co. v. Luzon Surety*[66] we held that the trial court cannot impose attorney's fees as well as other charges through summary judgment absent the standard proof of liability for specified amounts truly owing. Furthermore, since the attorney's fees along with the purported costs for real estate taxes and registration expenses were unjustifiably satisfied from proceeds of the sale of the mortgaged property,[67] we must order restitution of the amounts paid in excess of the duly established debt although the judgment may have become final and executory. In *Esler v. de la Cruz*[68] we held -

The gist of the appeal is that since the order for the dismissal of the case was issued on August 20, 1960, and said dismissal had become final, the court could no longer issue its order of December 9, 1960 directing the return of the property. The argument while apparently correct would be productive of clear injustice. As a matter of principle courts should be authorized, as in this case, at any time to order the return of property erroneously ordered to be delivered to one party, if the order was found to have been issued without

jurisdiction. Authority for the return of the property is expressed under the provision of Section 5 of Rule 39, Rules of Court, which reads as follows:

Sec. 5. Effect of reversal of executed judgment. - Where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances.

Under the same principle now expressed in Sec. 5, Rule 39, of the 1997 Rules of Civil Procedure^[69] respondent Inter-Urban Developers, Inc. must return to petitioner-spouses the amounts of P10,000.00 for attorney's fees, P1,691.15 for registration expenses and P10,582.02 for real estate taxes, with interest thereon at twelve percent (12%) per annum from promulgation of this Decision until fully satisfied.^[70]

WHEREFORE, the instant Petition for Review on Certiorari is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 54273, "Spouses Guillermo and Maxima Agbada v. Regional Trial Court, Quezon City, Branch 105, and Inter-Urban Developers, Inc.," which dismissed the petition for annulment of judgment with preliminary injunction filed by the Spouses Guillermo and Maxima Agbada to nullify and to set aside the Summary Judgment rendered by the Regional Trial Court-Br. 105 of Quezon City in its Civil Case No. Q-93-18592 for foreclosure of real estate mortgage, "Inter-Urban Developers, Inc. (represented by Philip Tiam Lee) v. Spouses Guillermo and Maxima Agbada," as well as the Resolution of the Court of Appeals denying reconsideration of the assailed Decision is AFFIRMED, with the MODIFICATION that respondent Inter-Urban Developers is directed to return to petitioner-spouses Guillermo and Maxima Agbada the amounts of P10,000.00 for attorney's fees, P1,691.15 for registration expenses and P10,582.02 for real estate taxes, with interest thereon at twelve percent (12%) per annum from promulgation of this Decision until satisfied.

Upon finality of this Decision, let this case be REMANDED to the Regional Trial Court - Branch 105 of Quezon City for prompt completion of the execution proceedings. No pronouncement as to costs.

SO ORDERED.

Mendoza, Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur

[1] Original Record, pp. 1, 12.

[2] Id., pp. 5-6, 39-40

[3] Id., pp. 5-6.

[4] Id., p. 7.

[5] Docketed as Civil Case No. Q-93-18592; id., pp. 1-4.

[6] Id., p. 12.

[7] Ibid.

[8] Id., p. 23.

[9] Id., pp. 29-30.

[10] Id., pp. 32-33.

[11] No copy of the opposition is attached to the original record but respondent Inter-Urban Developers, Inc. admitted receiving a copy thereof to which it filed a reply; id., pp. 55-56.

[12] *Id.*, pp. 49-52.

[13] *Id.*, p. 67.

[14] Decision penned by Judge Benedicto B. Ulep, RTC-Br. 105, Quezon City; *id.*, pp. 68-69.

[15] *Id.*, p. 69.

[16] *Id.*, p. 75.

[17] *Id.*, p. 76.

[18] *Id.*, pp. 77-78.

[19] *Id.*, pp. 77-80.

[20] *Id.*, p. 81.

[21] *Id.*, pp. 82-83.

[22] *Id.*, p. 86.

[23] *Id.*, p. 90.

[24] *Id.*, p. 144.

[25] *Id.*, p. 158.

[26] *Id.*, pp. 100-108.

[27] *Id.*, p. 175.

[28] The petition for review was procedurally erroneous since Rule 43 pertains to orders or decisions of the Regional Trial Court acting in its appellate jurisdiction which certainly was not the case herein; *id.*, pp. 180-182.

[29] *Id.*, pp. 189-190.

[30] *Id.*, pp. 185-187.

[31] *Id.*, p. 196.

[32] *Id.*, pp. 203-204.

[33] *Id.*, p. 206.

[34] *Id.*, p. 260.

[35] *Id.*, pp. 230-233.

[36] *Id.*, p. 259.

[37] *Id.*, p. 261.

[38] Docketed as CA-G.R. SP No. 54273; CA Record, pp. 5-6.

[39] *Id.*, p. 150.

[40] *Id.*, pp. 151-152.

[41] *Id.*, pp. 185-187.

- [42] G.R. No. 85332, 11 January 1990, 181 SCRA 26; Rollo, pp. 14-18.
- [43] *Id.*, pp. 11-12; see also petitioner-spouses' Memorandum, *id.*, pp. 152-153.
- [44] *Id.*, p. 127.
- [45] *Id.*, pp. 127, 131-134.
- [46] *Tiham v. Sibonghanoy*, G.R. No. L-21450, 15 April 1968, 23 SCRA 29.
- [47] *F. James, Jr. and G. Hazard, Jr., Civil Procedure* (1977), p. 220.
- [48] *I F.D. Regalado, Remedial Law Compendium* (1997), p. 557.
- [49] *Excelsa Industries, Incorporated v. Court of Appeals*, G.R. No. 105455, 23 August 1995, 247 SCRA 560.
- [50] *Narra Integrated Corporation v. Court of Appeals*, G.R. No. 137915, 15 November 2000, 344 SCRA 781, 786.
- [51] *Puyat v. Zabarte*, G.R. No. 141536, 26 February 2001; *R.L. Dessem, Pre-Trial Litigation: Law, Policy and Practice* (1991), p. 453.
- [52] G.R. No. 100635, 13 February 1995, 241 SCRA 254, 258.
- [53] G.R. No. L-46892, 30 September 1981, 108 SCRA 43.
- [54] *Id.*, p. 58.
- [55] *Lola v. Court of Appeals*, G.R. No. L-46573, 13 November 1986, 145 SCRA 439.
- [56] *Record*, p. 23.
- [57] See Note 50.
- [58] See Note 53.
- [59] G.R. No. 107481, 18 November 1993, 228 SCRA 51.
- [60] See Note 51, p. 454.
- [61] See Note 49.
- [62] See Note 41.
- [63] See Note 41, pp. 30-31.
- [64] See Note 52, p. 259.
- [65] *Record*, pp. 42-46.
- [66] 95 Phil. 924 (1954); see *Central Azucarera de Bais v. Court of Appeals*, G.R. No. 87597, 3 August 1990, 188 SCRA 328; *Filinvest Credit Corporation v. Mendez*, G.R. No. L-66419, 31 July 1987, 152 SCRA 593.
- [67] Sheriff's Return dated 19 November 1996; Rollo, p. 124.
- [68] No. L-18236, 31 January 1964, 10 SCRA 138, 139-140.
- [69] The provision now reads: "Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as

equity and justice may warrant under the circumstances.”

[70] Complaint dated 29 November 1993; Summary Judgment dated 13 January 1995; Rollo, pp. 106, 115; *Crismina Garments, Inc. v. Court of Appeals*, G.R. No. 128721, 9 March 1999, 304 SCRA 356; *Philippine National Bank v. Court of Appeals*, G.R. No. 123643, 30 October 1996, 263 SCRA 766.

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