

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. RUBEN S. GO AND ANGELITA M. GO, AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 168779. September 14, 2007

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168779/>

NACHURA, J.:

For this Court's consideration is a Petition for Review on Certiorari filed by the Development Bank of the Philippines (DBP) partially assailing the September 23, 2004 Decision[1] and June 20, 2005 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 63959.

The facts of the case, as found by the CA, are as follows:

On August 4, 1982, [private respondents] entered into a contract of loan with [petitioner] DBP for a sum of P494,000.00.

The contract was evidenced by two (2) promissory notes, one for P194,000.00, payable quarterly for five (5) years, and the other for P300,000.00, payable quarterly for seven (7) years. The above promissory notes were secured by a mortgage contract over both the real and personal properties of [private respondents].

One of the provisions of the contract contained the stipulated interest rate. Another provision of the contract contained a penalty clause. Both promissory notes had a stipulated interest rate of eighteen percent (18%) per annum interest rate (sic) and a penalty charge in case of default of eight percent (8%) per annum.

Another provision of the contract required all mortgagors to insure all real and personal properties mortgaged with the DBP Pool of Accredited Insurance Companies. In this case, [private respondents] were made to insure their real and personal properties with [the] DBP Pool of Accredited Insurance Companies for P709,000.00 — the net replacement cost of the assets mortgaged.

Another provision of the loan contract provided for [the] increase/decrease of interest rates, as follows: "The DBP further reserves the right to increase, with notice to the mortgagor, the rate of interest on the loan as well as other fees and charges on loans and advances pursuant to such policy as it may adopt from time to time during the period of the loan. Provided, that the rate of interest on the loan shall be reduced in the event that the applicable maximum rate of interest is reduced by law or by the Monetary Board; Provided, further, that the adjustment in the rate of interest shall take effect on or after the effectivity of the increase or decrease in the maximum rate of interest."

[Petitioner] DBP alleged that it was empowered to unilaterally increase or decrease interest rates. In fact, DBP unilaterally increased on August 16, 1984 the interest rate from the original 18% per annum interest rate to 35% per annum, then on September 3, 1984 lowered the 35% per annum interest rate to 29% per annum, and then raised again on August 4, 1985 the 29% per annum interest rate to 30%.

[Petitioner] DBP extra-judicially foreclosed on (sic) the mortgaged properties of [private respondents], claiming

that [private respondents] had defaulted on their loan contract and on September 30, 1986, the Sheriff sold [private respondents'] mortgaged properties at [a] public auction sale to DBP, the highest bidder, at P181,800.00.

On February 12, 1987, [private respondents] commenced suit with Branch 145, Regional Trial Court of Makati, docketed as Civil Case No. 15998, to nullify the extrajudicial foreclosure and sale at public auction of [private respondents'] mortgaged properties.

The Regional Trial Court of Makati issued a Temporary Restraining Order on February 16, 1987 and granted [private respondents'] application for preliminary prohibitory injunction on March 17, 1987 restraining [petitioner] DBP from consolidating title and the Quezon City Register of Deeds from registering any consolidation of ownership by [the] DBP.[2]

On April 30, 1999, the RTC rendered its Decision,[3] the dispositive portion of which reads:

WHEREFORE, the above-premises (sic) considered, this Court enters judgment in favor of the plaintiff spouses Go as against defendant Development Bank of the Philippines, Gil V. Corpus, and Samuel Cleofe[,] as well as those defaulting defendants and declares the following:

- The interest and penalty charges imposed by defendant DBP on plaintiffs' loan is hereby declared null and void;
- The promissory notes (Exhs. "A" and "B") [are] hereby declared null and void;
- The insurance premiums and other charges imposed on plaintiffs [are] null and void for having no legal and evidentiary basis. The insurance premiums[,] as well as other additional charges paid[,] are to be reimbursed to the plaintiffs;
- The extra-judicial foreclosure of the mortgaged properties of the plaintiffs on September 30, 1986 is hereby declared as null and void;
- Moral damages in the amount of P50,000.00 is hereby awarded to plaintiffs as against defendant DBP. Exemplary damages in the amount of P50,000.00 is further awarded in favor of plaintiffs as against defendant DBP;
- Attorney's fees in the amount of P100,000.00 is awarded in favor of the plaintiffs as against defendant DBP;
- Defendant Samuel Cleofe is ordered to refrain registration (sic) of any document consolidating title by defendant DBP over plaintiffs' properties;
- Costs against defendant.

SO ORDERED.

The DBP appealed the case to the CA. The CA reversed the decision of the RTC, ruling thus:

WHEREFORE, in view of the foregoing, the instant appeal is hereby GRANTED. The April 30, 1999 Decision of the Regional Trial Court of Makati, Branch 145, in Civil Case No. 15998 is hereby REVERSED and SET ASIDE and a new one is entered as follows:

- The promissory notes and the real estate mortgage are hereby declared legal and valid;
- The 8% per annum penalty charge imposed by defendant-appellant DBP on plaintiffs-appellees' loan is hereby declared legal and valid;
- The insurance premiums and other charges imposed on plaintiffs are hereby declared legal and valid;
- The increases in interest rate on the loan are hereby declared null and void;

- The extra-judicial foreclosure of the mortgaged properties and consequent sale at public auction and issuance of Certificate of Sale, are hereby declared premature and therefore null and void;
- The plaintiffs-appellees are hereby ordered to pay defendant-appellant DBP the P494,000.00 principal amount of their loan with 18% interest per annum from the date the loan was granted up to full payment, less payments already made, within ninety (90) days from the finality of this decision, otherwise, the defendant-appellant shall be entitled to foreclose the mortgaged properties and sell the same at public auction to satisfy the loan.
- The awards of moral damages, exemplary damages and attorney's fees are hereby deleted.
- No pronouncement as to costs.

SO ORDERED.[4]

The CA held that the unilateral increases in interest rates were void since these were done without notice and without the corresponding Monetary Board increase in lending rates. The extrajudicial foreclosure was also deemed void because the loan had not yet matured at the time of the foreclosure proceedings.

Conversely, the CA held that the stipulated interest rate of 18% was not usurious because it was clearly below the maximum rate fixed by the Monetary Board at that time. As to the penalty charge, the CA held that it was in the nature of liquidated damages, separate and distinct from interest payments. The penalty charge was deemed valid because the law expressly recognized it as an accessory undertaking of the obligor. The CA also held that the promissory note and the real estate mortgage were valid since the principal obligation can stand even though the stipulation on the interest was void. The insurance over the mortgaged property was also held valid because this constituted an additional condition under the mortgage contract.

The appellate court likewise ruled that the formation of the DBP Pool of Accredited Insurance Companies did not amount to restraint of trade because it does not exclude other insurance companies from being accredited to be part of the pool so long as they meet the requirements for accreditation.

The CA also reversed the RTC's award for damages and attorney's fees finding that there was no basis for such award.

Petitioner DBP filed a Motion for Partial Reconsideration.[5] It sought the modification of paragraph 6 of the dispositive portion of the CA Decision. Paragraph 6 allegedly failed to take into consideration and/or incorporate the 8% per annum penalty charge and insurance premiums and other charges stated in paragraphs 2 and 3, respectively. Petitioner also argued that the way paragraph 6 is written will convey the idea that private respondents are only liable to pay the principal amount of the loan plus the regular 18% per annum interest. DBP likewise argues that the provision may be interpreted to mean that in the event of private respondents' failure to pay the amount within ninety (90) days from finality of the CA Decision, extrajudicial foreclosure is the only remedy available to it.

Thus, petitioner prayed that said paragraph 6 be amended to read as follows:

6. The plaintiffs-appellees are hereby ordered to pay defendant-appellant DBP the P494,000.00 principal amount of their loan with 18% interest per annum from the date the loan was granted up to full payment, (plus 8% per annum penalty charge as provided in paragraph "2," supra,) and the total amount of insurance premiums and other charges (as provided in paragraph "3," supra,) less payments already made, within ninety (90) days from the finality of this decision, otherwise, the defendant-appellant DBP shall be entitled to a writ of execution to finally judicially foreclose the mortgaged properties and sell the same at public auction to satisfy the loan.

The CA denied the Motion for Partial Reconsideration for lack of merit in a Resolution[6] dated June 20, 2005.

Petitioner DBP now comes to this Court claiming that the CA committed grave abuse of discretion in issuing the assailed Decision.[7] It proffers the same grounds it raised in its Motion for Partial Reconsideration before the CA and reiterates its prayer for the amendment of paragraph 6 of the assailed Decision to read, thus:

6. The plaintiffs-appellees are hereby ordered to pay defendant-appellant DBP the P494,000.00 principal amount of their loan with 18% interest per annum from the date the loan was granted up to full payment, plus 8% per annum penalty charge as provided in paragraph "2," supra, and plus the total amount of insurance premium and other charges as provided in paragraph "3," supra, less payments already made, within ninety (90) days from the finality of this decision, otherwise, the defendant-appellant DBP shall be entitled to a writ of execution to finally judicially foreclose the mortgaged properties and sell the same at public auction to satisfy the loan.[8]

The petition is partly meritorious.

Initially, we resolve the procedural issues.

The petition is captioned as a petition for review. Under Rule 45 of the Revised Rules of Civil Procedure, a petition for review shall raise only questions of law which must be distinctly set forth.[9] A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference arises as to the truth or the falsehood of the alleged facts. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.[10]

Petitioner assails the CA Decision in this wise:

Petitioner DBP filed this instant petition on the ground that the latter part of the dispositive portion of the subject DECISION of the Honorable Court of Appeals is not the logical consequence of the earlier part of the same dispositive portion. In other words, the Honorable Court of Appeals committed grave abuse of discretion as shown by the fact that paragraph "6" of the dispositive portion of its DECISION dated September 23, 2004 failed to take into consideration and/or incorporate the decree stated in paragraphs "2" and "3" of the same dispositive portion of the Decision.[11]

This issue that petitioner raises before this Court is not a question of law. Petitioner imputes grave abuse of discretion to the CA for its alleged omission in its Decision.

In determining the nature of an action, it is not the caption but the averments of the petition and the character of the relief sought that are controlling.[12] Considering that petitioner charges the CA with acting in grave abuse of discretion, the petition should properly be treated as a special civil action for certiorari under Rule 65 of the Rules of Court.[13]

However, even if, in the interest of justice, we treat this as a special civil action for certiorari under Rule 65,[14] the petition nevertheless fails to convince us that the CA committed grave abuse of discretion.

It is well-settled that an act of a court or tribunal may only be considered to have been done in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[15]

An error of judgment committed in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." An abuse of discretion is not sufficient by itself to justify the issuance of a writ of certiorari. The

abuse must be grave and patent, and it must be shown that the discretion was exercised arbitrarily and despotically.[16] In fine, certiorari will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.[17]

In this case, we find no merit in petitioner's claim that the CA committed grave abuse of discretion. The CA Decision states clearly and distinctly the facts and laws upon which the judgment was made, and is in accord with existing law and jurisprudence.

Petitioner offers no sufficient support for its allegation that the CA committed grave abuse of discretion. The petition contains no explanation of how the CA exercised its judgment capriciously or whimsically or in an arbitrary or despotic manner. Other than the bare assertion of grave abuse of discretion in the section "Grounds Relied Upon for the Allowance of the Petition,"[18] there is no discussion of the acts and circumstances that would be aptly characterized as grave abuse of discretion by the CA.

The loan contract states:

Additional conditions

8. Loan amortizations or portions thereof (principal and/or regular interest) in arrears SHALL be subject to the following charges:

x x x x

b. Penalty charges — 8% p.a. on amortization or portion thereof for more than 30 days.[19]

The CA correctly held that the 8% penalty charge is valid. This Court has recognized a penalty clause as an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled.[20]

The enforcement of the penalty can be demanded by the creditor only when the non-performance is due to the fault or fraud of the debtor. The non-performance gives rise to the presumption of fault; in order to avoid the payment of the penalty, the debtor has the burden of proving an excuse — the failure of the performance was due to either force majeure or the acts of the creditor himself.[21]

In the present case, the non-performance of the obligation is due to the increases in interest rates by DBP, which the CA held were unauthorized and, therefore, void. Thus, the private respondents had no obligation to pay the increased rate. Therefore, the obligation to pay the 8% penalty charge never arose since there was, as yet, no breach that would put the penalty clause in operation. It would have been premature, nay, gross error for the CA to order private respondents to pay the same in the assailed Decision.

On the other hand, we agree with the CA in upholding the validity of the insurance over the mortgaged property. The same constitutes an additional condition clearly and explicitly included in the mortgage contract[22] to which private respondents agreed. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[23]

However, we find that, either by mistake or inadvertence, the CA Decision failed to include the obligation to pay the insurance premiums and other charges in the dispositive portion of the assailed Decision. The CA held in paragraph 3 of the dispositive portion that the insurance premium and other charges were valid and legal but failed to give the corresponding executory force to that pronouncement.[24]

The dispositive portion, or the fallo, is its decisive resolution and is thus the subject of execution.[25] Since the

execution must conform to that which is ordained or decreed in the dispositive portion of the decision,[26] the subject dispositive portion must provide the proper order for execution of the judgment. As we have held in the past, a judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party.[27] Hence, this Court must rectify the error.

As to the second part of petitioner's prayer seeking to amend the dispositive portion to include entitlement to a writ of execution to judicially foreclose the mortgaged properties, we find no basis to grant the same.

The mortgage contract states that petitioner may resort to either judicial or extrajudicial foreclosure in case of default.[28] Petitioner opted for extrajudicial foreclosure. However, both the trial court and the CA declared the extrajudicial foreclosure void for being premature. For all intents and purposes, there has been no foreclosure. Therefore, this Court, or any other court for that matter, cannot issue a writ of execution to judicially foreclose the property.

If and when private respondents default on their obligation subject of this decision, then petitioner, once again, shall have the option to resort to either judicial or extrajudicial foreclosure. Should it opt to judicially foreclose the mortgage, it should follow the procedure in Rule 68 of the Rules of Court. We cannot allow the petitioner to resort to short-cuts in the procedure for judicial foreclosure even in the guise of avoiding multiplicity of suits through the mere expediency of amending a duly-promulgated decision of the appellate court.

WHEREFORE, premises considered, the petition for review is GRANTED IN PART. Paragraph 6 of the assailed September 23, 2004 Decision of the Court of Appeals is MODIFIED as follows:

6. The plaintiffs-appellees are hereby ordered to pay defendant-appellant DBP the P494,000.00 principal amount of their loan with 18% interest per annum from the date the loan was granted up to full payment, plus the total amount of insurance premium and other charges as provided in paragraph "3," supra, less payments already made, within ninety (90) days from the finality of this decision, otherwise, the defendant-appellant shall be entitled to foreclose the mortgaged properties and sell the same at public auction to satisfy the loan.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Salvador J. Valdez, Jr. and Juan Q. Enriquez, Jr., concurring; rollo, pp. 10-26.

[2] Rollo, pp. 12-14.

[3] Penned by Judge Oscar B. Pimentel, id. at 98-107.

[4] Rollo, pp. 24-25.

[5] Id. at 180-184.

[6] Id. at 28-29.

[7] Id. at 45.

[8] Id. at 49.

[9] Revised Rules of Civil Procedure, Rule 45, Sec. 1.

- [10] *Tamondong v. Court of Appeals*, G.R. No. 158397, November 26, 2004, 444 SCRA 509, 517-518; *Parañaque Kings Enterprises, Inc. v. Court of Appeals*, 335 Phil. 1184, 1195 (1997).
- [11] *Rollo*, p. 45.
- [12] *Verceles v. Posada*, G.R. No. 159785, April 27, 2007.
- [13] *Ligon v. Court of Appeals*, 355 Phil. 503, 516 (1998).
- [14] See *Sawadjaan v. Court of Appeals*, G.R. No. 141735, June 8, 2005, 459 SCRA 516, 528.
- [15] *Garcia v. House of Representatives Electoral Tribunal*, 371 Phil. 280, 291 (1999); *People v. Court of Appeals*, 368 Phil. 169, 180 (1999); *Santiago v. Guingona, Jr.*, 359 Phil. 276, 304 (1998).
- [16] *Miranda v. Abaya*, 370 Phil. 642, 663, citing *Soriano v. Atienza*, 171 SCRA 284 (1989).
- [17] *People v. Court of Appeals*, *supra* note 15, at 181.
- [18] *Rollo*, p. 45.
- [19] *Records*, p. 17.
- [20] *Pryce Corporation v. Philippine Amusement and Gaming Corporation*, G.R. No. 157480, May 6, 2005, 458 SCRA 164, 180, citing *Ligutan v. CA*, 427 Phil. 42, 52 (2002); *Social Security System v. Moonwalk Development and Housing Corporation*, G.R. No. 73345, April 7, 1993, 221 SCRA 119, 124 & 127; *Country Bankers Insurance Corporation v. CA*, G.R. No. 85161, September 9, 1991, 201 SCRA 458, 465.
- [21] *Tolentino*, *Civil Code of the Philippines*, Vol. IV, p. 264.
- [22] *Records*, p. 16.
- [23] *Civil Code of the Philippines*, Article 1159.
- [24] See *Morales v. Court of Appeals*, G.R. No. 112140, June 23, 2005, 461 SCRA 34, 51.
- [25] *International School, Inc. v. Minister of Labor and Employment*, G.R. No. 54243, July 21, 1989, 175 SCRA 507, 517; *Tropical Homes, Inc. v. Fortun*, G.R. No. 51554, January 13, 1989, 169 SCRA 81, 92; *Medelo v. Gorospe*, G.R. No. L-41970, March 25, 1988, 159 SCRA 248, 254.
- [26] *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 833 (2001).
- [27] *Florentino v. Rivera*, G.R. No. 167968, January 23, 2006, 479 SCRA 522, 532, citing *Garcia v. Yared*, 447 Phil. 444, 453 (2003).
- [28] *Records*, p. 15.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.