SELEGNA MANAGEMENT AND DEVELOPMENT CORPORATION; AND SPOUSES EDGARDO AND ZENAIDA ANGELES, PETITIONERS, VS. UNITED COCONUT PLANTERS BANK, RESPONDENT.

G.R. NO. 165662. May 03, 2006

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PANGANIBAN, CJ:

A writ of preliminary injunction is issued to prevent an extrajudicial foreclosure, only upon a clear showing of a violation of the mortgagor's unmistakable right. Unsubstantiated allegations of denial of due process and prematurity of a loan are not sufficient to defeat the mortgagee's unmistakable right to an extrajudicial foreclosure.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the May 4, 2004 Amended Decision[2] and the October 12, 2004 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 70966. The challenged Amended Decision disposed thus:

> "WHEREFORE, the Motion for Reconsideration is GRANTED. The July 18, 2003 Decision is hereby REVERSED and SET ASIDE and another one entered GRANTING the petition and REVERSING and SETTING ASIDE the March 15, 2002 Order of the Regional Trial Court, Branch 58, Makati City in Civil Case No. 99-1061."[4]

The assailed Resolution denied reconsideration.

The Facts

On September 19, 1995, Petitioners Selegna Management and Development Corporation and Spouses Edgardo and Zenaida Angeles were granted a credit facility in the amount of P70 million by Respondent United Coconut Planters Bank (UCPB). As security for this credit facility, petitioners executed real estate mortgages over several parcels of land located in the cities of Muntinlupa, Las Piñas, Antipolo and Quezon; and over several condominium units in Makati. Petitioners were likewise required to execute a promissory note in favor of respondent every time they availed of the credit facility. As required in these notes, they paid the interest in monthly amortizations.

The parties stipulated in their Credit Agreement dated September 19, 1995,[5] that failure to pay "any availment of the accommodation or interest, or any sum due" shall constitute an event of default,[6] which shall consequently allow respondent bank to "declare [as immediately due and payable] all outstanding availments of the accommodation together with accrued interest and any other sum payable." [7]

In need of further business capital, petitioners obtained from UCPB an increase in their credit facility.[8] For this purpose, they executed a Promissory Note for P103,909,710.82, which was to mature on March 26, 1999.[9] In the same note, they agreed to an interest rate of 21.75 percent per annum, payable by monthly amortizations.

On December 21, 1998, respondent sent petitioners a demand letter, worded as follows:

> "Gentlemen:
>
> "With reference to your loan with principal outstanding balance of [P103,909,710.82], it appears from the records of United Coconut Planters Bank that you failed to pay interest amortizations amounting to [P14,959,525.10] on the Promissory Note on its due date, 30 May 1998.
>
> "x x x x x x x x x
>
> "Accordingly, formal demand is hereby made upon you to pay your outstanding obligations in the total amount of P14,959,525.10, which includes unpaid interest and penalties as of 21 December 1998 due on the promissory note, eight (8) days from date hereof."[10]

Respondent decided to invoke the acceleration provision in their Credit Agreement. Accordingly, through counsel, it relayed its move to petitioners on January 25, 1999 in a letter, which we quote:

> "Gentlemen:
>
> "x x x x x x x x x
>
> "It appears from the record of [UCPB] that you failed to pay the monthly interest due on said obligation since May 30, 1998 as well as the penalty charges due thereon. Despite repeated demands, you refused and continue to refuse to pay the same. Under the Credit Agreements/Letter Agreements you executed, failure to pay when due any installments of the loan or interest or any sum due thereunder, is an event of default.
>
> "Consequently, we hereby inform you that our client has declared your principal obligation in the amount of [P103,909,710.82], interest and sums payable under the Credit Agreement/Letter Agreement/Promissory Note to be immediately due and payable.
>
> "Accordingly, formal demand is hereby made upon you to please pay within five (5) days from date hereof or up to January 29, 1999 the principal amount of [P103,909,710.82], with the interest, penalty and other charges due thereon, which as of January 25, 1999 amounts to [P17,351,478.55]."[11]

Respondent sent another letter of demand on March 4, 1999. It contained a final demand on petitioners "to settle in full [petitioners'] said past due obligation to [UCPB] within five (5) days from [petitioners'] receipt of [the] letter."[12]

In response, petitioners paid respondent the amount of P10,199,473.96 as partial payment of the accrued interests.[13] Apparently unsatisfied, UCPB applied for extrajudicial foreclosure of petitioners' mortgaged properties.

When petitioners received the Notice of Extra Judicial Foreclosure Sale on May 18, 1999, they requested UCPB to give them a period of sixty (60) days to update their accrued interest charges; and to restructure or, in the alternative, to negotiate for a takeout of their account.[14]

On May 25, 1999, the Bank denied petitioners' request in these words:

> "This is to reply to your letter dated May 20, 1999, which confirms the request you made the previous day when you paid us a visit.
>
> "As earlier advised, your account has been referred to external counsel for appropriate legal action. Demand has also been made for the full settlement of your account.
>
> "We regret that the Bank is unable to grant your request unless a definite offer is made for settlement."[15]

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In order to forestall the extrajudicial foreclosure scheduled for May 31, 1999, petitioners filed a Complaint[16] (docketed as Civil Case No. 99-1061) for "Damages, Annulment of Interest, Penalty Increase and Accounting with Prayer for Temporary Restraining Order/Preliminary Injunction." All subsequent proceedings in the trial court and in the CA involved only the propriety of issuing a TRO and a writ of preliminary injunction.

Judge Josefina G. Salonga,[17] then executive judge of the Regional Trial Court (RTC) of Makati City, denied the Urgent Ex-parte Motion for Immediate Issuance of a Temporary Restraining Order (TRO), filed by petitioners. Judge Salonga denied their motion on the ground that no great or irreparable injury would be inflicted on them if the parties would first be heard.[18] Unsatisfied, petitioners filed an Ex-Parte Motion for Reconsideration, by reason of which the case was eventually raffled to Branch 148, presided by Judge Oscar B. Pimentel.[19]

After due hearing, Judge Pimentel issued an Order dated May 31, 1999, granting a 20-day TRO on the scheduled foreclosure of the Antipolo properties, on the ground that the Notice of Foreclosure had indicated an inexistent auction venue.[20] To resolve that issue, respondent filed a Manifestation[21] that it would withdraw all its notices relative to the foreclosure of the mortgaged properties, and that it would re-post or re-publish a new set of notices. Accordingly, in an Order dated September 6, 1999,[22] Judge Pimentel denied petitioners' application for a TRO for having been rendered moot by respondent's Manifestation.[23]

Subsequently, respondent filed new applications for foreclosure in the cities where the mortgaged properties were located. Undaunted, petitioners filed another Motion for the Issuance of a TRO/Injunction and a Supplementary Motion for the Issuance of TRO/Injunction with Motion to Clarify Order of September 6, 1999.[24]

On October 27, 1999, Judge Pimentel issued an Order[25] granting a 20-day TRO in favor of petitioners. After several hearings, he issued his November 26, 1999 Order,[26] granting their prayer for a writ of preliminary injunction on the foreclosures, but only for a period of twenty (20) days. The Order states:

> "Admitted by defendant witness is the fact that in all the notices of foreclosure sale of the properties of the plaintiffs x x x it is stated in each notice that the property will be sold at public auction to satisfy the mortgage indebtedness of plaintiffs which as of August 31, 1999 amounts to P131,854,773.98.
>
> "x x x x x x x x x
>
> "As the court sees it, this is the problem that should be addressed by the defendant in this case and in the meantime, the notice of foreclosure sale should be held in abeyance until such time as these matters are clarified and cleared by the defendants x x x Should the defendant be able to remedy the situation this court will have no more alternative but to allow the defendant to proceed to its intended action.
>
> "x x x x x x x x x
>
> "WHEREFORE, premises considered, and finding compelling reason at this point in time to grant the application for preliminary injunction, the same is hereby granted upon posting of a preliminary injunction bond in the amount of P3,500,000.00 duly approved by the court, let a writ of preliminary injunction be issued."[27]

The corresponding Writ of Preliminary Injunction[28] was issued on November 29, 1999.

Respondent moved for reconsideration. On the other hand, petitioners filed a Motion to Clarify Order of November 26, 1999. Conceding that the November 26 Order had granted an injunction during the pendency of the case, respondent contended that the injunctive writ merely restrained it for a period of 20 (twenty) days.

On December 29, 2000, Judge Pimentel issued an Order[29] granting respondent's Motion for Reconsideration and clarifying his November 26, 1999 Order in this manner:

> "There may have been an error in the Writ of Preliminary Injunction issued dated November 29, 1999 as the same [appeared to be actually] an extension of the TRO issued by this Court dated 27 October 1999 for another 20 days period. Plaintiff's seeks to enjoin defendants for an indefinite period pending trial of the case.
>
> "Be that as it may, the Court actually did not have any intention of restraining the defendants from foreclosing plaintiff[s'] property for an indefinite period and during the entire proceeding of the case x x x.
>
> "x x x x x x x x x
>
> "What the [c]ourt wanted the defendants to do was to merely modify the notice of [the] auction sale in order that the amount of P131,854,773.98 x x x would not appear to be the value of each property being sold on auction. x x x.[30]
>
> "WHEREFORE, premises considered and after finding merit on the arguments raised by herein defendants to be impressed with merit, and having stated in the Order dated 26 November 1999 that no other alternative recourse is available than to allow the defendants to proceed with their intended action, the Court hereby rules:
>
> "1.] To give due course to defendant[']s motion for reconsideration, as the same is hereby GRANTED, however, with reservation that this Order shall take effect upon after its[] finality[.]"[31]

Consequently, respondent proceeded with the foreclosure sale of some of the mortgaged properties. On the other hand, petitioners filed an "[O]mnibus [M]otion [for Reconsideration] and to [S]pecify the [A]pplication of the P92 [M]illion [R]ealized from the [F]oreclosure [S]ale x x x."[32] Before this Omnibus Motion could be resolved, Judge Pimentel inhibited himself from hearing the case.[33]

The case was then re-raffled to Branch 58 of the RTC of Makati City, presided by Judge Escolastico U. Cruz.[34] The proceedings before him were, however, all nullified by the Supreme Court in its En Banc Resolution dated September 18, 2001.[35] He was eventually dismissed from service.[36]

The case was re-raffled to the pairing judge of Branch 58, Winlove M. Dumayas. On March 15, 2002, Judge Dumayas granted petitioners' Omnibus Motion for Reconsideration and Specification of the Foreclosure Proceeds, as follows:

> "WHEREFORE, premises considered, the Motion to Reconsider the Order dated December 29, 2000 is hereby granted and the Order of November 26, 1999 granting the preliminary injunction is reinstated subject however to the condition that all properties of plaintiffs which were extrajudicially foreclosed though public bidding are subject to an accounting. [A]nd for this purpose defendant bank is hereby given fifteen (15) days from notice hereof to render an accounting on the proceeds realized from the foreclosure of plaintiffs' mortgaged properties located in Antipolo, Makati, Muntinlupa and Las Piñas."[37]

The aggrieved respondent filed before the Court of Appeals a Petition for Certiorari, seeking the nullification of the RTC Order dated March 15, 2002, on the ground that it was issued with grave abuse of discretion.[38]

The Special Fifteenth Division, speaking through Justice Rebecca de Guia-Salvador, affirmed the ruling of Judge Dumayas. It held that petitioners had a clear right to an injunction, based on the fact that respondent had kept them in the dark as to how and why their principal obligation had ballooned to almost P132 million. The CA held that respondent's refusal to give them a detailed accounting had prevented the determination of the maturity of the obligation and precluded the possibility of a foreclosure of the mortgaged properties. Moreover, their payment of P10 million had the effect of updating, and thereby averting the maturity of, the outstanding obligation.[39]

Respondent filed a Motion for Reconsideration, which was granted by a Special Division of Five of the Former Special Fifteenth Division.

Ruling of the Court of Appeals

Citing China Banking Corporation v. Court of Appeals,[40] the appellate court held in its Amended Decision[41] that the foreclosure proceedings should not be enjoined in the light of the clear failure of petitioners to meet their obligations upon maturity.[42]

Also citing Zulueta v. Reyes,[43] the CA, through Justice Jose Catral Mendoza, went on to say that a pending question on accounting did not warrant an injunction on the foreclosure.

Parenthetically, the CA added that petitioners were not without recourse or protection. Further, it noted their pending action for annulment of interest, damages and accounting. It likewise said that they could protect themselves by causing the annotation of lis pendens on the titles of the mortgaged or foreclosed properties.

In his Separate Concurring Opinion,[44] Justice Magdangal M. de Leon added that a prior accounting was not essential to extrajudicial foreclosure. He cited Abaca Corporation v. Garcia,[45] which had ruled that Act No. 3135 did not require mortgaged properties to be sold by lot or by only as much as would cover just the obligation. Thus, he concluded that a request for accounting -- for the purpose of determining whether the proceeds of the auction would suffice to cover the indebtedness -- would not justify an injunction on the foreclosure.

Petitioners filed a Motion for Reconsideration dated May 31, 2004, which the appellate court denied.[46]

Hence, this Petition.[47]

Issues

Petitioners raise the following issues for our consideration:

> "I
>
> "Whether or not the Honorable Court of Appeals denied the petitioners of due process.
>
> "II
>
> "Whether or not the Honorable Court of Appeals supported its Amended Decision by invoking jurisprudence not applicable and completely identical with the instant case.
>
> "III
>
> "Whether or not the Honorable Court of Appeals failed to establish its finding that RTC Judge Winlove Dumayas has acted with grave abuse of discretion."[48]

The resolution of this case hinges on two issues: 1) whether petitioners are in default; and 2) whether there is basis for preliminarily enjoining the extrajudicial foreclosure. The other issues raised will be dealt with in the resolution of these two main questions.

The Court's Ruling

The Petition has no merit.

First Issue:Default

The resolution of the present controversy necessarily begins with a determination of respondent's right to foreclose the mortgaged properties extrajudicially.

It is a settled rule of law that foreclosure is proper when the debtors are in default of the payment of their obligation. In fact, the parties stipulated in their credit agreements, mortgage contracts and promissory notes that

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respondent was authorized to foreclose on the mortgages, in case of a default by petitioners. That this authority was granted is not disputed.

Mora solvendi, or debtor's default, is defined as a delay[49] in the fulfillment of an obligation, by reason of a cause imputable to the debtor.[50] There are three requisites necessary for a finding of default. First, the obligation is demandable and liquidated; second, the debtor delays performance; third, the creditor judicially or extrajudicially requires the debtor's performance.[51]

Mortgagors' Default ofMonthly Interest Amortizations

In the present case, the Promissory Note executed on March 29, 1998, expressly states that petitioners had an obligation to pay monthly interest on the principal obligation. From respondent's demand letter,[52] it is clear and undisputed by petitioners that they failed to meet those monthly payments since May 30, 1998. Their nonpayment is defined as an "event of default" in the parties' Credit Agreement, which we quote:

> "Section 8.01. Events of Default. Each of the following events and occurrences shall constitute an Event of Default of this AGREEMENT:
>
> "1. The CLIENT shall fail to pay, when due, any availment of the Accommodation or interest, or any other sum due thereunder in accordance with the terms thereof;
>
> "x x x x x x x x x"
>
> "Section 8.02. Consequences of Default. (a) If an Event of Default shall occur and be continuing, the Bank may:
>
> "1. By written notice to the CLIENT, declare all outstanding availments of the Accommodation together with accrued interest and any other sum payable hereunder to be immediately due and payable without presentment, demand or notice of any kind, other than the notice specifically required by this Section, all of which are expressly waived by the CLIENT[.]"[53]

Considering that the contract is the law between the parties,[54] respondent is justified in invoking the acceleration clause declaring the entire obligation immediately due and payable.[55] That clause obliged petitioners to pay the entire loan on January 29, 1999, the date fixed by respondent.[56]

Petitioners' failure to pay on that date set into effect Article IX of the Real Estate Mortgage,[57] worded thus:

> "If, at any time, an event of default as defined in the credit agreements, promissory notes and other related loan documents referred to in paragraph 5 of ARTICLE I hereof (sic), or the MORTGAGOR and/or DEBTOR shall fail or refuse to pay the SECURED OBLIGATIONS, or any of the amortization of such indebtedness when due, or to comply any (sic) of the conditions and stipulations herein agreed, x x x then all the obligations of the MORTGAGOR secured by this MORTGAGE and all the amortizations thereof shall immediately become due, payable and defaulted and the MORTGAGEE may immediately foreclose this MORTGAGE judicially in accordance with the Rules of Court, or extrajudicially in accordance with Act No. 3135, as amended, and Presidential Decree No. 385. For the purpose of extrajudicial foreclosure, the MORTGAGOR hereby appoints the MORTGAGEE his/her/its attorney-in-fact to sell the property mortgaged under Act No. 3135, as amended, to sign all documents and perform any act requisite and necessary to accomplish said purpose and to appoint its substitutes as such attorney-in-fact with the same powers as above specified. x x x[.]"[58]

The foregoing discussion satisfactorily shows that UCPB had every right to apply for extrajudicial foreclosure on the basis of petitioners' undisputed and continuing default.

Petitioners' Debt Considered
Liquidated Despite the AllegedLack of Accounting

Petitioners do not even attempt to deny the aforementioned matters. They assert, though, that they have a right to a detailed accounting before they can be declared in default. As regards the three requisites of default, they say that the first requisite -- liquidated debt -- is absent. Continuing with foreclosure on the basis of an unliquidated obligation allegedly violates their right to due process. They also maintain that their partial payment of P10 million averted the maturity of their obligation.[59]

On the other hand, respondent asserts that questions regarding the running balance of the obligation of petitioners are not valid reasons for restraining the foreclosure. Nevertheless, it maintains that it has furnished them a detailed monthly statement of account.

A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of the relevant promissory notes and related documentation.[60] Failure to furnish a debtor a detailed statement of account does not ipso facto result in an unliquidated obligation.

Petitioners executed a Promissory Note, in which they stated that their principal obligation was in the amount of P103,909,710.82, subject to an interest rate of 21.75 percent per annum.[61] Pursuant to the parties' Credit Agreement, petitioners likewise know that any delay in the payment of the principal obligation will subject them to a penalty charge of one percent per month, computed from the due date until the obligation is paid in full.[62]

It is in fact clear from the agreement of the parties that when the payment is accelerated due to an event of default, the penalty charge shall be based on the total principal amount outstanding, to be computed from the date of acceleration until the obligation is paid in full.[63] Their Credit Agreement even provides for the application of payments.[64] It appears from the agreements that the amount of total obligation is known or, at the very least, determinable.

Moreover, when they made their partial payment, petitioners did not question the principal, interest or penalties demanded from them. They only sought additional time to update their interest payments or to negotiate a possible restructuring of their account.[65] Hence, there is no basis for their allegation that a statement of account was necessary for them to know their obligation. We cannot impair respondent's right to foreclose the properties on the basis of their unsubstantiated allegation of a violation of due process.

In Spouses Estares v. CA,[66] we did not find any justification to grant a preliminary injunction, even when the mortgagors were disputing the amount being sought from them. We held in that case that "[u]pon the nonpayment of the loan, which was secured by the mortgage, the mortgaged property is properly subject to a foreclosure sale."[67]

Compared with Estares, the denial of injunctive relief in this case is even more imperative, because the present petitioners do not even assail the amounts due from them. Neither do they contend that a detailed accounting would show that they are not in default. A pending question regarding the due amount was not a sufficient reason to enjoin the foreclosure in Estares. Hence, with more reason should injunction be denied in the instant case, in which there is no dispute as to the outstanding obligation of petitioners.

At any rate, whether respondent furnished them a detailed statement of account is a question of fact that this Court need not and will not resolve in this instance. As held in Zulueta v. Reyes,[68] in which there was no genuine controversy as to the amounts due and demandable, the foreclosure should not be restrained by the unnecessary question of accounting.

Maturity of the Loan Not
Averted by Partial Compliance
with Respondent's Demand

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Petitioners allege that their partial payment of P10 million on March 25, 1999, had the effect of forestalling the maturity of the loan;[69] hence the foreclosure proceedings are premature. [70] We disagree.

To be sure, their partial payment did not extinguish the obligation. The Civil Code states that a debt is not paid "unless the thing x x x in which the obligation consists has been completely delivered x x x."[71] Besides, a late partial payment could not have possibly forestalled a long-expired maturity date.

The only possible legal relevance of the partial payment was to evidence the mortgagee's amenability to granting the mortgagor a grace period. Because the partial payment would constitute a waiver of the mortgagee's vested right to foreclose, the grant of a grace period cannot be casually assumed;[72] the bank's agreement must be clearly shown. Without a doubt, no express agreement was entered into by the parties. Petitioners only assumed that their partial payment had satisfied respondent's demand and obtained for them more time to update their account.[73]

Petitioners are mistaken. When creditors receive partial payment, they are not ipso facto deemed to have abandoned their prior demand for full payment. Article 1235 of the Civil Code provides:

> "When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with."

Thus, to imply that creditors accept partial payment as complete performance of their obligation, their acceptance must be made under circumstances that indicate their intention to consider the performance complete and to renounce their claim arising from the defect.[74]

There are no circumstances that would indicate a renunciation of the right of respondent to foreclose the mortgaged properties extrajudicially, on the basis of petitioners' continuing default. On the contrary, it asserted its right by filing an application for extrajudicial foreclosure after receiving the partial payment. Clearly, it did not intend to give petitioners more time to meet their obligation.

Parenthetically, respondent cannot be reproved for accepting their partial payment. While Article 1248 of the Civil Code states that creditors cannot be compelled to accept partial payments, it does not prohibit them from accepting such payments.

Second Issue:Enjoining the Extrajudicial Foreclosure

A writ of preliminary injunction is a provisional remedy that may be resorted to by litigants, only to protect or preserve their rights or interests during the pendency of the principal action. To authorize a temporary injunction, the plaintiff must show, at least prima facie, a right to the final relief.[75] Moreover, it must show that the invasion of the right sought to be protected is material and substantial, and that there is an urgent and paramount necessity for the writ to prevent serious damage.[76]

In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. It is not proper when the complainant's right is doubtful or disputed.[77]

As a general rule, courts should avoid issuing this writ, which in effect disposes of the main case without trial.[78] In Manila International Airport Authority v. CA,[79] we urged courts to exercise caution in issuing the writ, as follows:

> "x x x. We remind trial courts that while generally the grant of a writ of preliminary injunction rests on the sound discretion of the court taking cognizance of the case, extreme caution must be observed in the exercise of such discretion. The discretion of the court a quo to grant an injunctive writ must be exercised based on the

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> grounds and in the manner provided by law. Thus, the Court declared in Garcia v. Burgos:
>
> "It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.
>
> "Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.'"[80] (Citations omitted)

Petitioners do not have any clear right to be protected. As shown in our earlier findings, they failed to substantiate their allegations that their right to due process had been violated and the maturity of their obligation forestalled. Since they indisputably failed to meet their obligations in spite of repeated demands, we hold that there is no legal justification to enjoin respondent from enforcing its undeniable right to foreclose the mortgaged properties.

In any case, petitioners will not be deprived outrightly of their property. Pursuant to Section 47 of the General Banking Law of 2000,[81] mortgagors who have judicially or extrajudicially sold their real property for the full or partial payment of their obligation have the right to redeem the property within one year after the sale. They can redeem their real estate by paying the amount due, with interest rate specified, under the mortgage deed; as well as all the costs and expenses incurred by the bank.[82]

Moreover, in extrajudicial foreclosures, petitioners have the right to receive any surplus in the selling price. This right was recognized in Sulit v. CA,[83] in which the Court held that "if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus."[84]

Petitioners failed to demonstrate the prejudice they would probably suffer by reason of the foreclosure. Also, it is clear that they would be adequately protected by law. Hence, we find no legal basis to reverse the assailed Amended Decision of the CA dated May 4, 2004.

WHEREFORE, the Petition is DENIED and the assailed Amended Decision and Resolution AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[*]The Court of Appeals is impleaded as respondent in the Petition for Review, but is presently excluded pursuant to Sec. 4(a) of Rule 45 of the Rules of Court.

[1] Rollo, pp. 8-33.

[2] Id. at 35-51. Former Special Fifteenth Division (Special Division of Five). Penned by Justice Jose Catral Mendoza, with the concurrence of Justices Marina L. Buzon (Division chairperson) and Fernanda L. Peralta (member). Justice Magdangal M. de Leon (member) concurred in a Separate Opinion, while Justice Rebecca de Guia-Salvador (member) dissented.

[3] Id. at 53-54.

[4]Assailed Amended CA Decision, p. 7; rollo, p. 41.

[5] Rollo, pp. 263-268.

[6]Id. at 266.

[7] Id. at 267.

[8]Amendment of Mortgage dated December 19, 1996; id. at 285.

[9] Promissory Note executed on March 29, 1998; id. at 290.

[10] Letter dated December 21, 1998; id. at 292.

[11] Letter dated January 25, 1999; id. at 293-294.

[12]Letter dated March 4, 1999; id. at 295.

[13]See letter dated May 20, 1999; id. at 296.

[14] Id.

[15] Letter dated May 25, 1999; id. at 297.

[16] Rollo, pp. 82-90.

[17] Now CA associate justice.

[18]CA Decision dated July 18, 2003, pp. 2-3; rollo, pp. 57-58.

[19] Id. at 3; id. at 58.

[20] Id.

[21] Rollo, pp. 246-248.

[22] Id. at 91-95.

[23] Id.

[24] CA Decision dated July 18, 2003, p. 5; rollo, p. 60.

[25]Rollo, pp. 96-100.

[26] Id. at 101-104.

[27] Id. at 103-104.

[28] Id. at 253.

[29] Id. at 105-117.

[30]Order dated December 29, 2000, p. 8; rollo, p. 112.

[31] Id. at 13; id. at 117.

[32] CA Decision dated July 18, 2003, p. 11; rollo, p. 66.

[33]Id. at 12; id. at 67.

[34] Id.

[35]Dr. Alday v. Judge Cruz, Jr., 426 Phil. 385, February 4, 2002.

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[36] Id.

[37]CA Decision dated July 18, 2003, p. 13; rollo, p. 68.

[38]Id. at 14; id. at 69.

[39]Id. at 17; id. at 72.

[40] 333 Phil. 158, December 5, 1996.

[41] Justice de Guia-Salvador dissented and stood by her original ruling.

[42] Assailed Amended CA Decision, p. 5; rollo, p. 39.

[43]126 Phil. 625, May 29, 1967.

[44] Rollo, pp. 43-47.

[45]272 SCRA 475, May 14, 1997.

[46]Rollo, pp. 48-51.

[47] This case was deemed submitted for decision on October 24, 2005, upon the Court's receipt of respondent's Memorandum, signed by Attys. Hector L. Hofileña and Miguelito V. Ocampo of Ocampo & Ocampo. Petitioners' Memorandum, signed by Atty. Alex M. Ganitano of Lopez & Rempillo, was received by this Court on October 17, 2005.

[48] Petitioners' Memorandum, p. 16; rollo, p. 204. Original in uppercase.

[49] Civil Code, Art. 1169. Those obliged to deliver or to do something incur delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

[50] A. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. IV, 101 (1987).

[51] Id. at 102.

[52] Rollo, p. 292.

[53] Credit Agreement dated September 19, 1995, Art. VIII; id. at 266-267.

[54] Civil Code, Art. 1159.

[55] Rollo, pp. 293-294.

[56] Id. at 294.

[57] Id. at 270.

[58]Id. Italics supplied.

[59]Petitioners' Memorandum, pp. 16-19; rollo, pp. 204-207.

[60]Pacific Mills, Inc., v. CA, 206 SCRA 317, February 17, 1992 (citing Bareng v. CA, 107 Phil. 641, April 25, 1960; Insurance Company of North America v. Republic, 127 Phil. 635, August 30, 1967).

[61] Rollo, p. 290.

[62]Credit Agreement dated September 19, 1995, Art. II, Sec. 2.04; id. at 263.

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[63]Id.

[64] Id. at 264.

[65] Id. at 296.

[66] 459 SCRA 604, June 8, 2005.

[67]Id. at 619, per Austria-Martinez, J.

[68] Supra note 43.

[69]Petitioners' Memorandum, pp. 16-17; rollo, pp. 204-205.

[70]Id. at 19; id. at 207.

[71] Civil Code, Art. 1233.

[72] Pacific Mills, Inc., v. CA, supra note 60; Andres v. Crown Life Insurance Company, 102 Phil. 919, January 28, 1958.

[73]Petitioner Selegna's May 20, 1999 letter to UCPB expresses its assumption: "Since we did not receive any other advice from you, we have assumed thereafter, that you will give us time to update our accounts." Rollo, p. 296.

[74] A. Tolentino, supra note 50 at 278.

[75]Ortigas & Company, Limited Partnership v. Ruiz, 148 SCRA 326, March 9, 1987.

[76]Sps. Arcega v. CA, 341 Phil. 166, July 7, 1997.

[77] Id.

[78] F. Regalado, Remedial Law Compendium, vol. I, 639 (7th revised ed., 1999).

[79]445 Phil. 369, February 14, 2003.

[80] Id. at 383-384, per Carpio, J.

[81]Republic Act No. 8791, approved on May 23, 2000.

[82] J. Feria and M.C. Noche, Civil Procedure Annotated, Vol. II, 577 (2001).

[83] 335 Phil. 914, February 17, 1997.

[84] Id. at 931, per Regalado, J.

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