

**ORIX METRO LEASING AND FINANCE CORPORATION, PETITIONER,
VS. M/V PILAR-I; AND SPOUSES ERNESTO DY AND
LOURDES DY, RESPONDENTS.***G.R. No. 157901. September 11, 2009*

Ponente: CHICO-NAZARIO, J.

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Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision^[1] dated 22 November 2002 and Resolution^[2] dated 2 April 2003 of the Court of Appeals in CA-G.R. CV No. 57321. The appellate court, in its assailed Decision and Resolution, affirmed with modifications the Decision^[3] dated 31 July 1997 of the Regional Trial Court (RTC), Makati City, Branch 64, in Civil Case No. 92-2311.

Petitioner Orix Metro Leasing and Finance Corporation (Orix Metro) is a domestic corporation engaged in the leasing and financing business. Respondents Ernesto and Lourdes Dy (spouses Dy) are the proprietors of Limchia Enterprises, engaged in the shipping business.

Needing to raise funds for the acquisition of a cargo vessel, Limchia Enterprises, with Lourdes Dy as co-maker, obtained a loan from Orix Metro in the amount of P4,764,024.00^[4] evidenced by a Promissory Note executed on 3 August 1990.^[5] According to the Promissory Note, Lourdes Dy would pay for the loan, without need of notice or demand, in 36 monthly installments due and payable on the 6th day of each month starting 6 September 1990. Ernesto Dy likewise executed a Continuing Suretyship Agreement,^[6] wherein he made himself a solidary obligor in the event his wife Lourdes Dy would default under the terms of the Promissory Note.

With the proceeds of the loan, Limchia Enterprises was able to acquire and register in its name the vessel M/V Pilar-I. On 16 July 1990, the Philippine Coast Guard in Zamboanga City issued in favor of Limchia Enterprises the Certificate of Ownership and Certificate of Philippine Registry of M/V Pilar-I.

As additional security for the loan from Orix Metro, Limchia Enterprises, with Lourdes Dy as signatory, executed on 3 August 1990 a Deed of Chattel Mortgage^[7] over M/V Pilar-I in favor of Orix Metro. The mortgage was registered with the Office of the Philippine Coast Guard in Zamboanga City, and annotated on the Certificate of Ownership of Limchia Enterprises, pursuant to the Ship Mortgage Act of 1978. Furthermore, the spouses Dy also constituted a Real Estate Mortgage on their Quezon City home in favor of Orix Metro.

On 27 December 1990, M/V Pilar-I was attacked by pirates, and the vessel was brought to Palau Sapi, Kota Kinabalu, Malaysia. The spouses Dy suffered financial losses from the incident and, thus, failed to pay according to the schedule of payments set forth in the Promissory Note dated 3 August 1990. As of August 1992, the spouses Dy should have already paid amortizations amounting to P3,140,364.00; however, they were only able to pay P2,775,339.00.^[8] Consequently, Orix Metro sent them several demand letters.

The spouses Dy appealed for the restructuring of their loan with Orix Metro. Lourdes Dy also requested the

release of the mortgage on their Quezon City home, so they could mortgage the same real property to secure a bank loan, the proceeds of which they would use, in turn, to pay the arrears, penalty charges, as well as advance payments, on their loan from Orix Metro.

On 29 July 1991, Orix Metro sent Lourdes Dy a letter approving the release of the real estate mortgage, thus:

We are pleased to inform you that your request for the release of Real Estate Property located at San Francisco del Monte, Quezon City which is presently mortgaged with us, has been approved subject to the final payment amounting to EIGHT HUNDRED THOUSAND PESOS only (P800,000.00) to cover all your arrearages, penalty charges and advance payment.

Release of the said property shall be subject to the final clearing of your check.[9]

When the spouses Dy still failed to make any payments, counsel for Orix Metro sent a final demand letter to Lourdes Dy on 21 February 1992, which reads:

For and in behalf of my client therefore, we are constrained to make FINAL LEGAL DEMAND against your company and its surety, ERNESTO T. DY, for the considered amount of THREE MILLION FOUR HUNDRED ELEVEN THOUSAND FIFTY PESOS (P3,411,050.00) to be paid and on hand on or before 28 February 1992, failing which we will be constrained to exercise our options under our contract, the pertinent provisions of which have been reproduced above for your perusal, and collect the full amount of P4,167,702.00 inclusive of penalties, attorney's fees and liquidated damages as provided for under our contract.[10]

It would appear that several checks issued by Lourdes Dy to Orix Metro to cover the loan bounced, prompting Orix Metro to file several criminal complaints against her for violation of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law, with the Makati RTC, Branch 134, where it was docketed as Criminal Cases No. 92-3964-08.[11] Lourdes Dy wrote Orix Metro a letter on 30 May 1992, and perhaps in the hope of settling aforesaid criminal cases, proposed that she and her husband Ernesto be allowed to update their loan account:

This has reference to I.S. No. 922871, Makati and our plea that you allow us to update our account. We will be paying interest and charges until we are able to reinstate our monthly payments of P132,334.00.

After a careful study and deliberation of cash flow and considering the onset of rainy season which renders mobility slower we would like to offer the following schedule of payment:

June 30, 1992 P280,000.00

July 31, 1992 330,000.00

August 31, 1992 330,000.00

September 30, 1992 330,000.00

October 30, 1992 130,000.00

November 28, 1992 130,000.00[12]

Orix Metro replied in a letter dated 9 June 1992[13] that it was considering Lourdes Dy's foregoing proposal. It presented a counter-offer, which included, as a condition, the posting by the spouses Dy of additional collateral worth not less than P550,000.00.[14]

The spouses Dy, however, asked Orix Metro to waive the requirement for additional collateral:

This is in reply to your letter of June 9, 1992 addressed to our client, Mrs. Lourdes Dy and to inform you that we will be amenable to incorporate the amount of P55,128.00 in order that their arrearages will be obliterated

on November 30, 1992.

However, we beg to be allowed to reinstate the account without being required to post an additional collateral of P500,000.00 considering that the value of the vessel mortgaged is more than double the amount of the loan.[15]

In a letter dated 14 July 1992, Orix Metro agreed to waive the additional collateral, but it required the spouses Dy to reinsure M/V Pilar-I and to issue postdated checks for the proposed payments, to wit:

In response to your letter dated June 22, 1992, we acknowledge your request to waive the requirement of additional collateral of P500,000.00 provided that (1) the vessel M/V Pilar I should be reinsured in the amount of P3.5 million with an insurance company accredited to COLF; (2) we would require the issuance of post dated checks for all proposed payments including the additional of P55,128.00; and (3) we would execute an affidavit of desistance only after the second payment of P330,000.00 on 31 July 1992 is cleared and credited to our account.[16]

The spouses Dy did not meet the foregoing conditions and were not able to reinsure the vessel or deliver all of the required postdated checks. In the meantime, on 18 August 1992, Orix Metro filed a Complaint and Petition for Extrajudicial Foreclosure of Preferred Ship Mortgage under Presidential Decree No. 1521 with Urgent Prayer for Attachment[17] with the RTC of Makati City, Branch 64, where it was docketed as Civil Case No. 92-2311.[18]

Upon the filing of an affidavit of merit and the posting of a bond in the amount of P2,386,825.00 by Orix Metro as required by the Revised Rules of Court, the RTC issued an Order of Arrest (of Vessel) dated 1 September 1992, directing the Sheriff to arrest, seize, and take immediate possession of M/V Pilar-I and to keep it under the custody of the court. Pursuant to the said arrest order, the Sheriff seized the vessel on 30 September 1992 at Pier 18 in North Harbor, Manila.

On 13 October 1992, Orix Metro filed an Urgent Ex Parte Motion asking the RTC to turn over possession of M/V Pilar-I to it.[19]

Also on 13 October 1992, the spouses Dy filed a Motion to Lift and/or Set Aside Order of Arrest/Seizure of Defendants' vessel M/V Pilar-I, manifesting that the obligation sought to be enforced by Orix Metro was not yet due. The spouses Dy claimed that it acted favorably on their request for restructuring of the loan in its letter dated 10 August 1992,[20] thus, resulting in the reduction of the monthly amortizations and the extension of the terms of payment. The initial payment of the loan under the extended period was to begin on 6 September 1992, or after the Complaint was filed on 18 August 1992.[21] Expectedly, Orix Metro opposed the Motion of the spouses Dy.

Subsequently, the spouses Dy filed their Answer,[22] again averring that there was yet no default on their part at the time the Complaint was filed on 18 August 1992, considering that Orix Metro acquiesced to the restructuring of their loan and to the extension of time to pay.

On 1 February 1993, the RTC issued an Order granting the motion to lift/set aside the order of arrest/seizure of M/V Pilar-I and ordering the Sheriff to return the vessel to the spouses Dy, but requiring them to pay Orix Metro according to the terms embodied in the 10 August 1992 letter of Orix Metro to spouses Dy.[23] However, acting on the Motion for Reconsideration filed by Orix Metro, the RTC set aside its 1 February 1993 Order and directed that M/V Pilar-I be returned to Orix Metro.

The spouses Dy assailed the RTC Order of 23 June 1993 before the Court of Appeals via a Petition for Certiorari, docketed as CA-G.R. SP No. 32000. In a Resolution dated 21 March 1994, the Court of Appeals dismissed CA-G.R. SP No. 32000 after finding no grave abuse of discretion on the part of the RTC judge when he reinstated the Order of Arrest of the vessel. The Court of Appeals held that the Attachment of the vessel was an ancillary

remedy, with both parties being protected by the bond put up by Orix Metro.[24] The spouses Dy intended to elevate their case to this Court, but failed to file the proper pleadings within the extended period granted to them; thus, their case was deemed closed and terminated. Thereafter, the proceedings before the RTC resumed.

On 28 September 1994, Orix Metro transferred all of its rights, title to and interests in M/V Pilar-I, as mortgagee, to Colorado Shipyard Corporation (Colorado).[25] Despite the objection of the spouses Dy, the RTC approved the assignment on the condition that the term "foreclosed vessel," used in the Deed of Assignment to refer to M/V Pilar-I, be changed to "mortgaged vessel." An Amended Transfer of Rights by Orix Metro and Colorado, executed and submitted to the RTC on 4 December 1994, was approved on 5 December 1994. Possession of M/V Pilar-I was then transferred to Colorado.

Trial on the merits ensued.

The RTC rendered its Decision[26] on 31 July 1997 in favor of the spouses Dy. It ruled that they had not yet incurred a default, since Orix Metro agreed to a restructured schedule of payment. There being no default, the attempt at foreclosure of the chattel mortgage on M/V Pilar-I by Orix Metro was premature, and the Complaint in Civil Case No. 92-2311 had no cause of action. The dispositive portion of the said RTC Decision is reproduced below:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

- Ordering [herein petitioner] Consolidated Orix Leasing and Finance Corporation and whoever is presently in actual possession of M/V "Pilar I" to return said vessels to [herein respondents]. The Sheriff of this Court with the assistance of the Philippine Coast Guard is ordered to effect the return of M/V Pilar I to [respondents] Limchia Enterprises and Spouses Ernesto Dy and Lourdes Dy; and

- Ordering [petitioner] Consolidated Orix Leasing and Finance Corporation [to pay] the following amounts to the [respondents]:

a) P2,340,000.00 as actual damages;

b) P300,000.00 as attorney's fees; and,

c) P500,000.00 as moral damages.[27]

Orix Metro sought recourse from the Court of Appeals by filing a Notice of Appeal on 2 September 1997. After being granted its request for extension, Orix Metro finally filed its Appellant's Brief on 29 March 1999. The spouses Dy were able to file their Appellee's Brief on 19 July 1999. The appellate court, however, still found for the spouses Dy based on the following ratiocination:

Evidently, the parties agreed to restructure the loan and [herein petitioner Orix Metro] acceded to the [herein respondents'] proposed schedule of payments. Records show that in accordance with [Lourdes Dy]'s letter dated May 30, 1992, [respondents] have partially complied with the payment of their obligation for the months of June and July 1992. This is so because [respondents] failed to pay the additional amounts of P55,128.00 which they agreed to incorporate in their monthly payments in addition to what was proposed in the May 30, 1992 letter.

The question we will now resolve is whether or not [respondents] are in default, in order to determine whether or not [Orix Metro] has a cause of action to institute the instant case.

In the instant case, [Orix Metro] gave [respondents] until November 28, 1992 to pay the amortizations which were not paid on time. However, instead of paying the agreed amount for July 1992, of P330,000.00, [respondents] paid only P130,000.00, claiming that they still have an advance payment of P289,480.00 with [Orix Metro].

When [respondents] defaulted in the payment of the monthly amortizations, [Orix Metro] demanded from [respondents] the full payment of the total obligation due in accordance with the terms in the contract of mortgage. However, after representations were made by [respondents], [Orix Metro] accepted the late and partial payments of [respondents], making their default immaterial. When they again defaulted in paying the next amortization due, [Orix Metro] this time made no demand for the full payment of the total obligation. Consequently, [respondents] made payments even after the due date, as in fact they paid several installments to [Orix Metro] which the latter accepted. Thus, upon expiration of the period to pay the monthly amortization, [Orix Metro] continued accepting late payments, an act which cannot but be construed as a waiver of the right to demand full payment of the obligation due and to foreclose the preferred mortgage. When the mortgagee, instead of availing of their right as embodied in the contract of mortgage, accepted and received delayed payments of installments beyond the period stipulated, and the mortgagors were in arrears, the mortgagee in effect waived and are now estopped from exercising such right. (*Heirs of Escanlar vs. Court of Appeals*, 281 SCRA 176).

Under the contract of mortgage, [Orix Metro] was given the right to demand payment of the entire unpaid obligation upon default of [respondents] in the payment of any installments. In other words, without default, such provision remains dormant as the [Orix Metro] could not demand payment of the entire obligation while [respondents] were religiously complying with their monthly obligation. In this case, while it is clear that [respondents] defaulted in paying their monthly amortizations, the parties agreed to update the delayed amortizations payments by way of a new schedule of payments. Thus, unless [respondents] default in paying any of the amortizations in accordance with the new schedule of payments agreed upon, [Orix Metro]'s right to demand payment of the total obligation becomes dormant. Admittedly, there were several defaults as evidenced by previous unsatisfied or partially satisfied payments. However, the previous defaults became immaterial when [Orix Metro], through pleas and entreaties of [respondents] for a chance to continue paying the obligation by partial payments, consequently, and compassionately allowed the latter to resume paying the unpaid amortizations by restructuring the monthly installments. Having become immaterial, it was as though no default previously occurred. This leaves that provision in the Contract of Mortgage on [Orix Metro]'s right to demand payment of the total obligation still dormant, thus, having the effect of stalling the right to foreclose the preferred mortgage (*Jacinto v. Intermediate Appellate Court*, August 29, 1988) [Orix Metro]'s acceptance of the late and partial payments from [respondents] constitutes a waiver of [Orix Metro]'s right as embodied in the contract of mortgage. (*Elisco Tool Mfg. Corp. vs. Court of Appeals*, 307 SCRA 731).[28]

The Court of Appeals, thus, affirmed the RTC Decision of 31 July 1997, with the following modifications: (1) the award for actual and moral damages be deleted; (2) attorney's fees be reduced to P50,000.00; and (3) the spouses Dy be ordered to reimburse Orix Metro for repair and drydocking expenses while the vessel was in the latter's possession. The fallo of the Decision of the appellate court reads:

WHEREFORE, premises considered, the Decision dated July 31, 1997 rendered by the Regional Trial Court of Makati City, Branch 64, is hereby AFFIRMED with modifications, as follows:

- The award for actual damages is deleted for lack of basis;
- The award for moral damages is reduced to P100,000.00;
- The award (for) attorney's fees is likewise reduced to P50,000.00; and
- [Herein respondents] are ordered to reimburse [herein petitioner Orix Metro] for the expenses it incurred for the repair and drydocking of the subject vessel at the time it was under [Orix Metro]'s possession.

The Motion for Reconsideration and Supplement to the Motion for Reconsideration filed by Orix Metro were both denied by the Court of Appeals in its Resolution dated 2 April 2003.

Hence, the instant Petition of Orix Metro with the following assignment of errors:

- THE APPELLATE COURT ERRED IN RULING THAT THE PARTIES AGREED TO RESTRUCTURE THE LOAN AND THAT ORIX METRO ACCEDED TO THE SPOUSES DY'S PROPOSED SCHEDULE OF PAYMENTS.
- THE APPELLATE COURT ERRED IN RULING THAT ORIX METRO'S ACCEPTANCE OF THE LATE AND PARTIAL PAYMENTS FROM THE SPOUSES DY CONSTITUTED A WAIVER OF ORIX METRO'S RIGHT TO FORECLOSE THE SHIP MORTGAGE.
- THE APPELLATE COURT ERRED IN RULING THAT ORIX METRO SHOULD NOT HAVE APPLIED THE ADVANCE PAYMENT OF P289,439.00 TO INTEREST DUE ON THE LOAN WITHOUT INFORMING THE SPOUSES DY.
- THE APPELLATE COURT ERRED IN RULING THAT THE SPOUSES DY ARE THE LEGAL POSSESSORS OF RESPONDENT VESSEL.
- THE APPELLATE COURT ERRED IN RULING THAT ORIX METRO'S ASSIGNEE, COLORADO, COULD NOT BE REIMBURSED BY THE SPOUSES DY FOR EXPENSES INCURRED IN DRYDOCKING AND REPAIRING RESPONDENT VESSEL.
- THE APPELLATE COURT ERRED IN RULING THAT THE SPOUSES DY ARE ENTITLED TO MORAL DAMAGES AND ATTORNEY'S FEES.
- THE APPELLATE COURT ERRED IN FAILING TO MAKE A SPECIFIC RULING WITH REGARD TO THE BALANCE OF THE SPOUSES DY'S OBLIGATION TO ORIX METRO.
- THE APPELLATE COURT ERRED IN NOT AWARDING DAMAGES TO PETITIONER.[29]

It is a settled doctrine that foreclosure is proper when the debtors are in default of the payment of their obligation. The conditions essential for that foreclosure would be to show, firstly, the existence of the chattel mortgage; and, secondly, the default of the mortgagor.[30]

The constitution of a chattel mortgage over M/V Pilar-I was never disputed. The Deed of Chattel Mortgage over the vessel, in favor of Orix Metro, was signed by Lourdes Dy, on behalf of Limchia Enterprises, on 3 August 1990. The mortgage was duly registered with the Office of the Philippine Coast Guard in Zamboanga City, and annotated on the Certificate of Ownership of Limchia Enterprises.

The issue arises as to the existence of the second condition for foreclosure, i.e., whether the spouses Dy were already in default at the time Orix Metro filed, on 18 August 1992, its Complaint for foreclosure of the mortgage constituted on M/V Pilar-I.

Orix Metro maintains that the spouses Dy defaulted in the payment of their obligation and denies that it acceded to the proposed restructure of payments of the spouses Dy. Orix Metro argues that it rejected the proposal for restructuring of the loan of the spouses Dy when it made a counter-offer with certain conditions, which spouses Dy failed to accept and comply with.

Both parties, however, agree that the issue of whether the spouses Dy were already in default when Orix Metro instituted foreclosure proceedings is factual in nature. There is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[31] It requires a re-evaluation of the evidence on record and is generally not under the cognizance of this Court. In petitions for review on certiorari, the Court only passes upon questions of

law in light of the general rule that findings of fact of the appellate court are binding on this Court, especially when these merely affirm the factual findings of the trial court.[32]

In the instant case, both the RTC and the Court of Appeals uniformly found, based on the evidence adduced by the parties, that the filing of the foreclosure proceedings was premature, since the spouses Dy were not yet in default of their obligation at the time thereof. The RTC and the Court of Appeals both observed that while the spouses Dy may not have been up to date on the payment of their monthly amortizations, Orix Metro did not pursue its right to foreclose and opted to accept the spouses Dy's offer to restructure their loan obligation. The Court of Appeals, in particular, held that the previous defaults became immaterial when Orix Metro continued to accept the spouses Dy's partial payments.

Strictly, the Court, not being a trier of facts, is under no obligation to examine and weigh anew evidence adduced below. It should already be bound by the aforementioned findings of fact of the RTC, as affirmed by the Court of Appeals. True, there are recognized exceptions to this general rule and the Court may be prevailed upon to review the findings of fact of the Court of Appeals when the same are manifestly mistaken, or when the appealed judgment was based on a misapprehension of facts, or when the appellate court overlooked certain undisputed facts which, if properly considered, would justify a different conclusion.[33] No such circumstances, however, exist in this case.

Nonetheless, in this case, the Court delves into the evidence on record in order to dispel any doubt as to the correctness of the assailed Decision of the Court of Appeals.

The foreclosure proceedings were instituted by Orix Metro on 18 August 1992. An examination of the records discloses that the obligation of the spouses Dy was not yet fully due and demandable on that date. In light of the new schedule of payments, by August 1992, the spouses Dy owed Orix Metro only P610,000.00,[34] broken down as follows:

Date of Payment Monthly Amortization

June 30, 1992 P280,000.00

July 31, 1992 P330,000.00

From the admission of Orix Metro, as of 18 August 2002, the spouses Dy already paid, and the former accepted, partial payments in the total amount of P450,000.00,[35] the details of which are presented below:

Date of Payment Amount of Partial Payment

July 6, 1992 P 88,847.00

July 6, 1992 129,363.00

July 6, 1992 81,790.00

August 13, 1992 47,573.00

August 13, 1992 102,427.00

In addition to the aforementioned payments, the spouses Dy had previously advanced the amount of P289,480.00. Resultantly, they have already paid Orix Metro the sum of P739,480.00.

Simple computation would reveal that the amount paid (P739,480.00) by the spouses Dy even exceeded the amount they were due to pay (P610,000.00) by August 1992. Thus, at the time the foreclosure proceedings were instituted by Orix Metro on 18 August 1992, there was no installment payment due and demandable, and

remaining unpaid, which would have rendered the spouses Dy in default and justified the foreclosure of the mortgage on M/V Pilar-I.

The argument of Orix Metro that it did not accede to the restructuring of the loan is only a belated repudiation of the new schedule of payments and deserves scant consideration. Orix Metro had already benefited from the said new schedule when it accepted the payments made by the spouses Dy based thereon. In fact, as further proof of its consent to the restructured schedule of payment, records show that Orix Metro wrote a letter to Limchia Enterprises, Inc. on 10 August 1992 informing the latter that the monthly amortization on its loan had been reduced to P127,261.00 for the next 12 months. The spouses Dy relied on the acceptance without any objection by Orix Metro of the payments made based on the new schedule. On equitable principles, particularly on the ground of estoppel, this Court upholds the new schedule of payment. Let it be noted that the doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where, without its aid, injustice might result. As aptly ruled by the Court of Appeals in this case:

When [the spouses Dy] defaulted in the payment of the monthly amortizations, [Orix Metro] demanded from [spouses Dy] the full payment of the total obligation due in accordance with the terms in the contract of mortgage. However, after representations were made by [spouses Dy], [Orix Metro] accepted the late and partial payments of [spouses Dy], making their default immaterial. When they again defaulted in paying the next amortization due, [Orix Metro] this time made no demand for the full payment of the total obligation. Consequently, [spouses Dy] made payments even after the due date, as in fact they paid several installments to [Orix Metro] which the latter accepted. Thus, upon the expiration of the period to pay the monthly amortization, [Orix Metro] continued accepting late payments, an act which cannot but be construed as a waiver of the right to demand full payment of the obligation due and to foreclose the preferred mortgage. When the mortgagee, instead of availing of their right as embodied in the contract of mortgage, accepted and received delayed payments of installments, beyond the period stipulated, and the mortgagors were in arrears, the mortgagee in effect waived and are now estopped from exercising such right. x x x.

Under the contract of mortgage, [Orix Metro] was given the right to demand payment of the entire unpaid obligation upon default of [spouses Dy] in the payment of any installments. In other words, without default, such provision remains dormant as the [Orix Metro] could not demand payment of the entire obligation while [spouses Dy] were religiously complying with their monthly obligations. In this case, while it is clear that [spouses Dy] defaulted in paying their monthly amortizations, the parties agreed to update the delayed amortization payments by way of a new schedule of payments. Thus, unless [spouses Dy] default in paying any of the amortizations in accordance with the new schedule of payments agreed upon, [Orix Metro]'s right to demand payment of the total obligation becomes dormant. Admittedly, there were several defaults as evidenced by previous unsatisfied or partially satisfied payments. However, the previous defaults became immaterial when [Orix Metro], through the pleas and entreaties of [spouses Dy] for a chance to continue paying the obligation by partial payments, consequently and compassionately allowed the latter to resume paying the unpaid amortizations by restructuring the monthly installments. Having become immaterial, it was as though no default previously occurred. This leaves that payment of the total obligation still dormant, thus, having the effect of stalling the right to foreclose the preferred mortgage. [Orix Metro]'s acceptance of the late and partial payments from [spouses Dy] constitutes a waiver of petitioner's right as embodied in the contract of mortgage.[36] (Emphases supplied.)

Suffice it to say that as of the time Orix Metro instituted the foreclosure proceedings against the spouses Dy, the legal basis for foreclosure of mortgage did not exist. Thus, Orix Metro had no cause of action against them and cannot demand foreclosure of the mortgage on M/V Pilar-I.

On the application of the advance payment of P289,480.00 to the obligation, the Court affirms the ruling of the Court of Appeals that Article 1252[37] of the Civil Code controls. Therefore, the spouses Dy may properly apply said advance payment against their outstanding obligation following the new schedule of payments. Additionally, in contracts involving installment payments with interest chargeable against the remaining balance of the obligation, the creditor is duty-bound to inform the debtor of the amount of interest that falls due, and that he is applying the installment payments to cover said interest. Without notifying the debtor, the creditor cannot apply the payments to the interest and then later on hold the debtor in default for nonpayment of installments on the principal.[38] In this case, as found by the appellate court, Orix Metro clearly failed to provide the spouses Dy a detailed accounting of the remaining principal obligation, interest, and payments already made.[39] The spouses Dy had all the right to apply the advance payment to the amount due in the new schedule of payments.

The Court further agrees in the deletion by the Court of Appeals of the award for actual damages made by the RTC. Actual or compensatory damages cannot be presumed, but must be proven with a reasonable degree of certainty.[40] Here, only the bare and self-serving testimonies of respondents' witnesses support the claim for actual damages. The Court cannot simply rely on speculation, conjecture, or guesswork as to the fact and amount of damages, but must depend on competent proof that the claimant has suffered, and an evidence of, the actual amount thereof.[41]

Finally, the Court cannot sustain the order of the Court of Appeals for the spouses Dy to reimburse Colorado, as the successor-in-interest of Orix Metro, for the expenses incurred by the latter in repairing and drydocking MV Pilar-I,[42] which, according to Bills No. 1 and 2, presented by Colorado, amounted to P5,154,620.20.[43] Said Bills do not deserve much evidentiary weight, being also self-serving, having been prepared by Colorado itself. The items therein are not even substantiated by official receipts.[44]

WHEREFORE, premises considered, the petition for review on certiorari is DENIED. The Decision dated 22 November 2002 and Resolution dated 2 April 2003 of the Court of Appeals in CA-G.R. CV No. 57321 are AFFIRMED with the MODIFICATION that the order requiring respondents spouses Dy to reimburse petitioner Orix Metro/Colorado's expenses incurred for the repair and drydocking of the vessel MV Pilar-I is DELETED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam, concurring; rollo, pp. 60-71.

[2] Rollo, p. 73.

[3] CA rollo, pp. 144-153.

[4] Breakdown: P3 million loan, the rest withheld by Orix as interest payments etc.

[5] Rollo, pp. 111-112.

[6] Id. at 114-115.

[7] Id. at 107-109.

[8] Orix Metro presented the following table of amortizations:

Monthly Amortization

Date of Payment

6 September 1990 P 132,334.00 6 September 1990 P 132,334.00

6 October 1990 132,334.00 6 October 1990 132,334.00

6 November 1990 132,334.00 6 November 1990 132,334.00

6 December 1990 132,334.00 12 December 1990 132,334.00

6 January 1991 132,334.00 20 February 1991 132,334.00

6 February 1991 132,334.00 12 April 1991 132,334.00

6 March 1991 132,334.00 10 June 1991 132,334.00

6 April 1991 132,334.00 10 June 1991 67,666.00

10 July 1991 50,000.00

18 July 1991 14,668.00

6 May 1991 132,334.00 18 July 1991 1,999.00

6 August 1991 130,335.00

6 June 1991 132,334.00 6 August 1991 132,334.00

6 July 1991 132,334.00 6 August 1991 132,334.00

6 August 1991 132,334.00 6 August 1991 132,334.00

6 September 1991 129,363.00 6 August 1991 129,363.00

6 October 1991 129,363.00 6 August 1991 129,363.00

6 November 1991 129,363.00 6 August 1991 13,937.00

2 September 1991 115,426.00

6 December 1991 129,363.00 2 September 1991 16,908.00

29 January 1992 112,455.00

6 January 1992 129,363.00 29 January 1992 19,679.00

13 March 1992 50,000.00

6 April 1992 50,000.00

7 May 1992 9,484.00

6 February 1992 129,363.00 7 May 1992 40,516.00

6 July 1992 88,847.00

6 March 1992 129,363.00 6 July 1992 129,363.00

6 April 1992 129,363.00 6 July 1992 81,790.00

13 August 1992 47,573.00

6 May 1992 129,363.00 13 August 1992 102,427.00

31 August 1992 26,936.00

6 June 1992 129,363.00 31 August 1992 23,064.00

(partial and

incomplete

6 July 1992 129,363.00

6 August 1992 129,363.00

6 September 1992 127,261.00

6 October 1992 127,261.00

6 November 1992 127,261.00

6 December 1992 127,261.00

6 January 1993 127,261.00

6 February 1993 127,261.00

6 March 1993 127,261.00

6 April 1993 127,261.00

6 May 1993 127,261.00

6 June 1993 127,261.00

6 July 1993 127,261.00

6 August 1993 127,261.00

TOTAL P4,667,496.00 P2,775,[1]39.00 (Memorandum, rollo, pp. 1289-1290):

[9] Records, Vol. II, p. 9.

[10] Rollo, pp. 214-216.

[11] Criminal Cases No. 92-3964-68 for Violation of Batas Pambansa Blg. 22 were eventually filed against Lourdes Dy before the Makati RTC, Branch 134. In a Decision dated 7 February 1996, the RTC found her guilty beyond reasonable doubt. She has since then jumped bail.

[12] Proposed Restructured Schedule of Payment; rollo, p. 217.

[13] Rollo, p. 218.

[14] Id. at 218.

[15] Id. at 219.

[16] Id. at 220.

[17] Records, pp. 1-16.

[18] Orix Metro filed criminal complaints against Lourdes Dy for violation of Batas Pambansa Bilang 22, otherwise known as "The Bouncing Checks Law," as a result of the latter's issuance of five worthless checks totaling P661,670.00 in payment of her loan obligation to Orix Metro. The criminal informations were docketed as Criminal Cases No. 92-3964 to 68, entitled "People of the Philippines v. Lourdes P. Dy," before the Regional Trial Court, Makati City, Branch 134. In a Decision dated 7 February 1996, Branch 134 found Lourdes Dy guilty beyond reasonable doubt. She has since jumped bail.

[19] 9 October 1992; records, pp. 128-130.

[20] Records, p. 163.

[21] 13 October 1992; records, pp. 131-139.

[22] 6 November 1992; id. at 249-283.

[23] 1 February 1993; id. at 365-368.

[24] Records, pp. 495-498.

[25] Rollo, pp. 827-829.

[26] CA rollo, pp. 144-153.

[27] Id. at 153.

[28] Rollo, pp. 66-67.

[29] Id. at 1273-1274.

[30] *Servicewide Specialists, Inc. v. Court of Appeals*, 376 Phil. 602, 612 (1999).

[31] *Barbacina v. Court of Appeals*, G.R. No. 135365, 31 August 2004, 437 SCRA 300, 305.

[32] *Cargolift Shipping, Inc. v. L. Acuario Marketing Corporation*, G.R. No. 146426, 27 June 2006, 493 SCRA 157, 163.

[33] Id.

[34] CA rollo, pp. 149-150.

[35] Rollo, p. 1280.

[36] Id. at 66-67.

[37] The provision reads:

Art. 1252. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract.

[38] *Rapanut v. Court of Appeals*, 316 Phil. 391, 398 (1995).

[39] CA rollo, p. 234.

[40] MCC Industrial Sales Corporation v. Ssangyong Corporation, G.R. No. 170633, 17 October 2007, 536 SCRA 408, 466.

[41] Id. at 468.

[42] CA rollo, p. 236.

[43] Records, pp. 74-112.

[44] See MCC Industrial Sales Corporation v. Ssangyong Corporation, supra note 40 at 467.

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