SPS. ESMERALDO AND ELIZABETH SUICO, PETITIONERS, VS. PHILIPPINE NATIONAL BANK AND HON. COURT OF APPEALS, RESPONDENTS.

G.R. NO. 170215. August 28, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Herein petitioners, Spouses Esmeraldo and Elizabeth Suico, obtained a loan from the Philippine National Bank (PNB) secured by a real estate mortgage[1] on real properties in the name of the former. The petitioners were unable to pay their obligation prompting the PNB to extrajudicially foreclose the mortgage over the subject properties before the City Sheriff of Mandaue City under EJF Case No. 92-5-15.

The petitioners thereafter filed a Complaint against the PNB before the Regional Trial Court (RTC) of Mandaue City, Branch 55, docketed as Civil Case No. MAN-2793 for Declaration of Nullity of Extrajudicial Foreclosure of Mortgage.[2]

The Complaint alleged that on 6 May 1992, PNB filed with the Office of the Mandaue City Sheriff a petition for the extrajudicial foreclosure of mortgage constituted on the petitioners' properties (subject properties) for an outstanding loan obligation amounting to P1,991,770.38 as of 10 March 1992. The foreclosure case before the Office of the Mandaue City Sheriff, which was docketed as EJF Case No. 92-5-15, covered the following properties:

> TCT NO. 13196
> "A parcel of land (Lot 701, plan 11-5121 Amd-2) situated at Mandaue City, bounded on the NE., and SE., by lot no. 700; on the SW. by lots nos. 688 and 702; on the NW. by lot no. 714, containing an area of 2,078 sq. m. more or less."
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> TAX DECL. NO. 00553
> "A parcel of land situated at Tabok, Mandaue City, Cad. Lot No. 700-C-1; bounded on the North by Lot No. 701 & 700-B; on the South by Lot No. 700-C-3; on the East by lot no. 700-C-3 and on the West by Lot no. 688, containing an area of 200 square meters, more or less."
>
> TAX DECL. NO. 00721
> "Two (2) parcels of land situated at Tabok, Mandaue City, Cad. lot nos. 700-C-3 and 700-C-2; bounded on the North by Lot Nos. 700-C-1 and 700-B; on the South by Lot No. 700-D; on the East by Lot Nos. 695 and 694; and on the West by Lot Nos. 688 and 700-C-1, containing an aggregate area of 1,683 sq. m. more or less."
>
> TAX DECL. NO. 0237
> "A parcel of land situated at Tabok, Mandaue City, Cad. Lot no. 700-B. Bounded on the NE. by (Lot 699) 109, (Lot No. 69) 110, on the SE (Lot 700-C) 115, on the NW. (Lot 700-A) 112 and on the SW. (Lot 701) 113; containing an area of .1785 HA more or less."
>
> TAX DECL. NO. 9267

> "A parcel of land situated at Tabok, Mandaue City, Cad. Lot no. 700-A. Bounded on the NE. by (Lot 699) 109, on the South West by (Lot 701) 113, on the SE. by (Lot 700-B) 111, and on the NW. by (lot 714) 040039; containing an area of .1785 HA more or less."[3]

Petitioners claimed that during the foreclosure sale of the subject properties held on 30 October 1992, PNB, as the lone bidder, offered a bid in the amount of P8,511,000.00. By virtue of the said bid, a Certificate of Sale of the subject properties was issued by the Mandaue City Sheriff in favor of PNB. PNB did not pay to the Sheriff who conducted the auction sale the amount of its bid which was P8,511,000.00 or give an accounting of how said amount was applied against petitioners' outstanding loan, which, as of 10 March 1992, amounted only to P1,991,770.38. Since the amount of the bid grossly exceeded the amount of petitioners' outstanding obligation as stated in the extrajudicial foreclosure of mortgage, it was the legal duty of the winning bidder, PNB, to deliver to the Mandaue City Sheriff the bid price or what was left thereof after deducting the amount of petitioners' outstanding obligation. PNB failed to deliver the amount of their bid to the Mandaue City Sheriff or, at the very least, the amount of such bid in excess of petitioners' outstanding obligation.

One year after the issuance of the Certificate of Sale, PNB secured a Certificate of Final Sale from the Mandaue City Sheriff and, as a result, PNB transferred registration of all the subject properties to its name.

Owing to the failure of PNB as the winning bidder to deliver to the petitioners the amount of its bid or even just the amount in excess of petitioners' obligation, the latter averred that the extrajudicial foreclosure conducted over the subject properties by the Mandaue City Sheriff, as well as the Certificate of Sale and the Certificate of Finality of Sale of the subject properties issued by the Mandaue City Sheriff, in favor of PNB, were all null and void.

Petitioners, in their Complaint in Civil Case No. MAN-2793, prayed for:

> a) Declaring the Nullity of Extra-judicial Foreclosure of Mortgage under EJF Case No. 92-5-15 including the certificate of sale and the final deed of sale of the properties affected;
>
> b) Order[ing] the cancellation of the certificates of titles and tax declaration already in the name of [herein respondent] PNB and revert the same back to herein [petitioners'] name;
>
> c) Ordering the [PNB] to pay [petitioners] moral damages amounting to more than P1,000,000,00; Exemplary damages of P500,000.00; Litigation expenses of P100,000.00 and attorney's fees of P300,000.00.[4]

PNB filed a Motion to Dismiss[5] Civil Case No. MAN-2793 citing the pendency of another action between the same parties, specifically Civil Case No. CEB-15236 before the RTC of Cebu City entitled, PNB v. Sps. Esmeraldo and Elizabeth Suico where PNB was seeking the payment of the balance of petitioners' obligation not covered by the proceeds of the auction sale held on 30 October 1992. PNB argued that these two cases involve the same parties. Petitioners opposed the Motion to Dismiss filed by PNB.[6] Subsequently, the Motion to Dismiss Civil Case No. MAN-2793 was denied in the Order of the RTC dated 15 July 1997;[7] thus, PNB was constrained to file its Answer.[8]

PNB disputed petitioners' factual narration. PNB asserted that petitioners had other loans which had likewise become due. Petitioners' outstanding obligation of P1,991,770.38 as of 10 March 1992 was exclusive of attorney's fees, and other export related obligations which it did not consider due and demandable as of said date. PNB maintained that the outstanding obligation of the petitioners under their regular and export- related loans was already more than the bid price of P8,511,000.00, contradicting the claim of surplus proceeds due the petitioners. Petitioners were well aware that their total principal outstanding obligation on the date of the auction sale was P5,503,293.21.

PNB admitted the non-delivery of the bid price to the sheriff and the execution of the final deed of sale, but

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claimed that it had not transferred in its name all the foreclosed properties because the petition to register in its name Transfer Certificates of Title (TCT) No. 37029 and No. 13196 were still pending.

On 2 February 1999, the RTC rendered its Decision[9] in Civil Case No. MAN-2793 for the declaration of nullity of the extrajudicial foreclosure of mortgage, the dispositive portion of which states:

> WHEREFORE, based on the foregoing, judgment is rendered in favor of [herein petitioners] Sps. Esmeraldo & Elizabeth Suico and against [herein respondent], Philippine National Bank (PNB), declaring the nullity of Extrajudicial Foreclosure of Mortgage under EJF Case No. 92-5-15, including the certificate of sale and the final deed of sale of the subject properties; ordering the cancellation of the certificates of titles and tax declaration already in the name of [respondent] PNB, if any, and revert the same back to the [petitioners'] name; ordering [respondent] PNB to cause a new foreclosure proceeding, either judicially or extra-judicially.
>
> Furnish parties thru counsels copy of this order.[10]

In granting the nullification of the extrajudicial foreclosure of mortgage, the RTC reasoned that given that petitioners had other loan obligations which had not yet matured on 10 March 1992 but became due by the date of the auction sale on 30 October 1992, it does not justify the shortcut taken by PNB and will not excuse it from paying to the Sheriff who conducted the auction sale the excess bid in the foreclosure sale. To allow PNB to do so would constitute fraud, for not only is the filing fee in the said foreclosure inadequate but, worse, the same constitutes a misrepresentation regarding the amount of the indebtedness to be paid in the foreclosure sale as posted and published in the notice of sale.[11] Such misrepresentation is fatal because in an extrajudicial foreclosure of mortgage, notice of sale is jurisdictional. Any error in the notice of sale is fatal and invalidates the notice.[12]

When the PNB appealed its case to the Court of Appeals,[13] the appellate court rendered a Decision[14] dated 12 April 2005, the fallo of which provides:

> WHEREFORE, premises considered, the instant appeal is GRANTED. The questioned decision of the Regional Trial Court of Mandaue City, Branch 55 dated February 2, 1999 is hereby REVERSED and SET ASIDE. Accordingly, the extra judicial foreclosure of mortgage under EJF 92-5-15 including the certificate of sale and final deed of sale executed appurtenant thereto are hereby declared to be valid and binding.[15]

In justifying reversal, the Court of Appeals held:

> A careful scrutiny of the evidence extant on record would show that in a letter dated January 12, 1994, [petitioners] expressly admitted that their outstanding principal obligation amounted to P5.4 Million and in fact offered to redeem the properties at P6.5 Million. They eventually increased their offer at P7.5 Million as evidenced by that letter dated February 4, 1994. And finally on May 16, 1994, they offered to redeem the foreclosed properties by paying the whole amount of the obligation by installment in a period of six years. All those offers made by the [petitioners] not only contradicted their very assertion that their obligation is merely that amount appearing on the petition for foreclosure but are also indicative of the fact that they have admitted the validity of the extra judicial foreclosure proceedings and in effect have cured the impugned defect. Thus, for the [petitioners] to insist that their obligation is only over a million is unworthy of belief. Oddly enough, it is evident from their acts that they themselves likewise believe otherwise.
>
> Even assuming that indeed there was a surplus and the [PNB] is retaining more than the proceeds of the sale than it is entitled, this fact alone will not affect the validity of the sale but simply gives the [petitioners] a cause of action to recover such surplus. In fine, the failure of the [PNB] to remit the surplus, if any, is not tantamount to a non-compliance of statutory requisites that could constitute a jurisdictional defect invalidating the sale. This situation only gives rise to a cause of action on the part of the [petitioners] to recover the alleged surplus from the [PNB]. This ruling is in harmony with the decisional rule that in suing for the return of the surplus

> proceeds, the mortgagor is deemed to have affirmed the validity of the sale since nothing is due if no valid sale has been made.[16]

Petitioners filed a Motion for Reconsideration[17] of the foregoing Decision, but the Court of Appeals was not persuaded. It maintained the validity of the foreclosure sale and, in its Amended Decision dated 28 September 2005, it merely directed PNB to pay the deficiency in the filing fees, holding thus:

> WHEREFORE, Our decision dated April 12, 2005 is hereby AMENDED. [Herein respondent PNB] is hereby required to pay the deficiency in the filing fees due on the petition for extra judicial foreclosure sale to be based on the actual amount of mortgage debts at the time of filing thereof. In all other respects, Our decision subject of herein petitioners'] motion for reconsideration is hereby AFFIRMED.[18]

Unflinching, petitioners elevated the case before this Court via the present Petition for Review essentially seeking the nullification of the extrajudicial foreclosure of the mortgage constituted on the subject properties. Petitioners forward two reasons for declaring null and void the said extrajudicial foreclosure: (1) the alleged defect or misrepresentation in the notice of sheriff's sale; and/or (2) failure of PNB to pay and tender the price of its bid or the surplus thereof to the sheriff.

Petitioners argue that since the Notice of Sheriff's Sale stated that their obligation was only P1,991,770.38 and PNB bidded P8,511,000.00, the said Notice as well as the consequent sale of the subject properties were null and void.

It is true that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.[19] Nonetheless, we must not also lose sight of the fact that the purpose of the publication of the Notice of Sheriff's Sale is to inform all interested parties of the date, time and place of the foreclosure sale of the real property subject thereof. Logically, this not only requires that the correct date, time and place of the foreclosure sale appear in the notice, but also that any and all interested parties be able to determine that what is about to be sold at the foreclosure sale is the real property in which they have an interest.[20]

Considering the purpose behind the Notice of Sheriff's Sale, we disagree with the finding of the RTC that the discrepancy between the amount of petitioners' obligation as reflected in the Notice of Sale and the amount actually due and collected from the petitioners at the time of the auction sale constitute fraud which renders the extrajudicial foreclosure sale null and void.

Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.[21]

All these considered, we are of the view that the Notice of Sale in this case is valid. Petitioners failed to convince this Court that the difference between the amount stated in the Notice of Sale and the amount of PNB's bid resulted in discouraging or misleading bidders, depreciated the value of the property or prevented it from commanding a fair price.

The cases cited by the RTC in its Decision do not apply herein. San Jose v. Court of Appeals[22] refers to a Notice of Sheriff's Sale which did not state the correct number of the transfer certificates of title of the property to be sold. This Court considered the oversight as a substantial and fatal error which resulted in invalidating the entire notice. The case of Community Savings and Loan Association, Inc. v. Court of Appeals[23] is also

inapplicable, because the said case refers to an extrajudicial foreclosure tainted with fraud committed by therein petitioners, which denied therein respondents the right to redeem the property. It actually has no reference to a Notice of Sale.

We now proceed to the effect of the non-delivery by PNB of the bid price or the surplus to the petitioners.

The following antecedents are not disputed:

For failure to pay their loan obligation secured by a real estate mortgage on the subject properties, PNB foreclosed the said mortgage. In its petition for foreclosure sale under ACT No. 3135 filed before the Mandaue City Sheriff, PNB stated therein that petitioners' total outstanding obligation amounted to P1,991,770.38.[24] PNB bidded the amount of P8,511,000.00. Admittedly, PNB did not pay its bid in cash or deliver the excess either to the City Sheriff who conducted the bid or to the petitioners after deducting the difference between the amount of its bid and the amount of petitioners' obligation in the Notice of Sale. The petitioners then sought to declare the nullity of the foreclosure, alleging that their loan obligation amounted only to P1,991,770.38 in the Notice of Sale, and that PNB did not pay its bid in cash or deliver to petitioner the surplus, which is required under the law.[25]

On the other hand, PNB claims that petitioners' loan obligation reflected in the Notice of Sale dated 10 March 1992 did not include their other obligations, which became due at the date of the auction sale on 10 October 1992; as well as interests, penalties, other charges, and attorney's fees due on the said obligation.[26]

Pertinent provisions under Rule 39 of the Rules of Court on extrajudicial foreclosure sale provide:

> SEC. 21. Judgment obligee as purchaser. - When the purchaser is the judgment obligee, and no third-party claim has been filed, he need not pay the amount of the bid if it does not exceed the amount of his judgment. If it does, he shall pay only the excess. (Emphasis supplied.)
>
> SEC. 39. Obligor may pay execution against obligee. - After a writ of execution against property has been issued, a person indebted to the judgment obligor may pay to the sheriff holding the writ of execution the amount of his debt or so much thereof as may be necessary to satisfy the judgment, in the manner prescribed in section 9 of this Rule, and the sheriff's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment obligee on the execution.

Conspicously emphasized under Section 21 of Rule 39 is that if the amount of the loan is equal to the amount of the bid, there is no need to pay the amount in cash. Same provision mandates that in the absence of a third-party claim, the purchaser in an execution sale need not pay his bid if it does not exceed the amount of the judgment; otherwise, he shall pay only the excess.[27]

The raison de etre is that it would obviously be senseless for the Sheriff or the Notary Public conducting the foreclosure sale to go through the idle ceremony of receiving the money and paying it back to the creditor, under the truism that the lawmaking body did not contemplate such a pointless application of the law in requiring that the creditor must bid under the same conditions as any other bidder. It bears stressing that the rule holds true only where the amount of the bid represents the total amount of the mortgage debt.[28]

The question that needs to be addressed in this case is: considering the amount of PNB's bid of P8,511,000.00 as against the amount of the petitioners' obligation of P1,991,770.38 in the Notice of Sale, is the PNB obliged to deliver the excess?

Petitioners insist that the PNB should deliver the excess. On the other hand PNB counters that on the date of the auction sale on 30 October 1992, petitioners' other loan obligation already exceeded the amount of P1,991,770.38 in the Notice of Sale.

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Rule 68, Section 4 of the Rules of Court provides:

> SEC. 4. Disposition of proceeds of sale.- The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it.

Under the above rule, the disposition of the proceeds of the sale in foreclosure shall be as follows:

> (a) first, pay the costs
>
> (b) secondly, pay off the mortgage debt
>
> (c) thirdly, pay the junior encumbrancers, if any in the order of priority
>
> (d) fourthly, give the balance to the mortgagor, his agent or the person entitled to it.[29]

Based on the foregoing, after payment of the costs of suit and satisfaction of the claim of the first mortgagee/senior mortgagee, the claim of the second mortgagee/junior mortgagee may be satisfied from the surplus proceeds. The application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by dacion; hence, it is the mortgagee's duty to return any surplus in the selling price to the mortgagor. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund and, being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. And even though the mortgagee is not strictly considered a trustee in a purely equitable sense, but as far as concerns the unconsumed balance, the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption.[30]

Thus it has been 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 give the mortgagor a cause of action to recover such surplus.[31]

In the case before us, PNB claims that petitioners' loan obligations on the date of the auction sale were already more than the amount of P1,991,770.38 in the Notice of Sale. In fact, PNB claims that on the date of the auction sale, petitioners' principal obligation, plus penalties, interests, attorneys fees and other charges were already beyond the amount of its bid of P8,511,000.00.

After a careful review of the evidence on record, we find that the same is insufficient to support PNB's claim. Instead, what is available on record is petitioner's Statement of Account as prepared by PNB and attached as Annex A[32] to its Answer with counterclaim.[33] In this Statement of Account, petitioners' principal obligation with interest/penalty and attorney's fees as of 30 October 1992 already amounted to P6,409,814.92.

Although petitioners denied the amounts reflected in the Statement of Account from PNB, they did not interpose any defense to refute the computations therein. Petitioners' mere denials, far from being compelling, had nothing to offer by way of evidence. This then enfeebles the foundation of petitioners' protestation and will not suffice to overcome the computation of their loan obligations as presented in the Statement of Account submitted by PNB.[34]

Noticeably, this Statement of Account is the only piece of evidence available before us from which we can determine the outstanding obligations of petitioners to PNB as of the date of the auction sale on 10 October 1992.

It did not escape the attention of this Court that petitioners wrote a number of letters to PNB almost two years

after the auction sale,[35] in which they offered to redeem the property. In their last letter, petitioners offered to redeem their foreclosed properties for P9,500,000.00. However, these letters by themselves cannot be used as bases to support PNB's claim that petitioners' obligation is more than its bid of P8,500,000.00, without any other evidence. There was no computation presented to show how petitioners' obligation already reached P9,500,000.00. Petitioners could very well have offered such an amount on the basis of the value of the foreclosed properties rather than their total obligation to PNB. We cannot take petitioners' offer to redeem their properties in the amount of P9,500,000.00 on its face as an admission of the amount of their obligation to PNB without any supporting evidence.

Given that the Statement of Account from PNB, being the only existing documentary evidence to support its claim, shows that petitioners' loan obligations to PNB as of 30 October 1992 amounted to P6,409,814.92, and considering that the amount of PNB's bid is P8,511,000.00, there is clearly an excess in the bid price which PNB must return, together with the interest computed in accordance with the guidelines laid down by the court in Eastern Shipping Lines v. Court of Appeals,[36] regarding the manner of computing legal interest, viz:

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

In Philippine National Bank v. Court of Appeals,[37] it was held that:

> The rate of 12% interest referred to in Cir. 416 applies only to:
>
> Loan or forbearance of money, or to cases where money is transferred from one person to another and the obligation to return the same or a portion thereof is adjudged. Any other monetary judgment which does not involve or which has nothing to do with loans or forbearance of any, money, goods or credit does not fall within its coverage for such imposition is not within the ambit of the authority granted to the Central Bank. When an obligation not constituting a loan or forbearance of money is breached then an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum in accordance with Art. 2209 of the Civil Code. Indeed, the monetary judgment in favor of private respondent does not involve a loan or forbearance of money, hence the proper imposable rate of interest is six (6%) per cent.

Using the above rule as yardstick, since the responsibility of PNB arises not from a loan or forbearance of money which bears an interest rate of 12%, the proper rate of interest for the amount which PNB must return to the petitioners is only 6%. This interest according to Eastern Shipping shall be computed from the time of the filing of the complaint. However, once the judgment becomes final and executory, the "interim period from the finality of judgment awarding a monetary claim and until payment thereof, is deemed to be equivalent to a forbearance of credit.' Thus, in accordance with the pronouncement in Eastern Shipping, the rate of 12% per annum should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied.

It must be emphasized, however, that our holding in this case does not preclude PNB from proving and recovering in a proper proceeding any deficiency in the amount of petitioners' loan obligation that may have accrued after the date of the auction sale.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated 12 April 2005 is MODIFIED in that the PNB is directed to return to the petitioners the amount of P2,101,185.08 with interest computed at 6% per annum from the time of the filing of the complaint until its full payment before finality of judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% per annum computed from the time the judgment became final and executory until fully satisfied. Costs against private respondent.

SO ORDERED.

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

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[1] Rollo, p. 93.

[2] Records, pp. 1-6.

[3] Id. at 2.

[4] Id. at 5.

[5] Id. at 14.

[6] Id. at 19.

[7] Id. at 31.

[8] Id. at 65.

[9] Penned by Judge Ulric R. Cañete.

[10] Records, p. 182.

[11] Id. at 146.

[12] Rollo, p. 15.

[13] Docketed as CA-G.R. CV No. 65905.

[14] Penned by Associate Justice Vicente L. Yap with Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas, concurring; rollo, pp. 18-26.

[15] Rollo, p. 25.

[16] Id. at 23-24.

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[17] Id. at 27.

[18] Id. at 41-42.

[19] Tambunting v. Court of Appeals, G.R. No. L-48278, 8 November 1988, 167 SCRA 16, 23.

[20] San Jose v. Court of Appeals, G.R. No. 106953, 19 August 1993, 225 SCRA 450, 454.

[21] Olizon v. Court of Appeals, G.R. No. 107075, 1 September 1994, 236 SCRA 148, 156.

[22] Supra note 20 at 454.

[23] G.R. No. L-75786, 31 August 1987, 153 SCRA 564, 572.

[24] Records, p. 146.

[25] Id. at 149.

[26] PNB further brings to the attention of this Court that during the pendency of this case, the RTC of Cebu City, Branch 6, promulgated its Decision dated 5 July 2005 in Civil Case No. CEB-15236. According to the RTC of Cebu City which rendered the decision in Civil Case No. CEB-15236, petitioners owed PNB two kinds of loan, namely a Time Loan Commercial in the amount of P1,750,000 and an export advance loan of P3,360,293.21. The RTC of Cebu City, Branch 6, took note as well of EJF Case No. 92-5-15, before the Mandaue City Sheriff's Office which is the extrajudicial foreclosure of mortgage now subject of the present Petition, where PNB bidded the amount of P8,511,000.00. The RTC of Cebu City, in Civil Case No. CEB-15236, found that since the petitioners' overdue obligation already reached P9,118,481.85 and the proceeds of the extrajudicial foreclosure of mortgage in EJF Case No. 92-5-15 amounted only to P8,511,000.00, clearly, petitioners still had a loan balance in the amount of P607,481.85. The RTC of Cebu City thus declared that petitioners are liable to PNB for its deficiency claim.

The dispositive portion of Civil Case No. CEB-15236 provides:

> WHEREFORE, this Court renders judgment in favor of plaintiff and against the defendants, as follows:
>
> 1) Ordering defendants, jointly and severally, to pay plaintiff P607,481.85 plus interest thereon of 12% per year beginning October 30, 1992 until it is fully paid;
>
> 2) Ordering defendants to pay plaintiff, jointly and severally a penalty of 12% per year on that deficiency beginning October 30, 1992 until it is fully paid;
>
> 3) Ordering defendants, jointly and severally, to pay plaintiff attorney's fees in the amount equivalent to 10% of that deficiency;

Ordering defendants to pay the costs. (Rollo, p. 149.)

Per verification with RTC, Cebu City, Branch 6, on the status of Civil Case No. CEB-15236, the same was subject of a Notice of Appeal filed by PNB which the RTC granted on 28 October 2005.

[27] Villavicencio v. Mojares, 446 Phil. 421, 429 (2003).

[28] Ruiz v. Sheriff of Manila, 145 Phil. 111, 115 (1970).

[29] Paras, Rules of Court, Vol. 2 (1990 ed.), p. 141.

[30] Sulit v. Court of Appeals, 335 Phil. 914, 931 (1997).

[31] Id. at 457.

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[32] Records, p. 71.

[33] Id. at 65.

[34] Ladignon v. Court of Appeals, 390 Phil. 1161, 1170 (2000).

[35] Dated 12 January 1994, Annex B, records, p. 74; dated 4 February 1994, Annex B-4, records, p. 79.

[36] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

[37] 331 Phil. 1079, 1083-1084 (1996).

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