BPI FAMILY SAVINGS BANK, INC., PETITIONER, VS. MARGARITA VDA. DE COSCOLLUELA, RESPONDENT.

G.R. NO. 167724. June 27, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Assailed before this Court is a Petition for Review under Rule 45 of the Rules of Court of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69732 granting respondent's petition for certiorari, and its resolution denying petitioner's motion for reconsideration.

The Antecedents

Respondent Margarita Coscolluela and her husband Oscar Coscolluela obtained an agricultural sugar crop loan from the Far East Bank & Trust Co. (FEBTC) Bacolod City Branch (later merged with petitioner Bank of the Philippine Islands) for crop years 1997 and 1998.[2] However, in the book of FEBTC, the loan account of the spouses was treated as a single account,[3] which amounted to P13,592,492.00 as evidenced by 67 Promissory Notes[4] executed on various dates, from August 29, 1996 to January 23, 1998, to wit:

Promissory Note
No.

Date

Amount
(in Phil. Peso)

1.

02-052-960971

29 August 1996

148,000

2.

02-052-961095

23 September 1996

1,200,000

3.

02-052-961122

27 September 1996

550,000

4.

02-052-961205

11 October 1996

180,000

5.

02-052-961231

18 October 1996

155,000

6.

02-052-961252

24 October 1996

190,000

7.

02-052-961274

30 October 1996

115,000

8.

02-052-961310

8 November 1996

90,000

9.

02-052-961373

21 November 1996

125,000

10.

02-052-961442

6 December 1996

650,000

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11.

02-052-961464

12 December 1996

240,000

12.

02-052-961498

19 December 1996

164,000

13.

02-052-961542

27 December 1996

200,000

14.

02-052-970018

3 January 1997

120,000

15.

02-052-970052

10 January 1997

185,000

16.

02-052-970078

15 January 1997

80,000

17.

02-052-970087

17 January 1997

170,000

18.

02-052-970131

23 January 1997

180,000

19.

02-052-970163

31 January 1997

220,000

20.

02-052-970190

7 February 1997

110,000

21.

02-052-970215

13 February 1997

170,000

22.

02-052-970254

20 February 1997

140,000

23.

02-052-970293

28 February 1997

130,000

24.

02-052-970345

7 March 1997

90,000

25.

02-052-970367

13 March 1997

50,000

26.

02-052-970402

21 March 1997

160,000

27.

02-052-970422

26 March 1997

190,000

28.

02-052-970453

4 April 1997

82,000

29.

02-052-970478

11 April 1997

150,000

30.

02-052-970502

17 April 1997

80,000

31.

02-052-970539

25 April 1997

145,000

32.

02-052-970558

30 April 1997

135,000

33.

02-052-970589

8 May 1997

54,000

34.

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02-052-970770

25 June 1997

646,492

35.

02-052-970781

27 June 1997

160,000

36.

02-052-970819

4 July 1997

250,000

37.

02-052-970852

11 July 1997

350,000

38.

02-052-970926

1 August 1997

170,000

39.

02-052-970949

5 August 1997

200,000

40.

02-052-970975

8 August 1997

120,000

41.

02-052-970999

15 August 1997

150,000

42.

02-052-971028

22 August 1997

110,000

43.

02-052-971053

29 August 1997

130,000

44.

02-052-971073

4 September 1997

90,000

45.

02-052-971215

12 September 1997

160,000

46.

02-052-971253

19 September 1997

190,000

47.

02-052-971280

26 September 1997

140,000

48.

02-052-971317

2 October 1997

115,000

49.

02-052-971340

10 October 1997

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115,000

50.

02-052-971351

15 October 1997

700,000

51.

02-052-971362

16 October 1997

90,000

52.

02-052-971394

24 October 1997

185,000

53.

02-052-971407

29 October 1997

170,000

54.

02-052-971449

6 November 1997

105,000

55.

02-052-971464

13 November 1997

170,000

56.

02-052-971501

20 November 1997

150,000

57.

02-052-971527

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25 November 1997

620,000

58.

02-052-971538

28 November 1997

130,000

59.

02-052-971569

4 December 1997

140,000

60.

02-052-971604

12 December 1997

220,000

61.

02-052-971642

18 December 1997

185,000

62.

02-052-971676

23 December 1997

117,000

63.

02-052-971688

29 December 1997

100,000

64.

02-052-980019

7 January 1998

195,000

65.

02-052-980032

8 January 1998

170,000

66.

02-052-980064

15 January 1998

225,000

67.

02-052-980079

23 January 1998

176,000

The promissory notes listed under Nos. 1 to 33 bear the maturity date of February 9, 1998, with a 30-day extension of up to March 11, 1998, while those listed under Nos. 34 to 67 bear December 28, 1998 as maturity date.

Meanwhile, on June 13, 1997, the spouses Coscolluela executed a real estate mortgage in favor of FEBTC over their parcel of land located in Bacolod City covered by Transfer Certificate of Title (TCT) No. T-109329 as security of loans on credit accommodation obtained by the spouses from FEBTC and those that may be obtained by the mortgagees which was fixed at P7,000,000.00, as well as those that may be extended by the mortgagor to the mortgagees.[5]

Under the terms and conditions of the real estate mortgage, in the event of failure to pay the mortgage obligation or any portion thereof when due, the entire principal, interest, penalties and other charges then outstanding, shall become immediately due; upon such breach or violation of the terms and conditions thereof, FEBTC may, at its absolute discretion foreclose the same extrajudicially in accordance with the procedure prescribed by Act No. 3135, as amended, and for the purpose appointed FEBTC as its attorney-in-fact with full power and authority to enter the premises where the mortgaged property is located and to take actual possession and control thereof without need of any order of any court, nor written permission from the spouses, and with special power to sell the mortgaged property at a public or private sale at the option of the mortgagee; and that the spouses expressly waived the term of 30 days or any other terms granted by law as the period which must elapse before the mortgage agreement may be foreclosed and, in any case, such period has already lapsed.

The mortgage was registered with the Registry of Deeds of Bacolod and was annotated in the title of the land on June 20, 1997.[6] Meantime, Oscar died intestate and was survived by his widow, herein respondent.

For failure to settle the outstanding obligation on the maturity dates, FEBTC sent a final demand letter[7] to respondent on March 10, 1999 demanding payment, within five days from notice, of the principal of the loan amounting to P13,481,498.68, with past due interests and penalties or in the total amount of P19,482,168.31 as of March 9, 1999.[8] Respondent failed to settle her obligation.

On June 10, 1999, FEBTC filed a petition for the extrajudicial foreclosure of the mortgaged property, significantly only for the total amount of P4,687,006.68 exclusive of balance, interest and penalty, covered by promissory notes from 1 to 33, except nos. 2 and 10.[9]

While the extrajudicial foreclosure proceeding was pending, petitioner FEBTC filed a complaint[10] with the Regional Trial Court (RTC) of Makati City, Branch 64, against respondent for the collection of the principal amount of P8,794,492.00 plus interest and penalty, or the total amount of P12,672,000.31, representing the amounts indicated in the rest of the promissory notes, specifically Promissory Note Nos. 34 to 67, as well as those dated December 6, 1996 and September 23, 1996:

PN No.

Date

Amount

Annex

2-052-980079

January 02, 1998

176,000.00

A

2-052-980064

January 15, 1998

225,000.00

B

2-052-980032

January 08, 1998

170,000.00

C

2-052-980019

January 07, 1998

195,000.00

D

2-052-971688

December 29, 1997

100,000.00

E

2-052-971676

December 23, 1997

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117,000.00

F

2-052-971642

December 18, 1997

185,000.00

G

2-052-971604

December 12, 1997

220,000.00

H

2-052-971569

December 04, 1997

140,000.00

I

2-052-971538

November 28, 1997

130,000.00

J

2-052-971527

November 25, 1997

620,000.00

K

2-052-971501

November 20, 1997

150,000.00

L

2-052-971464

November 13, 1997

170,000.00

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M

2-052-971449

November 06, 1997

105,000.00

N

2-052-971407

October 29, 1997

170,000.00

O

2-052-971394

October 24, 1997

185,000.00

P

2-052-971362

October 16, 1997

90,000.00

Q

2-052-971351

October 15, 1997

700,000.00

R

2-052-971340

October 15, 1997

115,000.00

S

2-052-971317

October 02, 1997

115,000.00

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T

2-052-971280

September 26, 1997

140,000.00

U

2-052-971253

September 19, 1997

190,000.00

V

2-052-971215

September 12, 1997

160,000.00

W

2-052-971073

September 04, 1997

90,000.00

X

2-052-971053

August 29, 1997

130,000.00

Y

2-052-971028

August 22, 1997

110,000.00

Z

2-052-970999

August 15, 1997

150,000.00

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AA

2-052-970975

August 08, 1997

120,000.00

BB

2-052-970949

August 05, 1997

200,000.00

CC

2-052-970926

August 01, 1997

170,000.00

DD

2-052-970852

July 11, 1997

350,000.00

EE

2-052-970819

July 04, 1997

250,000.00

FF

2-052-970781

June 27, 1997

160,000.00

GG

2-052-970770

June 25, 1997

646,492.00

HH

2-052-961442

December 06, 1996

650,000.00

II

2-052-961095

September 23, 1996

1,200,000.00

JJ [11]

Petitioner prayed that, after due proceedings, judgment be rendered in its favor, thus:

> WHEREFORE, it is respectfully prayed that, after trial, judgment be rendered in its favor and against defendants ordering them to pay the following:
>
> - The amount TWELVE MILLION SIX HUNDRED SEVENTY-TWO THOUSAND PESOS and 31/100 (P12,672,000.31), with additional stipulated interest and penalty equivalent to one (1%) percent of the amount due for every thirty (30) days or fraction thereof, until fully paid;
>
> - Expense of litigation amounting to P50,000.00;
>
> - The amount of P500,000.00 as attorney's fees.
>
> Other reliefs just and equitable in the premises are similarly prayed for.[12]

In her answer, respondent alleged, by way of special and affirmative defense, that the complaint was barred by litis pendentia, specifically, the pending petition for the extrajudicial foreclosure of the real estate mortgage, thus:

> 8) That plaintiff is guilty of forum shopping, in that some of the promissory notes attached to plaintiff's complaint are also the same promissory notes which were made the basis of the plaintiff in their extrajudicial foreclosure of mortgage filed against the defendant-spouses and also marked in evidence in support of their opposition to the issuance of the preliminary injunction in Civil Case No. 99-10864;
>
> 9) That plaintiff-bank has not only charged but over charged the defendant-spouses with excessive and exorbitant interest over and above those authorized by law. And in order to add more injury to the defendants, plaintiff also included other charges not legally collectible from the defendant-spouses;
>
> 10) That the act of the plaintiff-bank in seeking to collect twice on the same promissory notes is not only unfair and unjust but also condemnable as plaintiff seek to unjustly enrich itself at the expense of the defendants;
>
> 11) That there is another action pending between the same parties for the same cause;
>
> 12) That the claim or demand set forth in the plaintiff's complaint has either been waived, abandoned or otherwise extinguished.[13]

Petitioner presented Emmanuel Ganuelas, its loan officer in its Bacolod City Branch, as sole witness. He testified that the spouses Coscolluela were granted an agricultural sugar loan which is designed to finance the cultivation and plantation of sugar farms of the borrowers.[14] Borrowers were allowed to make successive drawdowns or

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availments against the loan as their need arose. Each drawdown is covered by a promissory note with uniform maturity dates.[15] The witness also testified that the loan account of the spouses was a "single loan account."[16]

After petitioner rested its case, respondent filed a demurrer to evidence[17] contending, among others, that, with Ganuelas' admission, there is only one loan account secured by the real estate mortgage, that the promissory notes were executed as evidence of the loans. Plaintiff was thus barred from instituting a personal action for collection of the drawdowns evidenced by Promissory Note Nos. 2, 10, and 34 to 67 after instituting a petition for extrajudicial foreclosure of the real estate mortgage for the amount covered by Promissory Note Nos. 1, 3 to 9, and 11 to 33. Respondent insisted that by filing a complaint for a sum of money, petitioner thereby split its cause of action against her; hence, the complaint must perforce be dismissed on the ground of litis pendentia.

Petitioner opposed the demurrer arguing that while the loans were considered as a single account, each promissory note executed by respondent constituted a separate contract. It reiterated that its petition for the extrajudicial and foreclosure of the real estate mortgage before the Ex-Oficio Provincial Sheriff involves obligations different and separate from those in its action for a sum of money before the court. Thus, petitioner could avail of the personal action for the collection of the amount evidenced by the 36 promissory notes not subject of its petition for the extrajudicial foreclosure of the real estate mortgage. Petitioner insists that the promissory notes subject of its collection suit should be treated separately from the other set of obligations, that is, the 31 promissory notes subject of its extrajudicial foreclosure petition.[18]

In its Order[19] dated January 10, 2002, the trial court denied the demurrer on the ground that the promissory notes executed by respondent and her deceased husband contained different amounts, and each note covered a loan distinct from the others. Thus, petitioner had the option to file a petition for the extrajudicial foreclosure of the real estate mortgage covering 31 of the promissory notes, and, as to the rest, to file an ordinary action for collection. Petitioner, thus, merely opted to institute an action for collection of the debt on the 36 promissory notes, and waived its action for the foreclosure of the security given on these notes.

Respondent filed a motion for reconsideration,[20] which the trial court denied in its February 19, 2002 Order,[21] prompting her to file a certiorari petition[22] under Rule 65 with the CA, assailing the January 10, 2002 and February 19, 2002 Orders of the trial court. Respondent alleged that:

> - PUBLIC RESPONDENT GRAVELY ABUSED HER DISCRETION TANTAMOUNT TO LACK AND/OR EXCESS OF JURISDICTION IN HOLDING THAT THE RESPONDENT BANK CAN FILE SIMULTANEOUS ACTIONS FOR FORECLOSURE AND FOR COLLECTION.

Meanwhile, on January 6, 2003, the parcel of land subject of the aforementioned real estate mortgage was sold at public auction where petitioner emerged as the highest bidder.[23]

On September 30, 2004, the CA rendered its Decision[24] granting the petition, holding, under prevailing jurisprudence, the remedies – either a real action to foreclose the mortgage or a personal action to collect the debt – of a mortgage creditor are alternative and not cumulative. Since respondent availed of the first one, it was deemed to have waived the second. Further, the filing of both actions results in a splitting of a single cause of action. Thus, in denying her Demurrer to Evidence, the RTC committed grave abuse of discretion as it overruled settled judicial pronouncements. The dispositive part of the decision states:

> WHEREFORE, the instant petition is GRANTED. The assailed Orders dated January 10, 2002 and February 19, 2002 are SET ASIDE.
>
> SO ORDERED.

The CA cited the ruling of this Court in Bachrach Motor Co., Inc. v. Esteban Icarañgal and Oriental Commercial

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Co., Inc.[25]

Aggrieved, petitioner filed a motion for reconsideration[26] on October 12, 2004. Respondent filed her opposition[27] to the motion on October 26, 2004. The CA thereafter denied the motion in a resolution promulgated on April 6, 2005.[28]

Petitioner filed the instant petition for review on certiorari, alleging that:

> I.
>
> THE COURT OF APPEALS ERRED IN GRANTING THE PETITION FOR CERTIORARI OF RESPONDENT ON THE GROUND OF GRAVE ABUSE OF DISCRETION.
>
> x x x x
>
> The Trial Court did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in denying the Demurrer to Evidence filed by the respondents. Petitioner, in instituting a petition for the Extra Judicial Foreclosure of the Mortgage of respondents based on 31 promissory notes executed by respondents and another action to collect on a separate set of 36 promissory notes, did not split their cause of action.
>
> x x x x
>
> The trial court did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it denied respondents' Demurrer to Evidence. In this wise, the Petition for Certiorari filed by respondents should not have been granted.[29]

During the pendency of this appeal, petitioner filed with this Court on December 2, 2005 a manifestation and joint motion for substitution, informing the court that petitioner bank has assigned to the Philippine Asset Investment, Inc. all its rights, title and interest over its non-performing loan accounts pursuant to Republic Act No. 9182 entitled "The Special Purpose Vehicle Act of 2002."

The issues raised in this case are (1) whether the petition for certiorari under Rule 65 of the Rules of Court filed by respondent in the CA was the proper remedy to assail the January 10, 2002 Order of the trial court; (2) whether the appellate court issued its January 10, 2002 Order with grave abuse of its discretion amounting to excess or lack of jurisdiction.

Petitioner avers that the January 10, 2002 Order of the RTC denying the Demurrer to Evidence of respondent was interlocutory, and as such could not be the subject of a petition for certiorari.[30] The RTC did not commit a grave abuse of its discretion in issuing its January 10, 2002 Order. Petitioner maintains that respondent executed 67 separate loan obligations evidenced by 67 separate promissory notes, with different amounts and maturity dates. It avers that each of the loans, as evidenced by each of the promissory notes, may properly be the subject of a separate action; thus, each promissory note is an actionable document. Moreover, the real estate mortgage executed by the spouses secured an obligation only to a fixed amount of P7,000,000.00 which is covered by Promissory Note Nos. 1 to 31, whereas the loans secured by the spouses covered by the Promissory Note Nos. 32 to 67 for the total amount of P12,672,000.31 were not secured by the real estate mortgage. Petitioner insists that it was proper to file the petition for extrajudicial foreclosure of the real estate mortgage only for respondent's loan account covered by the 36 promissory notes for the amount of P7,755,733.64. It was not barred from filing a separate action for the collection of the P12,672,000.31 against respondent in the RTC for the drawdowns as evidenced by Promissory Note Nos. 34 to 67. What should apply, petitioner asserts, is the ruling of this Court in Caltex Philippines, Inc. v. Intermediate Appellate Court[31] and Quiogue v. Bautista,[32] and not the ruling of this Court in Bachrach which involves only one promissory note.

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Petitioner insists that, although respondent and her husband had a joint account with it, they had separate loan obligations as evidenced by the promissory notes; hence, it had separate causes of action for each and every drawdown evidenced by a promissory note.

For her part, respondent admits having executed the promissory notes. However, as testified to by Ganuelas, the witness for petitioner, she and her husband only have one loan account with petitioner, hence, the latter had only one cause of action against her either for the collection of the entire loan account or for the extrajudicial foreclosure of the real estate mortgage, also for the entire amount of the loan. Petitioner cannot split her single loan account by filing a simple collection suit and a petition for extrajudicial foreclosure of the real estate mortgage without violating the rule against splitting a single cause of action.

Respondent asserts that the real estate mortgage executed by respondent and her deceased husband was a security not only of their loan account in the amount of P7,000,000.00 but for all other loans that may have been extended to them in excess of that amount.

The petition is unmeritorious.

On the first issue, we agree with petitioner's contention that the general rule is that an order denying a motion to dismiss or demurrer to evidence is interlocutory and is not appealable. Consequently, defendant must go to trial and adduce its evidence, and appeal, in due course, from an adverse decision of the trial court. However, the rule admits of exceptions. Where the denial by the trial court of a motion to dismiss or demurrer to evidence is tainted with grave abuse of discretion amounting to excess or lack of jurisdiction, the aggrieved party may assail the order of dismissal on a petition for certiorari under Rule 65 of the Rules of Court. A wide breadth of discretion is granted in certiorari proceedings in the interest of substantial justice and to prevent a substantial wrong.[33] As the Court held in Preferred Home Specialties, Inc. v. Court of Appeals:[34]

> It bears stressing that a writ of certiorari is of the highest utility and importance for curbing excessive jurisdiction and correcting errors and most essential to the safety of the people and the public welfare. Its scope has been broadened and extended, and is now one of the recognized modes for the correction of errors by this Court. The cases in which it will lie cannot be defined. To do so would be to destroy its comprehensiveness and limit its usefulness.
>
> The appropriate function of a certiorari writ is to relieve aggrieved parties from the injustice arising from errors of law committed in proceedings affecting justiciable rights when no other means for an adequate and speedy relief is open. It is founded upon a sense of justice, to release against wrongs otherwise irreconcilable, wrongs which go unredressed because of want of adequate remedy which would be a grave reproach to any system of jurisprudence.[35]

The aggrieved party is entitled to a writ of certiorari where the trial court commits a grave abuse of discretion amounting to excess or lack of jurisdiction in denying a motion to dismiss a complaint on the ground of litis pendentia. An appeal while available eventually is cumbersome and inadequate for it requires the parties to undergo a useless and time-consuming and expensive trial. The second case constitutes a rude if not debilitating imposition on the trial and the docket of the judiciary.[36]

In the present case, we agree with the ruling of the CA that the RTC acted with grave abuse of discretion amounting to excess or lack of jurisdiction when it denied the Demurrer to Evidence of respondent and, in the process, ignored applicable rulings of this Court. Although respondent had the right to appeal the decision of the trial court against her after trial, however, she, as defendant, need not use up funds and undergo the tribulations of a trial and thereafter appeal from an adverse decision.

Section 3, Rule 2 of the 1997 Rules of Civil Procedure provides that a party may not institute more than one suit

for a single cause of action and, if two or more suits are instituted on the basis of the same cause of action, the filing of one on a judgment upon the merits in any one is available as ground for the dismissal of the other or others.[37] A party will not be permitted to split up a single cause of action and make it a basis for several suits.[38] A party seeking to enforce a claim must present to the court by the pleadings or proofs or both, all the grounds upon which he expects a judgment in his favor. He is not at liberty to split up his demands and prosecute it by piecemeal, or present only a portion of the grounds upon which special relief is sought, and leave the rest to be presented in a second suit if the first fails.[39] The law does not permit the owner of a single or entire cause of action or an entire or indivisible demand to divide and split the cause or demand so as to make it the subject of several actions. The whole cause must be determined in one action.

Indeed, in Goldberg v. Eastern Brewing Co.,[40] the New York Supreme Court emphasized that:

> It was held in the case of Bendernagle v. Cocks, 19 Wend. 207 (32 Am.Dec. 448), that where a party had several demands or existing causes of action growing out of the same contract or resting in matter of account, which may be joined and sued for in the same action, they must be joined; and if the demands or causes of action be split up, and a suit brought for part only, and subsequently a second suit for the residue is brought, the first action may be pleaded in abatement or in bar of the second action. x x x[41]

The rule against splitting causes of action is not altogether one of original legal right but is one of interposition based upon principles of public policy and of equity to prevent the inconvenience and hardship incident to repeated and unnecessary litigation.[42]

It is not always easy to determine whether in a particular case under consideration, the cause of action is single and entire or separate. The question must often be determined, not by the general rules but by reference to the facts and circumstances of the particular case. Where deeds arising out of contract are distinct and separate, they give rise to separate cause of action for which separate action may be maintained; but it is also true that the same contract may give rise to different causes of action either by reason of successive breaches thereof or by reason of different stipulations or provisions of the contract.[43] The true rule which determines whether a party has only a single and entire cause of action for all that is due him, and which must be sued for in one action, or has a severable demand for which he may maintain separate suits, is whether the entire amount arises from one and the same act or contract or the several parts arise from distinct and different acts or contracts.[44]

Where there are entirely distinct and separate contracts, they give rise to separate causes of action for which separate actions may be instituted and presented. When money is payable by installments, a distinct cause of action assails upon the following due by each installment and they may be recovered in successive action. On the other hand, where several claims payable at different times arise out of the same transactions, separate actions may be brought as each liability accounts. But where no action is brought until more than one is due, all that are due must be included in one action; and that if an action is brought to recover upon one or more that are due but not upon all that are due, a recovery in such action will be a bar to a several or other actions brought to recover one or more claims of the other claims that were due at the time the first action was brought.[45]

The weight of authority is that in the absence of special controlling circumstances, an open or continuous running account between the same parties constitutes a single and indivisible demand, the aggregate of all the items of the account constituting the amount due. But the rule is otherwise where it affirmatively appears that the parties regarded the different items of the account as separate transactions and not parts of an ordinary running account. And there may also be, even between the same parties, distinct and separate actions upon which separate actions may be maintained.[46] In fine, what is decisive is that there be either an express contract, or the circumstances must be such as to raise an implied contract embracing all the items to make them, when they arise, at different times, a single or entire demand or cause of action.[47]

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Decisive of the principal issue is the ruling of this Court in Bachrach Motor Co., Inc. v. Esteban Icarañgal and Oriental Commercial Co., Inc.[48] in which it ruled that on the nonpayment of a note secured by a mortgage, the creditor has a single cause of action against the debtor. The single cause of action consists in the recovery of the credit with execution of the suit. In a mortgage credit transaction, the credit gives rise to a personal action for collection of the money. The mortgage is the guarantee which gives rise to a mortgage foreclosure suit to collect from the very property that secured the debt.[49]

The action of the creditor is anchored on one and the same cause: the nonpayment by the debtor of the debt to the creditor-mortgagee. Though the debt may be covered by a promissory note or several promissory notes and is covered by a real estate mortgage, the latter is subsidiary to the former and both refer to one and the same obligation.

A mortgage creditor may institute two alternative remedies against the mortgage debtor, either a personal action for the collection of debt, or a real action to foreclose the mortgage, but not both. Each remedy is complete by itself. As explained by this Court:

> We hold, therefore, that, in the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for a deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election. On the other hand, a rule that would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice (Soriano v. Enriques, 24 Phil. 584) and obnoxious to law and equity (Osorio v. San Agustin, 25 Phil. 404), but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies.[50]

If the mortgagee opts to foreclose the real estate mortgage, he thereby waives the action for the collection of the debt and vice versa.[51] If the creditor is allowed to file its separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, he will, in effect, be authorized plural redress for a single breach of contract at so much costs to the court and with so much vexation and oppressiveness to the debtor.[52]

In the present case, petitioner opted to file a petition for extrajudicial foreclosure of the real estate mortgage but only for the principal amount of P4,687,006.08 or in the total amount of P7,755,733.64 covering only 31 of the 67 promissory notes. By resorting to the extrajudicial foreclosure of the real estate mortgage, petitioner thereby waived its personal action to recover the amount covered not only by said promissory notes but also of the rest of the promissory notes. This is so because when petitioner filed its petition before the Ex-Oficio Provincial Sheriff on June 10, 1999, the entirety of the loan account of respondent under the 67 promissory notes was already due. The obligation of respondent under Promissory Note Nos. 1 to 33 became due on February 9, 1998 but was extended up to March 11, 1998, whereas, those covered by Promissory Note Nos. 34 to 67 matured on December 28, 1998. Petitioner should have caused the extrajudicial foreclosure of the real estate mortgage for the recovery of the entire obligation of respondent, on all the promissory notes. By limiting the account for which the real

estate mortgage was being foreclosed to the principal amount of P4,687,006.68, exclusive of interest and penalties, petitioner thereby waived recovery of the rest of respondent's agricultural loan account.

It must be stressed that the parties agreed in the Real Estate Mortgage that in the event that respondent shall fail to pay the mortgage obligation "or any portion thereof when due, the entire principal, interest, penalties and other charges then outstanding shall become immediately due, payable and defaulted," thus:

> - The terms and conditions of the Mortgage have been violated when the Mortgagors failed and/or refused to pay, notwithstanding repeated demands, the installment and/or maturity amount of the Mortgage obligation which became due and payable on the said date;
>
> - Under the terms and conditions of the Mortgage Agreement, in the event the Mortgagors fail and/or refuse to pay the Mortgage obligation or any portion thereof when due, the entire principal, interest, penalties and other charges then outstanding, shall, without need for demand, notice, or any other act or deed, become immediately due, payable and defaulted;
>
> - The Mortgage Agreement provides that upon such breach or violation of the terms and conditions thereof, the Mortgagee may, at its absolute discretion foreclose the same extrajudicially in accordance with the procedure prescribed by Act No. 3135, as amended, and for the purpose appointed the Mortgagee as its attorney-in-fact with full power and authority to enter the premises where the Mortgaged property is located and to take actual possession and control thereof without need of any order of any Court, nor written permission from the Mortgagors, and with special power to sell the Mortgaged Property at a public or private sale at the option of the Mortgagee.[53]

Petitioner cannot split the loan account of respondent by filing a petition for the extrajudicial foreclosure of the real estate mortgage for the principal amount of P4,687,006.68 covered by the first set of promissory notes, and a personal action for the collection of the principal amount of P12,672,000.31 covered by the second set of promissory notes without violating the proscription against splitting a single cause of action against respondent.

The contention of petitioner that respondent's loan account that was secured by the real estate mortgage was limited only to those covered by the Promissory Note Nos. 1 to 33 or for the total amount of P7,000,000.00 is belied by the real estate mortgage and by its own evidence.

Under the deed, the mortgage was to secure the payment of a credit accommodation already obtained by respondent, the principal of all of which was fixed at P7,000,000.00, as well as any other obligation that may be extended to respondent, including interest and expenses, to wit:

> That for and in consideration of credit accommodation obtained from the MORTGAGEE, and to secure the payment of the same and those that may hereafter be obtained, the principal of all of which is hereby fixed at SEVEN MILLION PESOS ONLY (P7,000,000.00), Philippine Currency, as well as those that the MORTGAGEE may extend to the MORTGAGOR, including interest and expenses or any other obligation owing to the MORTGAGEE, whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the MORTGAGEE, the MORTGAGOR does hereby transfer and convey by way of mortgage unto the MORTGAGEE, its successors or assigns, the parcels of land which are described in the list inserted on the back of this document and/or appended herein, together with all the buildings and improvements now existing or which may hereafter be erected or constructed thereon, of which the MORTGAGOR declares that he/it is the absolute owner free from all liens and encumbrances. However, if the MORTGAGOR shall pay to the MORTGAGEE, its successors or assigns, the obligation secured by this mortgage when due, together with interest, and shall keep and perform all and singular the covenants and agreements herein contained for the MORTGAGOR to keep and perform, then this mortgage shall be void, otherwise, it shall remain in full force and effect.[54] (Emphasis supplied)

The testimony of Ganuelas in the RTC relative to the real estate mortgage follows:

Q The real estate mortgage states: "That for and in consideration of credit accommodation obtained from the mortgagee." This simply means, Mr. Witness, that this mortgage is offered to secure loans already obtained by the mortgagor from the mortgagee Far East Bank and Trust Company. I am referring only to that phrase, obtained from the mortgagee, is that correct?

A Yes, Sir.

Q So from this phrase in the real estate mortgage, this mortgage was constituted to secure the credit accommodation already obtained by the mortgagor, the defendant spouses, as of the time of the execution of the real estate mortgage, is that correct?

A Yes, Sir.

Q Now since the loan secured by the defendants are evidenced by promissory notes, will you agree with me, Mr. Witness, that this real estate mortgage was executed for promissory notes already executed by the defendant spouses as of the time of the execution of the mortgage on June 13, 1997, is that correct?

A Yes, Sir.

> ATTY. MIRANO:For purposes of identification, we respectfully request that this phrase: "that for and in consideration of the credit accommodation obtained from the mortgagee" be bracketed and mark as Exhibit 6-B. (Acting court interpreter marking said phrase as Exhibit 6-B.)

Q Now in accordance with the terms of this real estate mortgage, this real estate mortgage was executed by the defendant spouses not only to secure the loan already obtained by the said spouses as of the time of the execution of the mortgage on June 13, 1997 but also all other loans that may be extended by Far East Bank and Trust Company to the defendant spouses after the execution of the mortgage as stated in this portion of the real estate mortgage which we quote: "to secure the payment as and those that may hereafter be obtained," is that correct?

A Yes, Sir.

Q So from your statement, Mr. Witness, this real estate mortgage was offered by the defendant spouses as a security for the loans they already secured as of the time of the execution of the mortgage but also for the loans that they will secure thereafter, is that correct?

A Yes, Sir.[55] (Emphasis supplied)

As gleaned from the plain terms of the real estate mortgage, the real estate of respondent served as continuing security liable for future advancements or obligations beyond the amount of P7,000,000.00. The mortgage partakes of the nature of contract for future advancements. As explained by this Court in the early case of Lim Julian v. Lutero:[56]

> The rule, of course, is well settled that an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage. The exact amount, however, for which the mortgage is given need not always be specifically named. The amount for which the mortgage is given may be stated in definite or general terms, as

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is frequently the case in mortgages to secure future advancements. The amount named in the mortgage does not limit the amount for which it may stand as security, if, from the four corners of the document, the intent to secure future indebtedness or future advancements is apparent. Where the plain terms, of the mortgage, evidence such an intent, they will control as against a contention of the mortgagor that it was the understanding of the parties that the mortgage was security only for the specific amount named. (Citizens' Savings Bank v. Kock, 117 Mich. 225). In that case, the amount mentioned in the mortgage was $7,000. The mortgage, however, contained a provision that "the mortgagors agree to pay said mortgagee any sum of money which they may now or hereafter owe said mortgagee."

At the time the action of foreclosure was brought, the mortgagors owed the mortgagee the sum of $21,522. The defendants contended that the amount to be recovered in an action to foreclose should be limited to the amount named in the mortgage. The court held that the amount named as consideration for the mortgage did not limit the amount for which the mortgage stood as security, if, from the whole instrument the intent to secure future indebtedness could be gathered. The court held that a mortgage to cover future advances is valid. (Michigan Insurance Co. v. Brown, 11 Mich. 265; Jones on Mortgages, 1, sec. 373; Keyes v. Bump's Administrator, 59 Vt. 391; Fisher v. Otis, 3 Pin. 78; Brown v. Kiefer, 71 N.Y. 610; Douglas v. Reynolds, 7 Peters [U.S.] 113; Shores v. Doherty, 65 Wis. 153)

Literal accuracy in describing the amount due, secured by a mortgage, is not required, but the description of the debt must be correct and full enough to direct attention to the sources of correct information in regard to it, and be such as not to mislead or deceive as to the amount of it, by the language used. Reading the mortgage before us from its four corners, we find that the description of the debt is full enough to give information concerning the amount due. The mortgage recites that it is given to secure the sum of P12,000, interest, commissions, damages, and all other amounts which may be found to be due at maturity. The terms of the contract are sufficiently clear to put all parties who may have occasion to deal with the property mortgaged upon inquiry. The parties themselves from the very terms of the mortgage could not be in ignorance at any time of the amount of their obligation and the security held to guarantee the payment.

When a mortgage is given for future advancements and the money is paid to the mortgagor "little by little" and repayments are made from time to time, the advancements and the repayments must be considered together for the purpose of ascertaining the amount due upon the mortgage at maturity. Courts of equity will not permit the consideration of the repayments only for the purpose of determining the balance due upon the mortgage. (Luengo & Martinez v. Moreno, 26 Phil. 111) The mere fact that, in contract of advancements, the repayments at any one time exceeds the specific amount mentioned in the mortgage will not have the effect of discharging the mortgage when the advancements at that particular time are greatly in excess of the repayments; especially is this true when the contract of advancement or mortgage contains a specific provision that the mortgage shall cover all "such other amounts as may be then due." Such a provision is added to the contract of advancements or mortgage for the express purpose of covering advancements in excess of the amount mentioned in the mortgage. (Luengo & Martinez v. Moreno, supra)

The sum found to be owing by the debtor at the termination of the contract of advancements between him and the mortgagee, during continuing credit, is still secured by the mortgage on the debtor's property, and the mortgagee is entitled to bring the proper action for the collection of the amounts still due and to request the sale of the property covered by the mortgage. (Luengo & Martinez v. Moreno, supra; Russell v. Davey, 7 Grant Ch. 13; Patterson First National Bank v. Byard, 26 N.J. Equity 225)

Under a mortgage to secure the payment of future advancements, the mere fact that the repayments on a particular day equal the amount of the mortgage will not discharge the mortgage before maturity so long as advancements may be demanded and are being received. (Luengo & Martinez v. Moreno, supra)[57]

Moreover, the series of loan advancements herein cannot be likened to the credit line discussed in Caltex Philippines, Inc. v. Intermediate Appellate Court,[58] as petitioner posited in its reply[59] filed before this Court.

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In Caltex, unlike the instant case, the real estate mortgage executed did not contain a "dragnet" clause[60] that would subsume all past and future debts. The mortgage therein specifically secured only the loans extended prior to the mortgage. Thus, in the said case, the future debts were deemed as constituting a separate transaction from the past debts secured by the mortgage.

The ruling of the Court in Quiogue v. Bautista[61] is likewise inapplicable. In that case, the Court deemed the loan transactions as separate, considering that those were two separate loans secured by two separate mortgages. In this case, however, there is only one mortgage securing all 67 drawdowns made by respondent.

In fine, for the failure of respondent to pay her loan obligation, petitioner had only one cause of action arising from such non-payment. This single cause of action consists in the recovery of the credit with execution of the security.[62] Petitioner is proscribed from splitting its single cause of action by filing an extrajudicial foreclosure proceedings on June 10, 1999 with respect to the amounts in the 31 promissory notes, and, during the pendency thereof, file a collection case on June 23, 1999, with respect to the amounts in the remaining 36 promissory notes.

Considering, therefore, that, in the case at bar, petitioner had already instituted extrajudicial foreclosure proceedings of the mortgaged property, it is now barred from availing itself of a personal action for the collection of the indebtedness.

IN VIEW OF ALL THE FOREGOING, the instant petition is DISMISSED for lack of merit. Costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring.

[2] TSN, August 17, 2001, p. 7.

[3] TSN, October 12, 2001, pp. 51-53.

[4] Rollo, pp. 63-134, 136-197.

[5] Id. at 198-203.

[6] Id. at 203.

[7] Id. at 135, 204.

[8] Id. at 204.

[9] Id. at 205-208.

[10] Id. at 277-281.

[11] Id. at 282-353.

[12] Id. at 280-281.

[13] Id. at 355-363.

[14] TSN, August 17, 2001, p. 8.

[15] Id. at 9.

[16] Id. at 7.

[17] Records, pp. 442-450.

[18] Id. at 451-455.

[19] Id. at 462-464.

[20] Id. at 465-474.

[21] Id. at 481-482.

[22] Id. at 483-503.

[23] CA rollo, p. 108.

[24] Rollo, pp. 43-59.

[25] 68 Phil. 287 (1939).

[26] CA rollo, p. 247-249.

[27] Id. at 253-255.

[28] Rollo, p. 61-62.[29] Id. at 22, 28.

[30] Tadeo v. People, G.R. No. 129774, December 29, 1998, 300 SCRA 744.

[31] G.R. No. 74730, August 25, 1989, 176 SCRA 741.

[32] 114 Phil. 401 (1962).

[33] Chu, Sr. v. Benelda Estate Development Corporation, G.R. No. 142313, March 1, 2001, 353 SCRA 424.

[34] G.R. No. 163593, December 16, 2005, 478 SCRA 387.

[35] Id. at 407-408.

[36] Casil v. Court of Appeals, 349 Phil. 187 (1998).

[37] Section 4, Rule 2 of the Rules of Court.

[38] Bachrach Motor Co., Inc. v. Esteban Icarañgal and Oriental Commercial Co., Inc., supra note 25.

[39] Stark v. Starr, 94 U.S. 477, 24 L.Ed. 276 (1876).

[40] 136 A.D. 692, 121 N.Y.S. 465 (1910).

[41] Id. at 694.

[42] U.S. v. Pan-American Petroleum Co., 55 F.2d 753 (1932).

[43] Fidelity & Deposit Co. of Maryland v. Brown, 65 S.W.2d 1064 (1933).

[44] Meyerotto v. Rommel's Estate, 49 S.W.2d 1081 (1932).

[45] Fidelity & Deposit Co. of Maryland v. Brown, supra.

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[46] Meyerotto v. Rommel's Estate, supra.

[47] Friedman, Keller & Co. v. Olson, 173 S.W. 28 (1915).

[48] Supra, note 38.

[49] Federal Deposit Insurance Corporation v. Altimar, Inc., 716 F. 7011.

[50] Bachrach Motor Co., Inc. V. Esteban Icaragal and Oriental Commercial Co., Inc., supra note 25, at 294-295.

[51] Industrial Finance Corporation v. Apostol, G.R. No. 35453, September 15, 1989, 177 SCRA 521.

[52] Bachrach Motor Co., Inc. V. Esteban Icarañgal and Oriental Commercial Co., Inc., supra note 25, at 294.

[53] Rollo, pp. 206-207.

[54] Id. at 198.

[55] TSN, October 12, 2001, pp. 9-13.

[56] 49 Phil. 703.

[57] Id. at 714-716.

[58] G.R. No. 74730, August 25, 1989, 176 SCRA 741, 749.

[59] Rollo, pp. 556-564.

[60] Philippine Bank of Communications v. Court of Appeals, G.R. No. 118552, February 5, 1996, 253 SCRA 241, 253.

[61] 114 Phil. 401 (1962).

[62] Danao v. Court of Appeals, G.R. L-48276, September 30, 1987, 154 SCRA 447, 457.

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