

NEW SAMPAGUITA BUILDERS CONSTRUCTION, INC. (NSBCI) AND SPOUSES EDUARDO R. DEE AND ARCELITA M. DEE, PETITIONERS, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.

G.R. No. 148753. July 30, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Courts have the authority to strike down or to modify provisions in promissory notes that grant the lenders unrestrained power to increase interest rates, penalties and other charges at the latter's sole discretion and without giving prior notice to and securing the consent of the borrowers. This unilateral authority is anathema to the mutuality of contracts and enable lenders to take undue advantage of borrowers. Although the Usury Law has been effectively repealed, courts may still reduce iniquitous or unconscionable rates charged for the use of money. Furthermore, excessive interests, penalties and other charges not revealed in disclosure statements issued by banks, even if stipulated in the promissory notes, cannot be given effect under the Truth in Lending Act.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to nullify the June 20, 2001 Decision[2] of the Court of Appeals[3] (CA) in CA-GR CV No. 55231. The decretal portion of the assailed Decision reads as follows:

“WHEREFORE, the decision of the Regional Trial Court of Dagupan City, Branch 40 dated December 28, 1995 is REVERSED and SET ASIDE. The foreclosure proceedings of the mortgaged properties of defendants-appellees[4] and the February 26, 1992 auction sale are declared legal and valid and said defendants-appellees are ordered to pay plaintiff-appellant PNB,[5] jointly and severally[,] the amount of deficiency that will be computed by the trial court based on the original penalty of 6% per annum as explicitly stated in the loan documents and to pay attorney's fees in an amount equivalent to x x x 1% of the total amount due and the costs of suit and expenses of litigation.”[6]

The Facts

The facts are narrated by the CA as follows:

“On February 11, 1989, Board Resolution No. 05, Series of 1989 was approved by [Petitioner] NSBCI [1]) authorizing the company to x x x apply for or secure a commercial loan with the PNB in an aggregate amount of P8.0M, under such terms agreed by the Bank and the NSBCI, using or mortgaging the real estate properties registered in the name of its President and Chairman of the Board [Petitioner] Eduardo R. Dee as collateral; [and] 2) authorizing [petitioner-spouses] to secure the loan and to sign any [and all] documents which may be required by [Respondent] PNB[,] and that [petitioner-spouses] shall act as sureties or co-obligors who shall be jointly and severally liable with [Petitioner] NSBCI for the payment of any [and all] obligations.

“On August 15, 1989, Resolution No. 77 was approved by granting the request of [Respondent] PNB thru its Board NSBCI for an P8 Million loan broken down into a revolving credit line of P7.7M and an unadvised line

of P0.3M for additional operating and working capital[7] to mobilize its various construction projects, namely:

- ‘1)
MWSS Watermain;
- 2)
NEA-Liberty farm;
- 3)
Olongapo City Pag-Asa Public Market;
- 4)
Renovation of COA-NCR Buildings 1, 2 and 9;
- 5)
Dupels, Inc., Extensive prawn farm development project;
- 6)
Banawe Hotel Phase II;
- 7)
Clark Air Base -- Barracks and Buildings; and
- 8)
Others: EDSA Lighting, Roxas Blvd. Painting NEA Sapang Palay and Angeles City.’

“The loan of [Petitioner] NSBCI was secured by a first mortgage on the following: a) three (3) parcels of residential land located at Mangaldan, Pangasinan with total land area of 1,214 square meters[,] including improvements thereon and registered under TCT Nos. 128449, 126071, and 126072 of the Registry of Deeds of Pangasinan; b) six (6) parcels of residential land situated at San Fabian, Pangasinan with total area of 1,767 square meters[,] including improvements thereon and covered by TCT Nos. 144006, 144005, 120458, 120890, 144161[,] and 121127 of the Registry of Deeds of Pangasinan; and c) a residential lot and improvements thereon located at Mangaldan, Pangasinan with an area of 4,437 square meters and covered by TCT No. 140378 of the Registry of Deeds of Pangasinan.

“The loan was further secured by the joint and several signatures of [Petitioners] Eduardo Dee and Arcelita Marquez Dee, who signed as accommodation-mortgagors since all the collaterals were owned by them and registered in their names.

“Moreover [Petitioner] NSBCI executed the following documents, viz: a) promissory note dated June 29, 1989 in the amount of P5,000,000.00 with due date on October 27, 1989; [b)] promissory note dated September 1, 1989 in the amount of P2,700,000.00 with due date on December 30, 1989; and c) promissory note dated September 6, 1989 in the amount of P300,000.00 with maturity date on January 4, 1990.

“In addition, [petitioner] corporation also signed the Credit Agreement dated August 31, 1989 relating to the ‘revolving credit line’ of P7.7 Million x x x and the Credit Agreement dated September 5, 1989 to support the ‘unadvised line’ of P300,000.00.

“On August 31, 1989, [petitioner-spouses] executed a ‘Joint and Solidary Agreement’ (JSA) in favor of [Respondent] PNB ‘unconditionally and irrevocably binding themselves to be jointly and severally liable with the borrower for the payment of all sums due and payable to the Bank under the Credit Document.’

“Later on, [Petitioner] NSBCI failed to comply with its obligations under the promissory notes.

“On June 18, 1991, [Petitioner] Eduardo R. Dee on behalf of [Petitioner] NSBCI sent a letter to the Branch Manager of the PNB Dagupan Branch requesting for a 90-day extension for the payment of interests and

restructuring of its loan for another term.

“Subsequently, NSBCI tendered payment to [Respondent] PNB [of] three (3) checks aggregating P1,000,000.00, namely 1) check no. 316004 dated August 8, 1991 in the amount of P200,000.00; 2) check no. 03499997 dated August 8, 1991 in the amount of P650,000.00; and 3) check no. 03499998 dated August 15, 1991 in the amount of P150,000.00.[8]

“In a meeting held on August 12, 1991, [Respondent] PNB’s representative[,] Mr. Rolly Cruzabra, was informed by [Petitioner] Eduardo Dee of his intention to remit to [Respondent] PNB post-dated checks covering interests, penalties and part of the loan principals of his due account.

“On August 22, 1991, [Respondent] bank’s Crispin Carcamo wrote [Petitioner] Eduardo Dee[,] informing him that [Petitioner] NSBCI’s proposal [was] acceptable[,] provided the total payment should be P4,128,968.29 that [would] cover the amount of P1,019,231.33 as principal, P3,056,058.03 as interests and penalties[,] and P53,678.93 for insurance[,] with the issuance of post-dated checks to be dated not later than November 29, 1991.

“On September 6, 1991, [Petitioner] Eduardo Dee wrote the PNB Branch Manager reiterating his proposals for the settlement of [Petitioner] NSBCI’s past due loan account amounting to P7,019,231.33.

“[Petitioner] Eduardo Dee later tendered four (4) post-dated Interbank checks aggregating P1,111,306.67 in favor of [Respondent] PNB, viz:

‘Check No. Date Amount

03500087 Sept. 29, 1991 P277,826.70

03500088 Oct. 29, 1991 P277,826.70

03500089 Nov. 29, 1991 P277,826.70

03500090 Dec. 20, 1991 P277,826.57’

“Upon presentment[,] however, x x x check nos. 03500087 and 03500088 dated September 29 and October 29, 1991 were dishonored by the drawee bank and returned due [to] a ‘stop payment’ order from [petitioners].

“On November 12, 1991, PNB’s Mr. Carcamo wrote [Petitioner] Eduardo Dee informing him that unless the dishonored checks [were] made good, said PNB branch ‘shall recall its recommendation to the Head Office for the restructuring of the loan account and refer the matter to its legal counsel for legal action.[’] [Petitioners] did not heed [respondent’s] warning and as a result[,] the PNB Dagupan Branch sent demand letters to [Petitioner] NSBCI at its office address at 1611 ERDC Building, E. Rodriguez Sr. Avenue, Quezon City[,] asking it to settle its past due loan account.

“[Petitioners] nevertheless failed to pay their loan obligations within the [timeframe] given them and as a result, [Respondent] PNB filed with the Provincial Sheriff of Pangasinan at Lingayen a Petition for Sale under Act 3135, as amended[,] and Presidential Decree No. 385 dated January 30, 1992.

“The notice of extra-judicial sale of the mortgaged properties relating to said PNB’s [P]etition for [S]ale was published in the February 8, 15 and 22, 1992 issues of the Weekly Guardian, allegedly a newspaper of general circulation in the Province of Pangasinan, including the cities of Dagupan and San Carlos. In addition[,] copies of the notice were posted in three (3) public places[,] and copies thereof furnished [Petitioner] NSBCI at 1611 [ERDC Building,] E. Rodriguez Sr. Avenue, Quezon City, [and at] 555 Shaw Blvd., Mandaluyong[, Metro Manila;] and [Petitioner] Sps. Eduardo and Arcelita Dee at 213 Wilson St., San Juan, Metro Manila.

“On February 26, 1992, the Provincial Deputy Sheriff Cresencio F. Ferrer of Lingayen, Pangasinan foreclosed the real estate mortgage and sold at public auction the mortgaged properties of [petitioner-spouses,] with

[Respondent] PNB being declared the highest bidder for the amount of P10,334,000.00.

“On March 2, 1992, copies of the Sheriff’s Certificate of Sale were sent by registered mail to [petitioner] corporation’s address at 1611 [ERDC Building,] E. Rodriguez Sr. Avenue, Quezon City and [petitioner-spouses’] address at 213 Wilson St., San Juan, Metro Manila.

“On April 6, 1992, the PNB Dagupan Branch Manager sent a letter to [petitioners] at their address at 1611 [ERDC Building,] E. Rodriguez Sr. Avenue, Quezon City[,] informing them that the properties securing their loan account [had] been sold at public auction, that the Sheriff’s Certificate of Sale had been registered with the Registry of Deeds of Pangasinan on March 13, 1992[,] and that a period of one (1) year therefrom [was] granted to them within which to redeem their properties.

“[Petitioners] failed to redeem their properties within the one-year redemption period[,] and so [Respondent] PNB executed a [D]eed of [A]bsolute [S]ale consolidating title to the properties in its name. TCT Nos. 189935 to 189944 were later issued to [Petitioner] PNB by the Registry of Deeds of Pangasinan.

“On August 4, 1992, [Respondent] PNB informed [Petitioner] NSBCI that the proceeds of the sale conducted on February 26, 1992 were not sufficient to cover its total claim amounting to P12,506,476.43[,] and thus demanded from the latter the deficiency of P2,172,476.43 plus interest and other charges[,] until the amount [was] fully paid.

“[Petitioners] refused to pay the above deficiency claim which compelled [Respondent] PNB to institute the instant [C]omplaint for the collection of its deficiency claim.

“Finding that the PNB debt relief package automatically [granted] to [Petitioner] NSBCI the benefits under the program, the court a quo ruled in favor of [petitioners] in its Decision dated December 28, 1995, the fallo of which reads: ‘In view of the foregoing, the Court believes and so holds that the [respondent] has no cause of action against the [petitioners].

‘WHEREFORE, the case is hereby DISMISSED, without costs.’”[9]

On appeal, respondent assailed the trial court’s Decision dismissing its deficiency claim on the mortgage debt. It also challenged the ruling of the lower court that Petitioner NSBCI’s loan account was bloated, and that the inadequacy of the bid price was sufficient to set aside the auction sale.

Ruling of the Court of Appeals

Reversing the trial court, the CA held that Petitioner NSBCI did not avail itself of respondent’s debt relief package (DRP) or take steps to comply with the conditions for qualifying under the program. The appellate court also ruled that entitlement to the program was not a matter of right, because such entitlement was still subject to the approval of higher bank authorities, based on their assessment of the borrower’s repayment capability and satisfaction of other requirements.

As to the misapplication of loan payments, the CA held that the subsidiary ledgers of NSBCI’s loan accounts with respondent reflected all the loan proceeds as well as the partial payments that had been applied either to the principal or to the interests, penalties and other charges. Having been made in the ordinary and usual course of the banking business of respondent, its entries were presumed accurate, regular and fair under Section 5(q) of Rule 131 of the Rules of Court. Petitioners failed to rebut this presumption.

The increases in the interest rates on NSBCI’s loan were also held to be authorized by law and the Monetary Board and -- like the increases in penalty rates -- voluntarily and freely agreed upon by the parties in the Credit Agreements they executed. Thus, these increases were binding upon petitioners.

However, after considering that two to three of Petitioner NSBCI’s projects covered by the loan were affected by

the economic slowdown in the areas near the military bases in the cities of Angeles and Olongapo, the appellate court annulled and deleted the adjustment in penalty from 6 percent to 36 percent per annum. Not only did respondent fail to demonstrate the existence of market forces and economic conditions that would justify such increases; it could also have treated petitioners' request for restructuring as a request for availment of the DRP. Consequently, the original penalty rate of 6 percent per annum was used to compute the deficiency claim.

The auction sale could not be set aside on the basis of the inadequacy of the auction price, because in sales made at public auction, the owner is given the right to redeem the mortgaged properties; the lower the bid price, the easier it is to effect redemption or to sell such right. The bid price of P10,334,000.00 vis-à-vis respondent's claim of P12,506,476.43 was found to be neither shocking nor unconscionable.

The attorney's fees were also reduced by the appellate court from 10 percent to 1 percent of the total indebtedness. First, there was no extreme difficulty in an extrajudicial foreclosure of a real estate mortgage, as this proceeding was merely administrative in nature and did not involve a court litigation contesting the proceedings prior to the auction sale. Second, the attorney's fees were exclusive of all stipulated costs and fees. Third, such fees were in the nature of liquidated damages that did not inure to respondent's salaried counsel.

Respondent was also declared to have the unquestioned right to foreclose the Real Estate Mortgage. It was allowed to recover any deficiency in the mortgage account not realized in the foreclosure sale, since petitioner-spouses had agreed to be solidarily liable for all sums due and payable to respondent.

Finally, the appellate court concluded that the extrajudicial foreclosure proceedings and auction sale were valid for the following reasons: (1) personal notice to the mortgagors, although unnecessary, was actually made; (2) the notice of extrajudicial sale was duly published and posted; (3) the extrajudicial sale was conducted through the deputy sheriff, under the direction of the clerk of court who was concurrently the ex-officio provincial sheriff and acting as agent of respondent; (4) the sale was conducted within the province where the mortgaged properties were located; and (5) such sale was not shown to have been attended by fraud.

Hence this Petition.[10]

Issues

Petitioners submit the following issues for our consideration:

"I

Whether or not the Honorable Court of Appeals correctly ruled that petitioners did not avail of PNB's debt relief package and were not entitled thereto as a matter of right.

"II

Whether or not petitioners have adduced sufficient and convincing evidence to overthrow the presumption of regularity and correctness of the PNB entries in the subsidiary ledgers of the loan accounts of petitioners.

"III

Whether or not the Honorable Court of Appeals seriously erred in not holding that the Respondent PNB bloated the loan account of petitioner corporation by imposing interests, penalties and attorney's fees without legal, valid and equitable justification.

"IV

Whether or not the auction price at which the mortgaged properties was sold was disproportionate to their actual fair mortgage value.

“V

Whether or not Respondent PNB is not entitled to recover the deficiency in the mortgage account not realized in the foreclosure sale, considering that:

- Petitioners are merely guarantors of the mortgage debt of petitioner corporation which has a separate personality from the [petitioner-spouses].
- The joint and solidary agreement executed by [petitioner- spouses] are contracts of adhesion not binding on them;
- The NSBCI Board Resolution is not valid and binding on [petitioner-spouses] because they were compelled to execute the said Resolution[;] otherwise[,] Respondent PNB would not grant petitioner corporation the loan;
- The Respondent PNB had already in its possession the properties of the [petitioner-spouses] which served as a collateral to the loan obligation of petitioner corporation[,] and to still allow Respondent PNB to recover the deficiency claim amounting to a very substantial amount of P2.1 million would constitute unjust enrichment on the part of Respondent PNB.

“VI

Whether or not the extrajudicial foreclosure proceedings and auction sale, including all subsequent proceedings[,] are null and void for non-compliance with jurisdictional and other mandatory requirements; whether or not the petition for extrajudicial foreclosure of mortgage was filed prematurely; and whether or not the finding of fraud by the trial court is amply supported by the evidence on record.”[11]

The foregoing may be summed up into two main issues: first, whether the loan accounts are bloated; and second, whether the extrajudicial foreclosure and subsequent claim for deficiency are valid and proper.

The Court’s Ruling

The Petition is partly meritorious.

First Main Issue:

Bloated Loan Accounts

At the outset, it must be stressed that only questions of law[12] may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. As a rule, questions of fact cannot be the subject of this mode of appeal,[13] for “[t]he Supreme Court is not a trier of facts.”[14] As exceptions to this rule, however, factual findings of the CA may be reviewed on appeal[15] when, inter alia, the factual inferences are manifestly mistaken;[16] the judgment is based on a misapprehension of facts;[17] or the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different legal conclusion.[18] In the present case, these exceptions exist in various instances, thus prompting us to take cognizance of factual issues and to decide upon them in the interest of justice and in the exercise of our sound discretion.[19]

Indeed, Petitioner NSBCI’s loan accounts with respondent appear to be bloated with some iniquitous imposition of interests, penalties, other charges and attorney’s fees. To demonstrate this point, the Court shall take up one by one the promissory notes, the credit agreements and the disclosure statements.

Increases in Interest Baseless

Promissory Notes. In each drawdown, the Promissory Notes specified the interest rate to be charged: 19.5 percent in the first, and 21.5 percent in the second and again in the third. However, a uniform clause therein permitted respondent to increase the rate “within the limits allowed by law at any time depending on whatever policy it may

adopt in the future x x x,”[20] without even giving prior notice to petitioners. The Court holds that petitioners’ accessory duty to pay interest[21] did not give respondent unrestrained freedom to charge any rate other than that which was agreed upon. No interest shall be due, unless expressly stipulated in writing.[22] It would be the zenith of farcicality to specify and agree upon rates that could be subsequently upgraded at whim by only one party to the agreement.

The “unilateral determination and imposition”[23] of increased rates is “violative of the principle of mutuality of contracts ordained in Article 1308[24] of the Civil Code.”[25] One-sided impositions do not have the force of law between the parties, because such impositions are not based on the parties’ essential equality.

Although escalation clauses[26] are valid in maintaining fiscal stability and retaining the value of money on long-term contracts,[27] giving respondent an unbridled right to adjust the interest independently and upwardly would completely take away from petitioners the “right to assent to an important modification in their agreement”[28] and would also negate the element of mutuality in their contracts. The clause cited earlier made the fulfillment of the contracts “dependent exclusively upon the uncontrolled will”[29] of respondent and was therefore void. Besides, the pro forma promissory notes have the character of a contract d’adhésion,[30] “where the parties do not bargain on equal footing, the weaker party’s [the debtor’s] participation being reduced to the alternative ‘to take it or leave it.’”[31]

“While the Usury Law[32] ceiling on interest rates was lifted by [Central Bank] Circular No. 905,[33] nothing in the said Circular grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.”[34] In fact, we have declared nearly ten years ago that neither this Circular nor PD 1684, which further amended the Usury Law, “authorized either party to unilaterally raise the interest rate without the other’s consent.”[35]

Moreover, a similar case eight years ago pointed out to the same respondent (PNB) that borrowing signified a capital transfusion from lending institutions to businesses and industries and was done for the purpose of stimulating their growth; yet respondent’s continued “unilateral and lopsided policy”[36] of increasing interest rates “without the prior assent”[37] of the borrower not only defeats this purpose, but also deviates from this pronouncement. Although such increases are not usurious, since the “Usury Law is now legally inexistent”[38] -- the interest ranging from 26 percent to 35 percent in the statements of account[39] -- “must be equitably reduced for being iniquitous, unconscionable and exorbitant.”[40] Rates found to be iniquitous or unconscionable are void, as if it there were no express contract thereon.[41] Above all, it is undoubtedly against public policy to charge excessively for the use of money.[42]

It cannot be argued that assent to the increases can be implied either from the June 18, 1991 request of petitioners for loan restructuring or from their lack of response to the statements of account sent by respondent. Such request does not indicate any agreement to an interest increase; there can be no implied waiver of a right when there is no clear, unequivocal and decisive act showing such purpose.[43] Besides, the statements were not letters of information sent to secure their conformity; and even if we were to presume these as an offer, there was no acceptance. No one receiving a proposal to modify a loan contract, especially interest -- a vital component -- is “obliged to answer the proposal.”[44]

Furthermore, respondent did not follow the stipulation in the Promissory Notes providing for the automatic conversion of the portion that remained unpaid after 730 days -- or two years from date of original release -- into a medium-term loan, subject to the applicable interest rate to be applied from the dates of original release.[45]

In the first,[46] second[47] and third[48] Promissory Notes, the amount that remained unpaid as of October 27, 1989, December 1989 and January 4, 1990 -- their respective due dates -- should have been automatically

converted by respondent into medium-term loans on June 30, 1991, September 2, 1991, and September 7, 1991, respectively. And on this unpaid amount should have been imposed the same interest rate charged by respondent on other medium-term loans; and the rate applied from June 29, 1989, September 1, 1989 and September 6, 1989 -- their respective original release --until paid. But these steps were not taken. Aside from sending demand letters, respondent did not at all exercise its option to enforce collection as of these Notes' due dates. Neither did it renew or extend the account.

In these three Promissory Notes, evidently, no complaint for collection was filed with the courts. It was not until January 30, 1992 that a Petition for Sale of the mortgaged properties was filed -- with the provincial sheriff, instead.[49] Moreover, respondent did not supply the interest rate to be charged on medium-term loans granted by automatic conversion. Because of this deficiency, we shall use the legal rate of 12 percent per annum on loans and forbearance of money, as provided for by CB Circular 416.[50]

Credit Agreements. Aside from the promissory notes, another main document involved in the principal obligation is the set of credit agreements executed and their annexes.

The first Credit Agreement[51] dated June 19, 1989 -- although offered and admitted in evidence, and even referred to in the first Promissory Note -- cannot be given weight.

First, it was not signed by respondent through its branch manager.[52] Apparently it was surreptitiously acknowledged before respondent's counsel, who unflinchingly declared that it had been signed by the parties on every page, although respondent's signature does not appear thereon.[53]

Second, it was objected to by petitioners,[54] contrary to the trial court's findings.[55] However, it was not the Agreement, but the revolving credit line[56] of P5,000,000, that expired one year from the Agreement's date of implementation.[57]

Third, there was no attached annex that contained the General Conditions.[58] Even the Acknowledgment did not allude to its existence.[59] Thus, no terms or conditions could be added to the Agreement other than those already stated therein.

Since the first Credit Agreement cannot be given weight, the interest rate on the first availment pegged at 3 percent over and above respondent's prime rate[60] on the date of such availment[61] has no bearing at all on the loan. After the first Note's due date, the rate of 19 percent agreed upon should continue to be applied on the availment, until its automatic conversion to a medium-term loan.

The second Credit Agreement[62] dated August 31, 1989, provided for interest -- respondent's prime rate, plus the applicable spread[63] in effect as of the date of each availment,[64] on a revolving credit line of P7,700,000[65] -- but did not state any provision on its increase or decrease.[66] Consequently, petitioners could not be made to bear interest more than such prime rate plus spread. The Court gives weight to this second Credit Agreement for the following reasons.

First, this document submitted by respondent was admitted by petitioners.[67] Again, contrary to their assertion, it was not the Agreement -- but the credit line -- that expired one year from the Agreement's date of implementation.[68] Thus, the terms and conditions continued to apply, even if drawdowns could no longer be made.

Second, there was no 7-page annex[69] offered in evidence that contained the General Conditions,[70] notwithstanding the Acknowledgment of its existence by respondent's counsel. Thus, no terms or conditions could be appended to the Agreement other than those specified therein.

Third, the 12-page General Conditions[71] offered and admitted in evidence had no probative value. There was no reference to it in the Acknowledgment of the Agreement; neither was respondent's signature on any of the pages thereof. Thus, the General Conditions' stipulations on interest adjustment,[72] whether on a fixed or a floating scheme, had no effect whatsoever on the Agreement. Contrary to the trial court's findings,[73] the General Condition were correctly objected to by petitioners.[74] The rate of 21.5 percent agreed upon in the second Note thus continued to apply to the second availment, until its automatic conversion into a medium-term loan.

The third Credit Agreement[75] dated September 5, 1989, provided for the same rate of interest as that in the second Agreement. This rate was to be applied to availments of an unadvised line of P300,000. Since there was no mention in the third Agreement, either, of any stipulation on increases or decreases[76] in interest, there would be no basis for imposing amounts higher than the prime rate plus spread. Again, the 21.5 percent rate agreed upon would continue to apply to the third availment indicated in the third Note, until such amount was automatically converted into a medium-term loan.

The Court also finds that, first, although this document was admitted by petitioners,[77] it was the credit line that expired one year from the implementation of the Agreement.[78] The terms and conditions therein continued to apply, even if availments could no longer be drawn after expiry.

Second, there was again no 7-page annex[79] offered that contained the General Conditions,[80] regardless of the Acknowledgment by the same respondent's counsel affirming its existence. Thus, the terms and conditions in this Agreement relating to interest cannot be expanded beyond that which was already laid down by the parties.

Disclosure Statements. In the present case, the Disclosure Statements[81] furnished by respondent set forth the same interest rates as those respectively indicated in the Promissory Notes. Although no method of computation was provided showing how such rates were arrived at, we will nevertheless take up the Statements seriatim in order to determine the applicable rates clearly.

As to the first Disclosure Statement on Loan/Credit Transaction[82] dated June 13, 1989, we hold that the 19.5 percent effective interest rate per annum[83] would indeed apply to the first availment or drawdown evidenced by the first Promissory Note. Not only was this Statement issued prior to the consummation of such availment or drawdown, but the rate shown therein can also be considered equivalent to 3 percent over and above respondent's prime rate in effect. Besides, respondent mentioned no other rate that it considered to be the prime rate chargeable to petitioners. Even if we disregarded the related Credit Agreement, we assume that this private transaction between the parties was fair and regular,[84] and that the ordinary course of business was followed.[85]

As to the second Disclosure Statement on Loan/Credit Transaction[86] dated September 2, 1989, we hold that the 21.5 percent effective interest rate per annum[87] would definitely apply to the second availment or drawdown evidenced by the second Promissory Note. Incidentally, this Statement was issued only after the consummation of its related availment or drawdown, yet such rate can be deemed equivalent to the prime rate plus spread, as stipulated in the corresponding Credit Agreement. Again, we presume that this private transaction was fair and regular, and that the ordinary course of business was followed. That the related Promissory Note was pre-signed would also bolster petitioners' claim although, under cross-examination Efren Pozon -- Assistant Department Manager I[88] of PNB, Dagupan Branch -- testified that the Disclosure Statements were the basis for preparing the Notes.[89]

As to the third Disclosure Statement on Loan/Credit Transaction[90] dated September 6, 1989, we hold that the same 21.5 percent effective interest rate per annum[91] would apply to the third availment or drawdown evidenced by the third Promissory Note. This Statement was made available to petitioner-spouses, only after the related Credit Agreement had been executed, but simultaneously with the consummation of the Statement's

related availment or drawdown. Nonetheless, the rate herein should still be regarded as equivalent to the prime rate plus spread, under the similar presumption that this private transaction was fair and regular and that the ordinary course of business was followed.

In sum, the three disclosure statements, as well as the two credit agreements considered by this Court, did not provide for any increase in the specified interest rates. Thus, none would now be permitted. When cross-examined, Julia Ang-Lopez, Finance Account Analyst II of PNB, Dagupan Branch, even testified that the bases for computing such rates were those sent by the head office from time to time, and not those indicated in the notes or disclosure statements.[92]

In addition to the preceding discussion, it is then useless to belabor the point that the increase in rates violates the impairment[93] clause of the Constitution,[94] because the sole purpose of this provision is to safeguard the integrity of valid contractual agreements against unwarranted interference by the State[95] in the form of laws. Private individuals' intrusions on interest rates is governed by statutory enactments like the Civil Code.

Penalty, or Increases Thereof, Unjustified

No penalty charges or increases thereof appear either in the Disclosure Statements[96] or in any of the clauses in the second and the third Credit Agreements[97] earlier discussed. While a standard penalty charge of 6 percent per annum has been imposed on the amounts stated in all three Promissory Notes still remaining unpaid or unrenewed when they fell due,[98] there is no stipulation therein that would justify any increase in that charges. The effect, therefore, when the borrower is not clearly informed of the Disclosure Statements -- prior to the consummation of the availment or drawdown -- is that the lender will have no right to collect upon such charge[99] or increases thereof, even if stipulated in the Notes. The time is now ripe to give teeth to the often ignored forty-one-year old "Truth in Lending Act"[100] and thus transform it from a snivelling paper tiger to a growling financial watchdog of hapless borrowers.

Besides, we have earlier said that the Notes are contracts of adhesion; although not invalid per se, any apparent ambiguity in the loan contracts -- taken as a whole -- shall be strictly construed against respondent who caused it.[101] Worse, in the statements of account, the penalty rate has again been unilaterally increased by respondent to 36 percent without petitioners' consent. As a result of its move, such liquidated damages intended as a penalty shall be equitably reduced by the Court to zilch[102] for being iniquitous or unconscionable.[103]

Although the first Disclosure Statement was furnished Petitioner NSBCI prior to the execution of the transaction, it is not a contract that can be modified by the related Promissory Note, but a mere statement in writing that reflects the true and effective cost of loans from respondent. Novation can never be presumed,[104] and the animus novandi "must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken."[105] To allow novation will surely flout the "policy of the State to protect its citizens from a lack of awareness of the true cost of credit."[106]

With greater reason should such penalty charges be indicated in the second and third Disclosure Statements, yet none can be found therein. While the charges are issued after the respective availment or drawdown, the disclosure statements are given simultaneously therewith. Obviously, novation still does not apply.

Other Charges Unwarranted

In like manner, the other charges imposed by respondent are not warranted. No particular values or rates of service charge are indicated in the Promissory Notes or Credit Agreements, and no total value or even the breakdown figures of such non-finance charge are specified in the Disclosure Statements. Moreover, the provision

in the Mortgage that requires the payment of insurance and other charges is neither made part of nor reflected in such Notes, Agreements, or Statements.[107]

Attorney's Fees Equitably Reduced

We affirm the equitable reduction in attorney's fees.[108] These are not an integral part of the cost of borrowing, but arise only when collecting upon the Notes becomes necessary. The purpose of these fees is not to give respondent a larger compensation for the loan than the law already allows, but to protect it against any future loss or damage by being compelled to retain counsel – in-house or not -- to institute judicial proceedings for the collection of its credit.[109] Courts have has the power[110] to determine their reasonableness[111] based on quantum meruit[112] and to reduce[113] the amount thereof if excessive.[114]

In addition, the disqualification argument in the Affidavit of Publication raised by petitioners no longer holds water, inasmuch as Act 496[115] has repealed the Spanish Notarial Law.[116] In the same vein, their engagement of their counsel in another capacity concurrent with the practice of law is not prohibited, so long as the roles being assumed by such counsel is made clear to the client.[117] The only reason for this clarification requirement is that certain ethical considerations operative in one profession may not be so in the other.[118]

Debt Relief Package

Not Availed Of

We also affirm the CA's disquisition on the debt relief package (DRP).

Respondent's Circular is not an outright grant of assistance or extension of payment,[119] but a mere offer subject to specific terms and conditions.

Petitioner NSBCI failed to establish satisfactorily that it had been seriously and directly affected by the economic slowdown in the peripheral areas of the then US military bases. Its allegations, devoid of any verification, cannot lead to a supportable conclusion. In fact, for short-term loans, there is still a need to conduct a thorough review of the borrower's repayment possibilities.[120]

Neither has Petitioner NSBCI shown enough margin of equity,[121] based on the latest loan value of hard collaterals,[122] to be eligible for the package. Additional accommodations on an unsecured basis may be granted only when regular payment amortizations have been established, or when the merits of the credit application would so justify.[123]

The branch manager's recommendation to restructure or extend a total outstanding loan not exceeding P8,000,000 is not final, but subject to the approval of respondent's Branches Department Credit Committee, chaired by its executive vice-president.[124] Aside from being further conditioned on other pertinent policies of respondent,[125] such approval nevertheless needs to be reported to its Board of Directors for confirmation.[126] In fact, under the General Banking Law of 2000,[127] banks shall grant loans and other credit accommodations only in amounts and for periods of time essential to the effective completion of operations to be financed, "consistent with safe and sound banking practices." [128] The Monetary Board -- then and now -- still prescribes, by regulation, the conditions and limitations under which banks may grant extensions or renewals of their loans and other credit accommodations.[129]

Entries in Subsidiary Ledgers

Regular and Correct

Contrary to petitioners' assertions, the subsidiary ledgers of respondent properly reflected all entries pertaining to Petitioner NSBCI's loan accounts. In accordance with the Generally Accepted Accounting Principles (GAAP) for

the Banking Industry,[130] all interests accrued or earned on such loans, except those that were restructured and non-accruing,[131] have been periodically taken into income.[132] Without a doubt, the subsidiary ledgers in a manual accounting system are mere private documents[133] that support and are controlled by the general ledger.[134] Such ledgers are neither foolproof nor standard in format, but are periodically subject to audit. Besides, we go by the presumption that the recording of private transactions has been fair and regular, and that the ordinary course of business has been followed.

Second Main Issue:

Extrajudicial Foreclosure Valid, But
Deficiency Claims Excessive

Respondent aptly exercised its option to “foreclose the mortgage,”[135] after petitioners had failed to pay all the Notes in full when they fell due.[136] The extrajudicial sale and subsequent proceedings are therefore valid, but the alleged deficiency claim cannot be recovered.

Auction Price Adequate

In the accessory contract[137] of real mortgage,[138] in which immovable property or real rights thereto are used as security[139] for the fulfillment of the principal loan obligation,[140] the bid price may be lower than the property’s fair market value.[141] In fact, the loan value itself is only 70 percent of the appraised value.[142] As correctly emphasized by the appellate court, a low bid price will make it easier[143] for the owner to effect redemption[144] by subsequently reacquiring the property or by selling the right to redeem and thus recover alleged losses. Besides, the public auction sale has been regularly and fairly conducted,[145] there has been ample authority to effect the sale,[146] and the Certificates of Title can be relied upon. No personal notice[147] is even required,[148] because an extrajudicial foreclosure is an action in rem, requiring only notice by publication and posting, in order to bind parties interested in the foreclosed property.[149]

As no redemption[150] was exercised within one year after the date of registration of the Certificate of Sale with the Registry of Deeds,[151] respondent -- being the highest bidder -- has the right to a writ of possession, the final process that will consummate the extrajudicial foreclosure. On the other hand, petitioner-spouses, who are mortgagors herein, shall lose all their rights to the property.[152]

No Deficiency Claim Receivable

After the foreclosure and sale of the mortgaged property, the Real Estate Mortgage is extinguished. Although the mortgagors, being third persons, are not liable for any deficiency in the absence of a contrary stipulation,[153] the action for recovery of such amount -- being clearly sureties to the principal obligation -- may still be directed against them.[154] However, respondent may impose only the stipulated interest rates of 19.5 percent and 21.5 percent on the respective availments -- subject to the 12 percent legal rate revision upon automatic conversion into medium-term loans -- plus 1 percent attorney’s fees, without additional charges on penalty, insurance or any increases thereof.

Accordingly, the excessive interest rates in the Statements of Account sent to petitioners are reduced to 19.5 percent and 21.5 percent, as stipulated in the Promissory Notes; upon loan conversion, these rates are further reduced to the legal rate of 12 percent. Payments made by petitioners are pro-rated, the charges on penalty and insurance eliminated, and the resulting total unpaid principal and interest of P6,582,077.70 as of the date of public auction is then subjected to 1 percent attorney’s fees. The total outstanding obligation is compared to the bid price. On the basis of these rates and the comparison made, the deficiency claim receivable amounting to P2,172,476.43 in fact vanishes. Instead, there is an overpayment by more than P3 million, as shown in the

following Schedules:

SCHEDULE 1: PN (1) drawdown amount on 6/29/89

P

5,000,000.00

Less: Interest deducted in advance (per 6/13/89 Disclosure Statement)

305,165.00

Net proceeds

4,694,835.00

Principal

5,000,000.00

Add:

Interest at 19.5% p.a.

10/28/89-12/31/89 (5,000,000 x 19.5% x [65/365])

173,630.14

1/1/90-1/5/90 (5,000,000 x 19.5% x [5/365])

13,356.16

186,986.30

186,986.30

Amount due as of 1/5/90

5,186,986.30

Less: Payment on 1/5/90 (pro-rated upon interest)

543,807.61

543,807.61

Balance

(356,821.30)

4,643,178.70

Add:

Interest at 19.5% p.a.

1/6/90-3/30/90 ([5,000,000-356,821.30] x 19.5% x [84/365])

208,370.59

208,370.59

Amount due as of 3/30/90

4,851,549.29

Less: Payment on 3/30/90 (pro-rated upon interest)

163,182.85

163,182.85

Balance

45,187.75

4,688,366.44

Add:

Interest at 19.5% p.a.

$3/31/90-5/31/90 ([5,000,000-356,821.30] \times 19.5\% \times [62/365])$

153,797.34

153,797.34

Amount due as of 5/31/90

198,985.09

4,842,163.79

Less: Payment on 5/31/90 (pro-rated upon interest)

199,806.42

199,806.42

Balance

(821.33)

4,642,357.36

Add:

Interest at 19.5% p.a.

$6/1/90-6/29/90 ([5,000,000-(356,821.30+821.33)] \times 19.5\% \times [29/365])$

71,924.74

71,924.74

Amount due as of 6/29/90

4,714,282.11

Less: Payment on 6/29/90 (pro-rated upon interest)

839,012.66

839,012.66

Balance

(767,087.92)

3,875,269.44

Add:

Interest at 19.5% p.a.

6/30/90-12/31/90 $([5,000,000-(356,821.30+821.33+767,087.92)] \times 19.5\% \times [185/365])$

383,014.64

1/1/91-6/29/91 $([5,000,000-(356,821.30+821.33+767,087.92)] \times 19.5\% \times [180/365])$

372,662.90

Interest at 12% p.a. upon automatic conversion

6/30/91-8/8/91 $([5,000,000-(356,821.30+821.33+767,087.92)] \times 12\% \times [40/365])$

50,962.45

806,639.99

806,639.99

Amount due as of 8/8/91

4,681,909.43

Less: Payment on 8/8/91 (pro-rated upon interest)

493,906.31

493,906.31

Balance

312,733.68

4,188,003.13

Add:

Interest at 12% p.a.

8/9/91-8/15/91 $([5,000,000-(356,821.30+821.33+767,087.92)] \times 12\% \times [7/365])$

8,918.43

8,918.43

Amount due as of 8/15/91

321,652.11

4,196,921.55

Less: Payment on 8/15/91 (pro-rated upon interest)

86,593.37

86,593.37

Balance

235,058.74

4,110,328.18

Add:

Interest at 12% p.a.

8/16/91-11/29/91 $([5,000,000 - (356,821.30 + 821.33 + 767,087.92)] \times 12\% \times [106/365])$

135,050.49

135,050.49

Amount due as of 11/29/91

370,109.22

4,245,378.67

Less: Payment on 11/29/91 (pro-rated upon interest)

161,096.81

161,096.81

Balance

209,012.41

4,084,281.86

Add:

Interest at 12% p.a.

11/30/91-12/20/91 $([5,000,000 - (356,821.30 + 821.33 + 767,087.92)] \times 12\% \times [21/365])$

26,755.28

26,755.28

Amount due as of 12/20/91

235,767.70

4,111,037.14

Less: Payment on 12/20/91 (pro-rated upon interest)

162,115.78

162,115.78

Balance

73,651.92

3,948,921.37

Add:

Interest at 12% p.a.

$12/21/91-12/31/91 ([5,000,000-(356,821.30+821.33+767,087.92)] \times 12\% \times [11/365])$

14,281.03

$1/1/92-2/26/92 ([5,000,000-(356,821.30+821.33+767,087.92)] \times 12\% \times [57/365])$

74,001.70

88,282.74

88,282.74

Amount due on PN (1) as of 2/26/92

161,934.66

P

4,037,204.10

SCHEDULE 2: PN (2) drawdown amount on 9/1/89

P

2,700,000.00

Less: Interest deducted in advance (per 9/1/89 Disclosure Statement)

180,559.88

Net proceeds

2,519,440.12

Principal

2,700,000.00

Add:

Interest at 21.5% p.a.

$12/31/89 (2,700,000 \times 21.5\% \times [1/365])$

1,590.41

$1/1/90-1/5/90 (2,700,000 \times 21.5\% \times [5/365])$

7,952.05

9,542.47

9,542.47

Amount due as of 1/5/90

2,709,542.47

Less: Payment on 1/5/90 (pro-rated upon interest)

27,752.12

27,752.12

Balance

(18,209.65)

2,681,790.35

Add:

Interest at 21.5% p.a.

1/6/90-3/30/90 $([2,700,000 - 18,209.65] \times 21.5\% \times [84/365])$

132,693.52

132,693.52

Amount due as of 3/30/90

2,814,483.87

Less: Payment on 3/30/90 (pro-rated upon interest)

103,917.28

103,917.28

Balance

28,776.23

2,710,566.58

Add:

Interest at 21.5% p.a.

3/31/90-5/31/90 $([2,700,000 - 18,209.65] \times 21.5\% \times [62/365])$

97,940.45

97,940.45

Amount due as of 5/31/90

126,716.69

2,808,507.04

Less: Payment on 5/31/90 (pro-rated upon interest)

127,239.72

127,239.72

Balance

(523.04)

2,681,267.31

Add:

Interest at 21.5% p.a.

6/1/90-6/29/90 $[(2,700,000 - (18,209.65 + 523.04)) \times 21.5\% \times [29/365]]$

45,801.92

45,801.92

Amount due as of 6/29/90

2,727,069.24

Less: Payment on 6/29/90 (pro-rated upon interest)

534,286.14

534,286.14

Balance

(488,484.22)

2,192,783.10

Add:

Interest at 21.5% p.a.

6/30/90-12/31/90 $[(2,700,000 - (18,209.65 + 523.04 + 488,484.22)) \times 21.5\% \times [185/365]]$

238,953.28

1/1/91-8/8/91 $[(2,700,000 - (18,209.65 + 523.04 + 488,484.22)) \times 21.5\% \times [220/365]]$

284,160.66

523,113.94

523,113.94

Amount due as of 8/8/91

2,715,897.04

Less: Payment on 8/8/91 (pro-rated upon interest)

320,303.08

320,303.08

Balance

202,810.86

2,395,593.95

Add:

Interest at 21.5% p.a.

$8/9/91-8/15/91 \text{ } ([2,700,000-(18,209.65+523.04+488,484.22)] \times 21.5\% \times [7/365])$

9,041.48

9,041.48

Amount due as of 8/15/91

211,852.33

2,404,635.43

Less: Payment on 8/15/91 (pro-rated upon interest)

57,033.69

57,033.69

Balance

154,818.64

2,347,601.74

Add:

Interest at 21.5% p.a.

$8/16/91-9/1/91 \text{ } ([2,700,000-(18,209.65+523.04+488,484.22)] \times 21.5\% \times [17/365])$

21,957.87

Interest at 12% p.a. upon automatic conversion

$9/2/91-11/29/91 \text{ } ([2,700,000-(18,209.65+523.04+488,484.22)] \times 12\% \times [89/365])$

64,161.43

86,119.30

86,119.30

Amount due as of 11/29/91

240,937.94

2,433,721.04

Less: Payment on 11/29/91 (pro-rated upon interest)

104,872.65

104,872.65

Balance

136,065.30

2,328,848.39

Add:

Interest at 12% p.a.

11/30/91-12/20/91 $([2,700,000-(18,209.65+523.04+488,484.22)] \times 12\% \times [21/365])$

15,139.21

15,139.21

Amount due as of 12/20/91

151,204.51

2,343,987.61

Less: Payment on 12/20/91 (pro-rated upon interest)

103,969.45

103,969.45

Balance

47,235.07

2,240,018.16

Add:

Interest at 12% p.a.

12/21/91-12/31/91 $([2,700,000-(18,209.65+523.04+488,484.22)] \times 12\% \times [11/365])$

7,930.06

1/1/92-2/26/92 $([2,700,000-(18,209.65+523.04+488,484.22)] \times 12\% \times [57/365])$

41,092.15

49,022.22

49,022.22

Amount due on PN (2) as of 2/26/92

96,257.28

P

2,289,040.38

SCHEDULE 3: PN (3) drawdown amount on 9/6/89

P

300,000.00

Less: Interest deducted in advance (per 9/6/89 Disclosure Statement)

20,062.21

Net proceeds

279,937.79

Principal

300,000.00

Add:

Interest at 21.5% p.a.

$1/5/90 (300,000 \times 21.5\% \times [1/365])$

176.71

176.71

Amount due as of 1/5/90

300,176.71

Less: Payment on 1/5/90 (pro-rated upon interest)

513.93

513.93

Balance

(337.22)

299,662.78

Add:

Interest at 21.5% p.a.

$1/6/90-3/30/90 ([300,000-337.22] \times 21.5\% \times [84/365])$

14,827.15

14,827.15

Amount due as of 3/30/90

314,489.93

Less: Payment on 3/30/90 (pro-rated upon interest)

11,611.70

11,611.70

Balance

3,215.45

302,878.24

Add:

Interest at 21.5% p.a.

3/31/90-5/31/90 $([300,000-337.22] \times 21.5\% \times [62/365])$

10,943.85

10,943.85

Amount due as of 5/31/90

14,159.30

313,822.08

Less: Payment on 5/31/90 (pro-rated upon interest)

14,217.74

14,217.74

Balance

(58.44)

299,604.34

Add:

Interest at 21.5% p.a.

6/1/90-6/29/90 $([300,000-(337.22+58.44)] \times 21.5\% \times [29/365])$

5,117.90

5,117.90

Amount due as of 6/29/90

304,722.24

Less: Payment on 6/29/90 (pro-rated upon interest)

59,701.04

59,701.04

Balance

(54,583.14)

245,021.20

Add:

Interest at 21.5% p.a.

6/30/90-12/31/90 $([300,000-(337.22+58.44+54,583.14)] \times 21.5\% \times [185/365])$

26,700.60

1/1/91-8/8/91 $([300,000-(337.22+58.44+54,583.14)]) \times 21.5\% \times [220/365])$

31,752.06

58,452.66

58,452.66

Amount due as of 8/8/91

303,473.86

Less: Payment on 8/8/91 (pro-rated upon interest)

35,790.61

35,790.61

Balance

22,662.05

267,683.25

Add:

Interest at 21.5% p.a.

8/9/91-8/15/91 $([300,000-(337.22+58.44+54,583.14)]) \times 21.5\% \times [7/365])$

1,010.29

1,010.29

Amount due as of 8/15/91

23,672.34

268,693.54

Less: Payment on 8/15/91 (pro-rated upon interest)

6,372.93

6,372.93

Balance

17,299.41

262,320.61

Add:

Interest at 21.5% p.a.

$8/16/91-9/6/91 ([300,000-(337.22+58.44+54,583.14)]) \times 21.5\% \times [22/365]$

3,175.21

Interest at 12% p.a. upon automatic conversion

$9/7/91-11/29/91 ([300,000-(337.22+58.44+54,583.14)]) \times 12\% \times [84/365]$

6,766.61

9,941.82

9,941.82

Amount due as of 11/29/91

27,241.23

272,262.43

Less: Payment on 11/29/91 (pro-rated upon interest)

11,857.24

11,857.24

Balance

15,383.98

260,405.18

Add:

Interest at 12% p.a.

$11/30/91-12/20/91 ([300,000-(337.22+58.44+54,583.14)]) \times 12\% \times [21/365]$

1,691.65

1,691.65

Amount due as of 12/20/91

17,075.64

262,096.84

Less: Payment on 12/20/91 (pro-rated upon interest)

11,741.35

11,741.35

Balance

5,334.29

250,355.49

Add:

Interest at 12% p.a.

12/21/91-12/31/91 $([300,000-(337.22+58.44+54,583.14)]) \times 12\% \times [11/365]$

886.10

1/1/92-2/26/92 $([300,000-(337.22+58.44+54,583.14)]) \times 12\% \times [57/365]$

4,591.63

5,477.73

5,477.73

Amount due on PN (3) as of 2/26/92

10,812.03

P

255,833.22

SCHEDULE 4: Application of Payments Upon Interest

Date

Interest

Payable

Pro-rated

1/5/90

PN (1)

P 186,986.30

P 543,807.61

PN (2)

9,542.47

27,752.12

PN (3)

176.71

513.93

196,705.48

572,073.65

=====

=====

3/30/90

PN (1)

208,370.59

163,182.85

PN (2)

132,693.52

103,917.28

PN (3)

14,827.15

11,611.70

355,891.26

278,711.83

=====

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5/31/90

PN (1)

198,985.09

199,806.42

PN (2)

126,716.69

127,239.72

PN (3)

14,159.30

14,217.74

339,861.08

341,263.89

=====

=====

6/29/90

PN (1)

71,924.74

839,012.66

PN (2)

45,801.92

534,286.14

PN (3)

5,117.90

59,701.04

122,844.56

1,432,999.84

=====

=====

8/8/91

PN (1)

806,639.99

493,906.31

PN (2)

523,113.94

320,303.08

PN (3)

58,452.66

35,790.61

1,388,206.59

850,000.00

=====

=====

8/15/91

PN (1)

321,652.11

86,593.37

PN (2)

211,852.33

57,033.69

PN (3)

23,672.34

6,372.93

557,176.79

150,000.00

=====

=====

11/29/91

PN (1)

370,109.22

161,096.81

PN (2)

240,937.94

104,872.65

PN (3)

27,241.23

11,857.24

638,288.39

277,826.70

=====

=====

12/20/91

PN (1)

235,767.70

162,115.78

PN (2)

151,204.51

103,969.45

PN (3)

17,075.64

11,741.35

P 404,047.85**P 277,826.57**

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In the preparation of the above-mentioned schedules, these basic legal principles were followed:

First, the payments were applied to debts that were already due.[155] Thus, when the first payment was made and applied on January 5, 1990, all Promissory Notes were already due.

Second, payments of the principal were not made until the interests had been covered.[156] For instance, the first payment on January 15, 1990 had initially been applied to all interests due on the notes, before deductions were made from their respective principal amounts. The resulting decrease in interest balances served as the bases for subsequent pro-ratings.

Third, payments were proportionately applied to all interests that were due and of the same nature and burden.[157] This legal principle was the rationale for the pro-rated computations shown on Schedule 4.

Fourth, since there was no stipulation on capitalization, no interests due and unpaid were added to the principal;

hence, such interests did not earn any additional interest.[158]The simple -- not compounded -- method of interest calculation[159] was used on all Notes until the date of public auction.

In fine, under solutio indebiti[160] or payment by mistake,[161] there is no deficiency receivable in favor of PNB, but rather an excess claim or surplus[162] payable by respondent; this excess should immediately be returned to petitioner-spouses or their assigns -- not to mention the buildings and improvements[163] on and the fruits of the property -- to the end that no one may be unjustly enriched or benefited at the expense of another.[164] Such surplus is in the amount of P3,686,101.52, computed as follows:

Total unpaid principal and interest on the promissory notes as of February 26, 1992:

Drawdown on June 29, 1989

(Schedule 1)

P 4,037,204.10

Drawdown on September 1, 1989

(Schedule 2)

2,289,040.38

Drawdown on September 6, 1989

(Schedule 3)

255,833.22

6,582,077.70

Add: 1% attorney's fees

65,820.78

Total outstanding obligation

6,647,898.48

Less: Bid price

10,334,000.00

Excess

P 3,686,101.52

Joint and Solidary Agreement. Contrary to the contention of the petitioner-spouses, their Joint and Solidary Agreement (JSA)[165] was indubitably a surety, not a guaranty.[166] They consented to be jointly and severally liable with Petitioner NSBCI -- the borrower -- not only for the payment of all sums due and payable in favor of respondent, but also for the faithful and prompt performance of all the terms and conditions thereof.[167] Additionally, the corporate secretary of Petitioner NSBCI certified as early as February 23, 1989, that the spouses should act as such surety.[168] But, their solidary liability should be carefully studied, not sweepingly assumed to cover all availments instantly.

First, the JSA was executed on August 31, 1989. As correctly adverted to by petitioners,[169] it covered only the Promissory Notes of P2,700,000 and P300,000 made after that date. The terms of a contract of suretyship undeniably determine the surety's liability[170] and cannot extend beyond what is stipulated therein.[171] Yet, the total amount petitioner-spouses agreed to be held liable for was P7,700,000; by the time the JSA was executed, the first Promissory Note was still unpaid and was thus brought within the JSA's ambit.[172]

Second, while the JSA included all costs, charges and expenses that respondent might incur or sustain in connection with the credit documents,[173] only the interest was imposed under the pertinent Credit Agreements.

Moreover, the relevant Promissory Notes had to be resorted to for proper valuation of the interests charged.

Third, although the JSA, as a contract of adhesion, should be taken contra proferentum against the party who may have caused any ambiguity therein, no such ambiguity was found. Petitioner-spouses, who agreed to be accommodation mortgagors,[174] can no longer be held individually liable for the entire onerous obligation[175] because, as it turned out, it was respondent that still owed them.

To summarize, to give full force to the Truth in Lending Act, only the interest rates of 19.5 percent and 21.5 percent stipulated in the Promissory Notes may be imposed by respondent on the respective availments. After 730 days, the portions remaining unpaid are automatically converted into medium-term loans at the legal rate of 12 percent. In all instances, the simple method of interest computation is followed. Payments made by petitioners are applied and pro-rated according to basic legal principles. Charges on penalty and insurance are eliminated, and 1 percent attorney's fees imposed upon the total unpaid balance of the principal and interest as of the date of public auction. The P2 million deficiency claim therefore vanishes, and a refund of P3,686,101.52 arises.

WHEREFORE, this Petition is hereby PARTLY GRANTED. The Decision of the Court of Appeals is AFFIRMED, with the MODIFICATION that PNB is ORDERED to refund the sum of P3,686,101.52 representing the overcollection computed above, plus interest thereon at the legal rate of six percent (6%) per annum from the filing of the Complaint until the finality of this Decision. After this Decision becomes final and executory, the applicable rate shall be twelve percent (12%) per annum until its satisfaction. No costs.

SO ORDERED.

Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.
Corona, J., on leave.

[1] Rollo, pp. 118-158.

[2] Id., pp. 159-183.

[3] Special Eleventh Division. Penned by Justice Presbitero J. Velasco Jr., with the concurrence of Justices Bienvenido L. Reyes and Juan Q. Enriquez Jr.

[4] Petitioners herein.

[5] Respondent herein.

[6] CA Decision, pp. 24-25; rollo, pp. 182-183.

[7] "Working capital" refers to current assets minus current liabilities.

[8] Prior to 1991, the following payments were also made by NSBCI to PNB:

January 5, 1990
P 572,073.65

March 30, 1990
278,711.83

May 31, 1990
341,263.89

June 29, 1990

1,432,999.84

These were indicated in the “Summary of Payments,” (Exhibit 20, folder of exhibits, Vol. I, p. 27) prepared and testified to by PNB’s Loan Analyst II, Julia Ang-Lopez; and offered in evidence by petitioners on December 1, 1994, per records, p. 141. No objection thereto was raised in respondent’s Comments/Objections (to defendants’ formal offer of evidence) filed on December 28, 1994 (per records, p. 146) and admitted by the RTC in its December 28, 1994 Order (per records, p. 151).

[9] CA Decision, pp. 2-8; rollo, pp. 160-166. Citations omitted.

[10] The Petition was deemed submitted for decision on August 19, 2002, upon receipt by the Court of petitioners’ Memorandum signed by Atty. Cesar M. Carino. Respondent’s Memorandum, signed by Attys. Flerida P. Zaballa-Banzuela and Dinah B. Tabada, was filed on June 28, 2002.

[11] Petitioners’ Memorandum, pp. 14-16; rollo, pp. 385-387. Original in upper case.

[12] Metropolitan Bank and Trust Co. v. Wong, 412 Phil. 207, 216, June 26, 2001.

[13] Perez v. CA, 374 Phil. 388, 409-410, October 1, 1999.

[14] Far East Bank & Trust Co. v. CA, 326 Phil. 15, 18, April 1, 1996, per Hermosisima Jr., J.

[15] Alsua-Betts v. CA, 92 SCRA 332, 366, July 30, 1979.

[16] Luna v. Linatoc, 74 Phil. 15, October 28, 1942.

[17] De La Cruz v. Sosing, 94 Phil. 26, 28, November 27, 1953.

[18] Larena v. Mapili, 408 SCRA 484, 489, August 7, 2003, per Panganiban, J.; and The Heirs of Felicidad Canque v. CA, 341 Phil. 738, 750, July 21, 1997.

[19] Feria and Noche, Civil Procedure Annotated, Vol. 2 (2001), p. 203.

[20] Exhibits C, C-1, and C-2; Exhibits 13, 13-B, and 13-C; folder of exhibits, Vol. I, pp. 5-7.

[21] De Leon, Comments and Cases on Credit Transactions (1995), p. 32.

[22] Article 1956 of the Civil Code.

[23] Spouses Florendo v. CA, 333 Phil. 535, 546, December 17, 1996, per Panganiban, J.

[24] Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

[25] Spouses Florendo v. CA, supra (citing Philippine National Bank v. CA, 196 SCRA 536, 544-545, April 30, 1991. See Philippine National Bank v. CA, 328 Phil. 54, 61-62, July 9, 1996).

[26] Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. I (1989), p. 131. See Banco Filipino Savings and Mortgage Bank v. Hon. Navarro, 152 SCRA 346, 353, July 28, 1987.

“Escalation clauses are not basically wrong or legally objectionable as long as they are not solely potestative but based on reasonable and valid grounds.” Polotan Sr. v. CA, 357 Phil. 250, 260, September 25, 1998, per Romero, J.

[27] De Leon, supra, p. 87.

[28] Philippine National Bank v. CA, supra at note 25, pp. 62-63, per Mendoza, J. (citing Philippine National

Bank v. CA, 238 SCRA 20, 26, November 8, 1994, per Puno, J).

[29] Garcia v. Rita Legarda, Inc., 128 Phil. 590, 594-595, October 30, 1967, per Dizon, J.

[30] “Labeled since Raymond Baloilles’ ‘contracts by adherence.’” Qua Chee Gan v. Law Union & Rock Insurance Co. Ltd., 98 Phil. 85, 95, December 17, 1955, per Reyes, J.B.L., J.

[31] Philippine National Bank v. CA, supra at note 25, per Griño-Aquino, J. See Qua Chee Gan v. Law Union & Rock Insurance Co. Ltd., supra.

[32] Act No. 2655.

[33] Approved by the Monetary Board in its Resolution No. 2224 on December 3, 1982, it took effect on January 1, 1983.

[34] Imperial v. Jaucian, GR No. 149004, April 14, 2004, p. 10, per Panganiban; citing Spouses Solangon v. Salazar, 412 Phil. 816, 822, June 29, 2001, per Sandoval-Gutierrez, J.; and Spouses Almeda v. CA, 326 Phil. 309, 319, April 17, 1996.

[35] Philippine National Bank v. CA, supra at note 28, p. 25.

[36] Spouses Almeda v. CA, supra, p. 319, per Kapunan, J.

[37] Id., p. 316.

[38] Medel v. CA, 359 Phil. 820, 829, November 27, 1998, per Pardo, J. See also People v. Dizon, 329 Phil. 685, 696, August 22, 1996; Liam Law v. Olympic Sawmill Co., 214 Phil. 385, 388, May 28, 1984; People’s Financing Corp. v. CA, 192 SCRA 34, 40, December 4, 1990; and Javier v. De Guzman Jr., 192 SCRA 434, 439, December 19, 1990.

[39] These are billings sent by respondent to petitioner showing the details of its outstanding claim against the latter as of a given date.

[40] Spouses Solangon v. Salazar, supra, p. 822.

[41] Imperial v. Jaucian, supra, p. 10.

[42] De Leon, supra, p. 50.

[43] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I (1990), p. 29.

[44] Philippine National Bank v. CA, supra at note 25, p. 63, per Mendoza, J. (citing Philippine National Bank v. CA, supra at note 28, pp. 26-27).

[45] Exhibits C, C-1, and C-2; Exhibits 13, 13-B, and 13-C; folder of exhibits, Vol. I, pp. 5-7.

[46] Exhibit C; Exhibit 13; folder of exhibits, Vol. I, p. 5.

[47] Exhibit C-1; Exhibit 13-B; folder of exhibits, Vol. I, p. 6.

[48] Exhibit C-2; Exhibit 13-C; folder of exhibits, Vol. I, p. 7.

[49] Exhibit N; folder of exhibits, Vol. I, pp. 54-57.

[50] De Leon, supra, p. 40. See Tropical Homes, Inc. v. CA, 338 Phil. 930, 943-944, May 14, 1997 (citing Eastern Shipping Lines, Inc. v. CA, 234 SCRA 78, 95-96, July 12, 1994).

[51] Exhibit F-2, pp. 1-4; folder of exhibits, Vol. I, pp. 24-27.

[52] Exhibit F-2, p. 3; id., p. 26.

[53] Id., pp. 4 and 27.

[54] Comments/Objections to Respondent's Formal Offer of Evidence, dated September 5, 1994, p. 2; records, p. 111.

[55] Order dated September 15, 1994; records, p. 118.

[56] Banks give credit lines to businessmen in order to assist them in the operation of their business. A fixed limit or ceiling may be placed on the account, provided its balance does not exceed such stipulated limit or ceiling. The balance may perhaps never be cleared, since the credit revolves round and round; hence, the title "revolving credit." Miranda, *Essentials of Money, Credit and Banking* (5th rev. ed., 1981), pp. 96-99.

Moreover, a "revolving credit line" is a formal commitment by a bank to lend a borrower up to a specified amount of money over a given period of time. The actual notes evidencing the debt are short-term; but the borrower may renew them up to a specified maximum throughout the duration of such commitment. The bank, in turn, is legally bound under the loan agreement to have funds available whenever money is borrowed. At the maturity of the commitment, borrowings then owing can be converted into a "term loan." Van Horne, *Financial Management and Policy* (5th ed., 1980), pp. 520-521.

Thus, when a borrower needs money, it makes a drawdown or availment on the credit line in the form of a note or "promise to pay" a certain principal amount. The balance of all unpaid principals, otherwise known as outstanding drawdowns or availments, at any given time, should not exceed the ceiling or limit. After due payment of any drawdown or availment, the borrower can make succeeding drawdowns or availments within the maximum amount committed, provided the line has not yet expired.

[57] §1.01 of Exhibit F-2, p. 1; folder of exhibits, Vol. I, p. 24.

[58] §4.01 of Exhibit F-2, p. 3; id., p. 26.

[59] Acknowledgment dated June 19, 1989 of Exhibit F-2, pp. 3-4; id., pp. 26-27.

[60] In 1983, the interest rate structuring was completely deregulated. To complement the lifting of short-term interest ceilings, the Central Bank (now Bangko Sentral) implemented a prime rate system. Under this system, the "prime rate" referred to the rate charged on loans to borrowers with the highest credit ratings on 90-day loans of P500,000 and above, that were not rediscountable at preferred rates with the Central Bank. Saldaña, *Financial Management in the Philippine Setting: Text and Cases* (1985), p. 82.

[61] §1.04(a) of Exhibit F-2, p. 1; folder of exhibits, Vol. I, p. 24.

[62] Exhibit F, pp. 1-5; id., pp. 15-19.

[63] The difference between the interest and other service fees charged by a bank to its borrowers and clients and the interest it pays to its depositors and other suppliers of funds is the "gross or intermediation spread." IBON Databank Phil., Inc., *The Philippine Financial System -- A Primer* (1983), p. 36.

[64] §1.04(a) of Exhibit F, p. 2; folder of exhibits, Vol. I, p. 16.

[65] Exhibit F, p. 1; id., p. 15.

[66] §1 of Exhibit F, pp. 1-2; id., pp. 15-16.

- [67] Comments/Objections (to [Respondent's] Formal Offer of Evidence) dated September 5, 1994, p.2; records, p. 111.
- [68] Ibid.
- [69] Acknowledgment dated August 31, 1989 of Exhibit F, p. 5; folder of exhibits, Vol. I, p. 19.
- [70] §4 of Exhibit F, p. 4; id., p. 18.
- [71] Exhibit F-2-A, pp. 1-12; id., pp. 28-39.
- [72] §7.02 of Exhibit F-2-C, p. 9; id., p. 36.
- [73] Order dated September 15, 1994; records, p. 118.
- [74] Comments/Objections to Respondent's Formal Offer of Evidence dated September 5, 1994, p.3; records, p. 112.
- [75] Exhibit F-1, pp. 1-4; folder of exhibits, Vol. I, pp. 20-23.
- [76] §1 of Exhibit F, pp. 1-2; id., pp. 15-16.
- [77] Comments/Objections to Respondent's Formal Offer of Evidence dated September 5, 1994, p. 2; records, p. 111.
- [78] §1.01 of Exhibit F-1, p. 1; folder of exhibits, Vol. I, p. 20.
- [79] Acknowledgment (dated September 5, 1989) of Exhibit F-1, p. 4; id., p. 23.
- [80] §4 of Exhibit F-1, p. 3; id., p. 22.
- [81] Exhibits 12, 12-A, and 12-B; folder of exhibits, Vol. II, pp. 19-21.
- [82] Exhibit 12; id., p. 19.
- [83] Item 7, *ibid*.
- [84] §3(p) of Rule 131 of the Rules of Court.
- [85] §3(q) of Rule 131 of the Rules of Court.
- [86] Exhibit 12-A; folder of exhibits, Vol. II, p. 20.
- [87] Item 7, *ibid*; *ibid*.
- [88] On direct examination, he said that he was also a member of the branch committee in charge of loan approval and sale of foreclosed properties. TSN, May 11, 1994, pp. 3-4.
- [89] TSN, May 26, 1994, p. 7.
- [90] Exhibit 12-B; folder of exhibits, Vol. II, p. 21.
- [91] Item 7 of Exhibit 12-B; id., p. 21.
- [92] TSN, July 6, 1994, pp. 13 & 17.
- [93] This is anything substantial that diminishes the efficacy of a contract. *Clemons v. Nolting*, 42 Phil. 702, 717, January 24, 1922 (cited in Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, Vol. I [1st ed., 1987], p. 321).

[94] §10 of Article III of the 1987 Constitution.

[95] Cruz, Constitutional Law (1989), p. 232.

[96] Exhibits 12, 12-A, and 12-B; folder of exhibits, Vol. II, pp. 19-21.

[97] Exhibit F, pp. 1-5; and Exhibit F-1, pp. 1-4; folder of exhibits, Vol. I, pp. 15-23.

[98] Exhibits C, C-1, and C-2; exhibits 13, 13-B, and 13-C; folder of exhibits, Vol. I, pp. 22-24.

[99] Consolidated Bank and Trust Corp. (Solidbank) v. CA, 316 Phil 247, 258, July 14, 1995.

[100] RA 3765, effective upon approval on June 22, 1963.

[101] Article 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

See *Palmares v. CA*, 351 Phil. 664, 677, March 31, 1998; and *Garcia v. CA*, 327 Phil. 1097, 1111, July 5, 1996.

[102] A penalty that causes the economic ruin of the borrower, or is grossly disproportionate to the damage suffered by the lender, may be entirely voided. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV (1991), p. 268.

[103] Article 2227 of the Civil Code provides:

“Article 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.”

See also *Palmares v. CA*, supra, pp. 690-691; *Social Security Commission v. Almeda*, 168 SCRA 474, 480, December 14, 1988; *Garcia v. CA*, 167 SCRA 815, 831, November 24, 1988; and *Joe’s Radio and Electrical Supply v. Alto Electronics Corp.*, 104 Phil. 333, 344, August 22, 1958.

[104] Tolentino, supra at note 102, p. 383.

[105] *Ocampo-Paule v. CA*, 426 Phil. 463, 470, February 4, 2002, per Kapunan, J. (citing *Quinto v. People*, 365 Phil. 259, 267, April 14, 1999, per Vitug, J).

[106] §2 of RA 3765.

[107] Agbayani, supra, p. 142.

[108] The legality of stipulations on attorney’s fees is recognized in the Negotiable Instruments Law and in the Civil Code. Agbayani, supra, p. 135.

[109] De Leon, supra, p. 64. See *Andreas v. Green*, 48 Phil. 463, 465, December 16, 1925.

[110] *The Bachrach Garage and Taxicab Co., Inc. v. Golingco*, 39 Phil. 912, 920-921, July 12, 1919; and *Bachrach v. Golingco*, 39 Phil. 138, 143-144, November 13, 1918.

[111] Article 2208 of the Civil Code.

[112] Agpalo, *Legal Ethics* (4th ed., 1989), p. 323.

[113] *Sangrador v. Spouses Valderrama*, 168 SCRA 215, 229, November 29, 1988.

[114] *Manila Trading & Supply Co. v. Tamaraw Plantation Co.*, 47 Phil. 513, 524, February 28, 1925.

[115] Aznar Brothers Realty Co. v. CA, 384 Phil. 95, 112-113, March 7, 2000.

[116] Kapunan v. Casilan, 109 Phil. 889, 892-893, October 31, 1960 (cited in Peña, Legal Forms for Conveyancing and Other Deeds [4th ed., 1994], pp. 9-10).

[117] Rule 15.08 of the Code of Professional Responsibility (cited in Agpalo, supra, p. 85).

[118] Agpalo, The Code of Professional Responsibility for Lawyers (1st ed., 1991), p. 186.

[119] Exhibit 2, pp. 1-6; folder of exhibits, Vol. I, pp. 4-9.

[120] Exhibit 2-B, p. 2; id., p. 5.

[121] Either party has not defined the term “margin of equity;” hence, there is no basis for its being shown by petitioners or approved by respondent.

[122] Exhibit 2, p. 4; id., p. 7.

[123] Ibid.

[124] Exhibit 2, p. 5, id., p. 8.

[125] Ibid.

[126] Exhibit 2, p. 6, id., p. 9.

[127] Rep. Act (RA) No. 8791.

[128] 1st par. of §39 of RA 8791 (then §75 of RA 337 or The General Banking Act, as amended).

The amount, tenor or maturity of the loan must comport with the actual requirements of the borrower. The purpose of the loan or credit accommodation must be stated in the application and documentation. Any deviation may cause acceleration, immediate repayment, foreign currency blacklisting, or conversion from a term loan to a demand loan. Morales, The Philippine General Banking Law Annotated (2002), pp. 105-106.

[129] §48 of RA 8791 (then §81 of RA 337, as amended).

[130] This is the first of a series of Statements of Financial Accounting Standards (SFAS) for specialized industries -- issued by the Accounting Standards Council -- effective for the fiscal years ending on or after December 31, 1988, although its earlier application has been encouraged. The Board of Accountancy, in its Board Resolution No. 509, series of 1987, has also approved this Statement.

[131] These two types of accounts are valued and reported differently in the books and financial statements of a bank, as part of the heading “Resources,” in accordance with the GAAP for the Banking Industry.

In fact, there is every reason to use also the account title “Real and Other Properties Owned or Acquired” or ROPOA for “real and other properties acquired” by the bank in the settlement of loans. Item 1 of ROPOA, GAAP for the Banking Industry, pp. 23-25.

In addition to §48 of RA 8791, there are existing rules on restructured loans in §X322 of the Manual of Regulations for Banks. Matters of extension or renewal, short of restructuring, are addressed to the sound discretion of the lending bank, subject to the guidelines of the Monetary Board and the Basle Core Principle 7 for effective banking supervision. Morales, supra, p. 118.

[132] Item 7 of Loans, GAAP for the Banking Industry, p. 16.

[133] §19 of Rule 132 of the Rules of Court.

[134] Meigs and Meigs, *Accounting: The Basis for Business Decisions*, Part 1 (5th ed., 1982), pp. 251-255.

A “general ledger,” on the one hand, is a summary or repository of accounts to which debits and credits resulting from financial transactions are posted from journals or books of original entry; a “subsidiary ledger,” on the other, is a special type of ledger confined chiefly to a particular account.

[135] *China Banking Corp. v. CA*, 333 Phil. 158, 174, December 5, 1996, per Francisco, J.

[136] *Bicol Savings and Loan Association v. CA*, 171 SCRA 630, 634-635, March 31, 1989; and *Commodity Financing Co., Inc. v. Jimenez*, 91 SCRA 57, 69, June 29, 1979.

[137] *Rodriguez, Credit Transactions* (2nd ed., 1992), pp. 143-144.

[138] Also known as a mortuum vadium. *Noblejas and Noblejas, Registration of Land Titles and Deeds* (1992 rev. ed.), p. 510.

[139] It is a mere lien on and does not create title to the property. *Peña, Peña Jr., and Peña, Registration of Land Titles and Deeds* (1994 rev. ed.), p.253.

[140] Contracts of loan, being consensual, are deemed perfected at the time the Mortgage is executed. *Bonnevie v. CA*, 210 Phil. 100, 108, October 24, 1983.

It appears that the Mortgage was executed even before the first Promissory Note was made, both covering the same amount of availment. Exhibit D; folder of exhibits, Vol. I, p. 26.

The Amendment to this Mortgage was also executed prior to the second Note, which was for an increased amount. Exhibit E; id., p. 14-16.

Only the third Note was not secured by the Mortgage, but the fair market value of the mortgaged properties was even higher than the value of the Note itself. Furthermore, the mortgagors were the absolute owners of said properties; no additional security was necessary.

[141] *De Leon*, supra, pp. 398-399.

[142] *Pozon* also testified that the appraised value was only 90% of the fair market value. TSN, May 26, 1994, p. 13.

Under §37 of RA 8791, except as otherwise prescribed by the Monetary Board, such rate has been increased to 75%, plus 60% of the appraised value of the insured improvements. This is a less strict benchmark set out in BSP Circular-Letter dated May 6, 1997. *Morales*, supra, p. 103.

[143] *The Abaca Corp. of the Philippines, represented by the Board of Liquidators v. Garcia*, 338 Phil. 988, 993, May 14, 1997; citing *Tiongco v. Philippine Veterans Bank*, 212 SCRA 176, August 5, 1992.

[144] *Aquino, Land Registration and Related Proceedings* (2002 rev. ed.), p. 201.

[145] See AM No. 99-10-05-0, “Procedure in Extra-Judicial Foreclosure of Mortgage,” August 7, 2001.

[146] This is in conformity with the procedure laid out in Act No. 3135, as amended by Act No. 4118. See *Fiestan v. CA*, 185 SCRA 751, 755-757, May 28, 1990; citing *Valenzuela v. Aguilar*, 118 Phil. 213, 217, May 31, 1963.

[147] *Philippine National Bank v. Spouses Rabat*, 344 SCRA 706, 716, November 15, 2000.

[148] *Peña, Peña Jr., and Peña*, supra, p. 295.

[149] *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 347 SCRA 542, 559, December 8, 2000.

[150] It is an absolute and personal privilege, the exercise of which is entirely dependent upon the will and discretion of the redemptioner. *De Leon*, supra, p. 408.

[151] §6 of Art No. 3135 and §47 of RA 8791.

The right becomes *functus officio* on the date of its expiry. *Noblejas and Noblejas*, supra, p. 572.

[152] *State Investment House, Inc. v. CA*, 215 SCRA 734, 744-747, November 13, 1992.

[153] *De Leon*, supra, p. 391.

[154] “x x x [T]he mortgagee is entitled to claim the deficiency from the debtor.” *Philippine National Bank v. CA*, 367 Phil. 508, 515, June 14, 1999, per Mendoza, J.

[155] 1[st] par. of Article 1252 of the Civil Code.

[156] Article 1253 of the Civil Code.

[157] 2[nd] par. of Article 1254 of the Civil Code.

[158] Article 1959 of the Civil Code.

[159] *Mambulao Lumber Co. v. Philippine National Bank*, 130 Phil. 366, 377, January 30, 1968.

[160] Article 1960 of the Civil Code.

[161] *Tolentino*, supra at note 102, p. 650.

[162] To recover the surplus, the mortgagee “cannot raise the defense that no actual cash was received.” *Sulit v. CA*, 335 Phil. 914, 928-929, February 17, 1997, per Regalado, J.

[163] *Felipe Cuison Jr.*, security inspector of PNB on mortgaged properties, testified on cross-examination that no value had been given to such improvements, because it was the bank’s policy to consider them fully depreciated. *TSN*, July 13, 1994, pp. 28-30.

[164] *Tolentino*, supra at note 102, p. 68.

[165] Exhibit G, pp. 1-6; folder of exhibits, Vol. I, pp. 40-45.

[166] Applying Article 2047 of the Civil Code, the surety is charged not as a collateral undertaking, but as an original promissor to the loan. See *Rodriguez*, supra, p. 71; *Goldenrod, Inc. v. CA*, 418 Phil. 492, 502, September 28, 2001; and *Philippine National Bank v. Luzon Surety Co., Inc.*, 68 SCRA 207, 214, November 29, 1975.

[167] Exhibit G, pp. 1-2; folder of Exhibits, Vol. I, pp. 40-41.

It is “common business and banking practice to require ‘sureties’ to guarantee corporate obligations.” *Tañedo v. Allied Banking Corp.*, 424 Phil. 844, 850, January 18, 2002, per Pardo, J.

[168] Secretary’s Certificate issued by Macario G. Ydia, referring to the P8 million commercial loan application of Petitioner NSBCI, Exhibit A; folder of exhibits, Vol. I, p. 1.

[169] Comments/Objections to Respondent’s Formal Offer of Evidence dated September 5, 1994, p. 3; records, p. 112.

[170] *Government v. Herrero*, 38 Phil. 410, 413, August 5, 1918.

[171] *Visayan Surety & Insurance Corp. v. CA*, 417 Phil. 110, 116-117, September 7, 2001; and *Solon v. Solon*, 64 Phil. 729, 734, September 9, 1937.

[172] “A bank or financing company which anticipates entering into a series of credit transactions with a particular company, commonly requires the projected principal debtor to execute a continuing surety agreement along with its sureties.” *South City Homes, Inc. v. BA Finance Corp.*, 423 Phil. 84, 95, December 7, 2001, per Pardo, J. (citing *Fortune Motors (Phils.) Corp. v. CA*, 335 Phil. 315, 326, February 7, 1997).

[173] Item 4 of Exhibit G, pp. 2-3, folder of exhibits, Vol. I, pp. 41-42.

[174] An accommodation mortgagor is a third person who is not a debtor to a principal obligation, but secures it by mortgaging his or her own property. Peña, Peña Jr., and Peña, *supra*, p. 255. See *Spouses Belo v. Philippine National Bank*, 353 SCRA 359, 371, March 1, 2001.

Like an accommodation party to a negotiable instrument under §29 of Act No. 2031, otherwise known as the “Negotiable Instruments Law,” the accommodation mortgagor uses his or her own property, in effect becoming a surety, to enable the accommodated debtor to obtain credit. See *Spouses Gardose v. Tarroza*, 352 Phil. 797, 807, May 19, 1998.

[175] Tolentino, *supra* at note 102, p. 217.

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