

**CARLOS LIM, CONSOLACION LIM, EDMUNDO LIM, CARLITO LIM,
SHIRLEY LEODADIA DIZON, AND ARLEEN LIM FERNANDEZ,
PETITIONERS, VS. DEVELOPMENT BANK OF THE PHILIPPINES,
RESPONDENT.**

G.R. No. 177050. July 01, 2013

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

“While the law recognizes the right of a bank to foreclose a mortgage upon the mortgagor’s failure to pay his obligation, it is imperative that such right be exercised according to its clear mandate. Each and every requirement of the law must be complied with, lest, the valid exercise of the right would end.”[1]

This Petition for Review on Certiorari[2] under Rule 45 of the Rules of Court assails the February 22, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 59275.

Factual Antecedents

On November 24, 1969, petitioners Carlos, Consolacion, and Carlito, all surnamed Lim, obtained a loan of P40,000.00 (Lim Account) from respondent Development Bank of the Philippines (DBP) to finance their cattle raising business.[4] On the same day, they executed a Promissory Note[5] undertaking to pay the annual amortization with an interest rate of 9% per annum and penalty charge of 11% per annum.

On December 30, 1970, petitioners Carlos, Consolacion, Carlito, and Edmundo, all surnamed Lim; Shirley Leodadia Dizon, Arleen Lim Fernandez, Juan S. Chua,[6] and Trinidad D. Chua[7] obtained another loan from DBP[8] in the amount of P960,000.00 (Diamond L Ranch Account).[9] They also executed a Promissory Note,[10] promising to pay the loan annually from August 22, 1973 until August 22, 1982 with an interest rate of 12% per annum and a penalty charge of 1/3% per month on the overdue amortization.

To secure the loans, petitioners executed a Mortgage[11] in favor of DBP over real properties covered by the following titles registered in the Registry of Deeds for the Province of South Cotabato:

- (a) TCT No. T-6005 x x x in the name of Edmundo Lim;
- (b) TCT No. T-6182 x x x in the name of Carlos Lim;
- (c) TCT No. T-7013 x x x in the name of Carlos Lim;
- (d) TCT No. T-7012 x x x in the name of Carlos Lim;
- (e) TCT No. T-7014 x x x in the name of Edmundo Lim;
- (f) TCT No. T-7016 x x x in the name of Carlito Lim;
- (g) TCT No. T-28922 x x x in the name of Consolacion Lim;

(h) TCT No. T-29480 x x x in the name of Shirley Leodadia Dizon;

(i) TCT No. T-24654 x x x in the name of Trinidad D. Chua; and

(j) TCT No. T-25018 x x x in the name of Trinidad D. Chua's deceased husband Juan Chua.[12]

Due to violent confrontations between government troops and Muslim rebels in Mindanao from 1972 to 1977, petitioners were forced to abandon their cattle ranch.[13] As a result, their business collapsed and they failed to pay the loan amortizations.[14]

In 1978, petitioners made a partial payment in the amount of P902,800.00,[15] leaving an outstanding loan balance of P610,498.30, inclusive of charges and unpaid interest, as of September 30, 1978.[16]

In 1989, petitioners, represented by Edmundo Lim (Edmundo), requested from DBP Statements of Account for the "Lim Account" and the "Diamond L Ranch Account." [17] Quoted below are the computations in the Statements of Account, as of January 31, 1989 which were stamped with the words "Errors & Omissions Excepted/Subject to Audit:"

Diamond L Ranch Account:

Matured [Obligation]:

Principal

P 939,973.33

Regular Interest

561,037.14

Advances

34,589.45

Additional Interest

2,590,786.26

Penalty Charges

1,068,147.19

Total claims as of January 31, 1989

P 5,194,533.37[18]

Lim Account:

Matured [Obligation]:

Principal

P 40,000.00

Regular Interest

5,046.97

Additional Interest

92,113.56

Penalty Charges

39,915.46

Total claims as of January 31, 1989

P 177,075.99[19]

Claiming to have already paid P902,800.00, Edmundo requested for an amended statement of account.[20]

On May 4, 1990, Edmundo made a follow-up on the request for recomputation of the two accounts.[21] On May 17, 1990, DBP's General Santos Branch informed Edmundo that the Diamond L Ranch Account amounted to P2,542,285.60 as of May 31, 1990[22] and that the mortgaged properties located at San Isidro, Lagao, General Santos City, had been subjected to Operation Land Transfer under the Comprehensive Agrarian Reform Program (CARP) of the government.[23] Edmundo was also advised to discuss with the Department of Agrarian Reform (DAR) and the Main Office of DBP[24] the matter of the expropriated properties.

Edmundo asked DBP how the mortgaged properties were ceded by DAR to other persons without their knowledge.[25] No reply was made.[26]

On April 30, 1991, Edmundo again signified petitioners' intention to settle the Diamond L Ranch Account.[27] Again, no reply was made.[28]

On February 21, 1992, Edmundo received a Notice of Foreclosure scheduled the following day.[29] To stop the foreclosure, he was advised by the bank's Chief Legal Counsel to pay an interest covering a 60-days period or the amount of P60,000.00 to postpone the foreclosure for 60 days.[30] He was also advised to submit a written proposal for the settlement of the loan accounts.[31]

In a letter[32] dated March 20, 1992, Edmundo proposed the settlement of the accounts through dacion en pago, with the balance to be paid in equal quarterly payments over five years.

In a reply-letter[33] dated May 29, 1992, DBP rejected the proposal and informed Edmundo that unless the accounts are fully settled as soon as possible, the bank will pursue foreclosure proceedings.

DBP then sent Edmundo the Statements of Account[34] as of June 15, 1992 which were stamped with the words "Errors & Omissions Excepted/Subject to Audit" indicating the following amounts: (1) Diamond L Ranch: P7,210,990.27 and (2) Lim Account: P187,494.40.

On June 11, 1992, Edmundo proposed to pay the principal and the regular interest of the loans in 36 equal monthly installments.[35]

On July 3, 1992, DBP advised Edmundo to coordinate with Branch Head Bonifacio Tamayo, Jr. (Tamayo).[36] Tamayo promised to review the accounts.[37]

On September 21, 1992, Edmundo received another Notice from the Sheriff that the mortgaged properties would be auctioned on November 22, 1992.[38] Edmundo again paid P30,000.00 as additional interest to postpone the auction.[39] But despite payment of P30,000.00, the mortgaged properties were still auctioned with DBP emerging as the highest bidder in the amount of P1,086,867.26.[40] The auction sale, however, was later withdrawn by DBP for lack of jurisdiction.[41]

Thereafter, Tamayo informed Edmundo of the bank's new guidelines for the settlement of outstanding loan accounts under Board Resolution No. 0290-92.[42] Based on these guidelines, petitioners' outstanding loan

obligation was computed at P3,500,000.00 plus.[43] Tamayo then proposed that petitioners pay 10% downpayment and the remaining balance in 36 monthly installments.[44] He also informed Edmundo that the bank would immediately prepare the Restructuring Agreement upon receipt of the downpayment and that the conditions for the settlement have been “pre-cleared” with the bank’s Regional Credit Committee.[45] Thus, Edmundo wrote a letter[46] on October 30, 1992 manifesting petitioners’ assent to the proposal.

On November 20, 1992, Tamayo informed Edmundo that the proposal was accepted with some minor adjustments and that an initial payment should be made by November 27, 1992.[47]

On December 15, 1992, Edmundo paid the downpayment of P362,271.75[48] and was asked to wait for the draft Restructuring Agreement.[49]

However, on March 16, 1993, Edmundo received a letter[50] from Tamayo informing him that the Regional Credit Committee rejected the proposed Restructuring Agreement; that it required downpayment of 50% of the total obligation; that the remaining balance should be paid within one year; that the interest rate should be non prime or 18.5%, whichever is higher; and that the proposal is effective only for 90 days from March 5, 1993 to June 2, 1993.[51]

Edmundo, in a letter[52] dated May 28, 1993, asked for the restoration of their previous agreement.[53] On June 5, 1993, the bank replied,[54] viz:

This has reference to your letter dated May 28, 1993, which has connection to your desire to restructure the Diamond L Ranch/Carlos Lim Accounts.

We wish to clarify that what have been agreed between you and the Branch are not final until [the] same has been approved by higher authorities of the Bank. We did [tell] you during our discussion that we will be recommending the restructuring of your accounts with the terms and conditions as agreed. Unfortunately, our Regional Credit Committee did not agree to the terms and conditions as recommended, hence, the subject of our letter to you on March 15, 1993.

Please be informed further, that the Branch cannot do otherwise but to comply with the conditions imposed by the Regional Credit Committee. More so, the time frame given had already lapsed on June 2, 1993.

Unless we will receive a favorable action on your part soonest, the Branch will be constrained to do appropriate action to protect the interest of the Bank.”[55]

On July 28, 1993, Edmundo wrote a letter[56] of appeal to the Regional Credit Committee.

In a letter[57] dated August 16, 1993, Tamayo informed Edmundo that the previous Restructuring Agreement was reconsidered and approved by the Regional Credit Committee subject to the following additional conditions, to wit:

- 1) Submission of Board Resolution and Secretary’s Certificate designating you as authorized representative in behalf of Diamond L Ranch;
- 2) Payment of March 15 and June 15, 1993 amortizations within 30 days from date hereof; and
- 3) Submission of SEC registration.

In this connection, please call immediately x x x our Legal Division to guide you for the early documentation of your approved restructuring.

Likewise, please be reminded that upon failure on your part to sign and perfect the documents and comply [with] other conditions within (30) days from date of receipt, your approved recommendation shall be deemed

CANCELLED and your deposit of P362,271.75 shall be applied to your account.

No compliance was made by Edmundo.[58]

On September 21, 1993, Edmundo received Notice that the mortgaged properties were scheduled to be auctioned on that day.[59] To stop the auction sale, Edmundo asked for an extension until November 15, 1993[60] which was approved subject to additional conditions:

Your request for extension is hereby granted with the conditions that:

- 1) This will be the last and final extension to be granted your accounts; and
- 2) That all amortizations due from March 1993 to November 1993 shall be paid including the additional interest computed at straight 18.5% from date of your receipt of notice of approval, viz:

x x x x

Failure on your part to comply with these conditions, the Bank will undertake appropriate legal measures to protect its interest.

Please give this matter your preferential attention.[61]

On November 8, 1993, Edmundo sent Tamayo a telegram, which reads:

Acknowledge receipt of your Sept. 27 letter. I would like to finalize documentation of restructuring Diamond L Ranch and Carlos Lim Accounts. However, we would need clarification on amortizations due on NTFI means [sic]. I will call x x x your Legal Department at DBP Head Office by Nov. 11. Pls. advise who[m] I should contact. Thank you.[62]

Receiving no response, Edmundo scheduled a meeting with Tamayo in Manila.[63] During their meeting, Tamayo told Edmundo that he would send the draft of the Restructuring Agreement by courier on November 15, 1993 to the Main Office of DBP in Makati, and that Diamond L Ranch need not submit the Board Resolution, the Secretary's Certificate, and the SEC Registration since it is a single proprietorship.[64]

On November 24, 1993 and December 3, 1993, Edmundo sent telegrams to Tamayo asking for the draft of the Restructuring Agreement.[65]

On November 29, 1993, the documents were forwarded to the Legal Services Department of DBP in Makati for the parties' signatures. At the same time, Edmundo was required to pay the amount of P1,300,672.75, plus a daily interest of P632.15 starting November 16, 1993 up to the date of actual payment of the said amount.[66]

On December 19, 1993, Edmundo received the draft of the Restructuring Agreement.[67]

In a letter[68] dated January 6, 1994, Tamayo informed Edmundo that the bank cancelled the Restructuring Agreement due to his failure to comply with the conditions within a reasonable time.

On January 10, 1994, DBP sent Edmundo a Final Demand Letter asking that he pay the outstanding amount of P6,404,412.92, as of November 16, 1993, exclusive of interest and penalty charges.[69]

Edmundo, in a letter[70] dated January 18, 1994, explained that his lawyer was not able to review the agreement due to the Christmas holidays. He also said that his lawyer was requesting clarification on the following points:

- Can the existing obligations of the Mortgagors, if any, be specified in the Restructuring Agreement already?
- Is there a statement showing all the accrued interest and advances that shall first be paid before the restructuring shall be implemented?

- Should Mr. Jun Sarenas Chua and his wife Mrs. Trinidad Chua be required to sign as Mortgagors considering that Mr. Chua is deceased and the pasture lease which he used to hold has already expired?[71]

Edmundo also indicated that he was prepared to pay the first quarterly amortization on March 15, 1994 based on the total obligations of P3,260,445.71, as of December 15, 1992, plus interest.[72]

On January 28, 1994, Edmundo received from the bank a telegram[73] which reads:

We refer to your cattle ranch loan carried at our DBP General Santos City Branch.

Please coordinate immediately with our Branch Head not later than 29 January 1994, to forestall the impending foreclosure action on your account.

Please give the matter your utmost attention.

The bank also answered Edmundo's queries, viz:

In view of the extended leave of absence of AVP Bonifacio A. Tamayo, Jr. due to the untimely demise of his father, we regret [that] he cannot personally respond to your letter of January 18, 1994. However, he gave us the instruction to answer your letter on direct to the point basis as follows:

- Yes to Items No. 1 and 2,
- No longer needed on Item No. 3

AVP Tamayo would like us also to convey to you to hurry up with your move to settle the obligation, while the foreclosure action is still pending with the legal division. He is afraid you might miss your last chance to settle the account of your parents.[74]

Edmundo then asked about the status of the Restructuring Agreement as well as the computation of the accrued interest and advances[75] but the bank could not provide any definite answer.[76]

On June 8, 1994, the Office of the Clerk of Court and Ex-Officio Provincial Sheriff of the RTC of General Santos City issued a Notice[77] resetting the public auction sale of the mortgaged properties on July 11, 1994. Said Notice was published for three consecutive weeks in a newspaper of general circulation in General Santos City.[78]

On July 11, 1994, the Ex-Officio Sheriff conducted a public auction sale of the mortgaged properties for the satisfaction of petitioners' total obligations in the amount of P5,902,476.34. DBP was the highest bidder in the amount of P3,310,176.55.[79]

On July 13, 1994, the Ex-Officio Sheriff issued the Sheriff's Certificate of Extra-Judicial Sale in favor of DBP covering 11 parcels of land.[80]

In a letter[81] dated September 16, 1994, DBP informed Edmundo that their right of redemption over the foreclosed properties would expire on July 28, 1995, to wit:

This is to inform you that your right of redemption over your former property/ies acquired by the Bank on July 13, 1994, thru Extra-Judicial Foreclosure under Act 3135 will lapse on July 28, 1995.

In view thereof, to entitle you of the maximum condonable amount (Penal Clause, AI on Interest, PC/Default Charges) allowed by the Bank, we are urging you to exercise your right within six (6) months from the date of auction sale on or before January 12, 1995.

Further, failure on your part to exercise your redemption right by July 28, 1995 will constrain us to offer your former property/ies in a public bidding.

Please give this matter your preferential attention. Thank you.[82]

On July 28, 1995, petitioners filed before the RTC of General Santos City, a Complaint[83] against DBP for Annulment of Foreclosure and Damages with Prayer for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order. Petitioners alleged that DBP's acts and omissions prevented them from fulfilling their obligation; thus, they prayed that they be discharged from their obligation and that the foreclosure of the mortgaged properties be declared void. They likewise prayed for actual damages for loss of business opportunities, moral and exemplary damages, attorney's fees, and expenses of litigation.[84]

On same date, the RTC issued a Temporary Restraining Order[85] directing DBP to cease and desist from consolidating the titles over petitioners' foreclosed properties and from disposing the same.

In an Order[86] dated August 18, 1995, the RTC granted the Writ of Preliminary Injunction and directed petitioners to post a bond in the amount of P3,000,000.00.

DBP filed its Answer,[87] arguing that petitioners have no cause of action;[88] that petitioners failed to pay their loan obligation;[89] that as mandated by Presidential Decree No. 385, initial foreclosure proceedings were undertaken in 1977 but were aborted because petitioners were able to obtain a restraining order;[90] that on December 18, 1990, DBP revived its application for foreclosure but it was again held in abeyance upon petitioners' request;[91] that DBP gave petitioners written and verbal demands as well as sufficient time to settle their obligations;[92] and that under Act 3135,[93] DBP has the right to foreclose the properties.[94]

Ruling of the Regional Trial Court

On December 10, 1996, the RTC rendered a Decision,[95] the dispositive portion of which reads:

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

- (1) Declaring that the [petitioners] have fully extinguished and discharged their obligation to the [respondent] Bank;
- (2) Declaring the foreclosure of [petitioners'] mortgaged properties, the sale of the properties under the foreclosure proceedings and the resultant certificate of sale issued by the foreclosing Sheriff by reason of the foreclosure NULL and VOID;
- (3) Ordering the return of the [properties] to [petitioners] free from mortgage liens;
- (4) Ordering [respondent] bank to pay [petitioners], actual and compensatory damages of P170,325.80;
- (5) Temperate damages of P50,000.00;
- (c) Moral damages of P500,000.00;
- (d) Exemplary damages of P500,000.00;
- (e) Attorney's fees in the amount of P100,000.00; and
- (f) Expenses of litigation in the amount of P20,000.00.

[Respondent] Bank's counterclaims are hereby DISMISSED.

[Respondent] Bank is likewise ordered to pay the costs of suit.

SO ORDERED.[96]

Ruling of the Court of Appeals

On appeal, the CA reversed and set aside the RTC Decision. Thus:

WHEREFORE, in view of the foregoing, the instant appeal is hereby GRANTED. The assailed Decision dated 10 December 1996 is hereby REVERSED and SET ASIDE. A new judgment is hereby rendered. It shall now read as follows:

WHEREFORE, premises considered, judgment is hereby rendered:

- Ordering the dismissal of the Complaint in Civil Case No. 5608;
- Declaring the extrajudicial foreclosure of [petitioners'] mortgaged properties as valid;
- Ordering [petitioners] to pay the [respondent] the amount of Two Million Five Hundred Ninety Two Thousand Two Hundred Ninety Nine [Pesos] and Seventy-Nine Centavos (P2,592,299.79) plus interest and penalties as stipulated in the Promissory Note computed from 11 July 1994 until full payment; and
- Ordering [petitioners] to pay the costs.

SO ORDERED.

SO ORDERED.[97]

Issues

Hence, the instant recourse by petitioners raising the following issues:

1. Whether x x x respondent's own wanton, reckless and oppressive acts and omissions in discharging its reciprocal obligations to petitioners effectively prevented the petitioners from paying their loan obligations in a proper and suitable manner;
2. Whether x x x as a result of respondent's said acts and omissions, petitioners' obligations should be deemed fully complied with and extinguished in accordance with the principle of constructive fulfillment;
3. Whether x x x the return by the trial Court of the mortgaged properties to petitioners free from mortgage liens constitutes unjust enrichment;
4. Whether x x x the low bid price made by the respondent for petitioners' mortgaged properties during the foreclosure sale is so gross, shocking to the conscience and inherently iniquitous as to constitute sufficient ground for setting aside the foreclosure sale;
5. Whether x x x the restructuring agreement reached and perfected between the petitioners and the respondent novated and extinguished petitioners' loan obligations to respondent under the Promissory Notes sued upon; and
6. Whether x x x the respondent should be held liable to pay petitioners actual and compensatory damages, temperate damages, moral damages, exemplary damages, attorney's fees and expenses of litigation.[98]

Petitioners' Arguments

Petitioners seek the reinstatement of the RTC Decision which declared their obligation fully extinguished and the foreclosure proceedings of their mortgaged properties void.

Relying on the Principle of Constructive Fulfillment, petitioners insist that their obligation should be deemed fulfilled since DBP prevented them from performing their obligation by charging excessive interest and penalties not stipulated in the Promissory Notes, by failing to promptly provide them with the correct Statements of Account, and by cancelling the Restructuring Agreement even if they already paid P362,271.75 as downpayment.[99] They likewise deny any fault or delay on their part in finalizing the Restructuring

Agreement.[100]

In addition, petitioners insist that the foreclosure sale is void for lack of personal notice[101] and the inadequacy of the bid price.[102] They contend that at the time of the foreclosure, petitioners' obligation was not yet due and demandable,[103] and that the restructuring agreement novated and extinguished petitioners' loan obligation.[104]

Finally, petitioners claim that DBP acted in bad faith or in a wanton, reckless, or oppressive manner; hence, they are entitled to actual, temperate, moral and exemplary damages, attorney's fees, and expenses of litigation.[105]

Respondent's Arguments

DBP, on the other hand, denies acting in bad faith or in a wanton, reckless, or oppressive manner[106] and in charging excessive interest and penalties.[107] According to it, the amounts in the Statements of Account vary because the computations were based on different cut-off dates and different incentive schemes.[108]

DBP further argues that the foreclosure sale is valid because gross inadequacy of the bid price as a ground for the annulment of the sale applies only to judicial foreclosure.[109] It likewise maintains that the Promissory Notes and the Mortgage were not novated by the proposed Restructuring Agreement.[110]

As to petitioners' claim for damages, DBP contends it is without basis because it did not act in bad faith or in a wanton, reckless, or oppressive manner.[111]

Our Ruling

The Petition is partly meritorious.

The obligation was not extinguished or discharged.

The Promissory Notes subject of the instant case became due and demandable as early as 1972 and 1976. The only reason the mortgaged properties were not foreclosed in 1977 was because of the restraining order from the court. In 1978, petitioners made a partial payment of P902,800.00. No subsequent payments were made. It was only in 1989 that petitioners tried to negotiate the settlement of their loan obligations. And although DBP could have foreclosed the mortgaged properties, it instead agreed to restructure the loan. In fact, from 1989 to 1994, DBP gave several extensions for petitioners to settle their loans, but they never did, thus, prompting DBP to cancel the Restructuring Agreement.

Petitioners, however, insist that DBP's cancellation of the Restructuring Agreement justifies the extinguishment of their loan obligation under the Principle of Constructive Fulfillment found in Article 1186 of the Civil Code.

We do not agree.

As aptly pointed out by the CA, Article 1186 of the Civil Code, which states that "the condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment," does not apply in this case,[112] viz:

Article 1186 enunciates the doctrine of constructive fulfillment of suspensive conditions, which applies when the following three (3) requisites concur, viz: (1) The condition is suspensive; (2) The obligor actually prevents the fulfillment of the condition; and (3) He acts voluntarily. Suspensive condition is one the happening of which gives rise to the obligation. It will be irrational for any Bank to provide a suspensive condition in the Promissory Note or the Restructuring Agreement that will allow the debtor-promissor to be freed from the duty to pay the loan without paying it.[113]

Besides, petitioners have no one to blame but themselves for the cancellation of the Restructuring Agreement. It is

significant to point out that when the Regional Credit Committee reconsidered petitioners' proposal to restructure the loan, it imposed additional conditions. In fact, when DBP's General Santos Branch forwarded the Restructuring Agreement to the Legal Services Department of DBP in Makati, petitioners were required to pay the amount of P1,300,672.75, plus a daily interest of P632.15 starting November 16, 1993 up to the date of actual payment of the said amount.[114] This, petitioners failed to do. DBP therefore had reason to cancel the Restructuring Agreement.

Moreover, since the Restructuring Agreement was cancelled, it could not have novated or extinguished petitioners' loan obligation. And in the absence of a perfected Restructuring Agreement, there was no impediment for DBP to exercise its right to foreclose the mortgaged properties.[115]

The foreclosure sale is not valid.

But while DBP had a right to foreclose the mortgage, we are constrained to nullify the foreclosure sale due to the bank's failure to send a notice of foreclosure to petitioners.

We have consistently held that unless the parties stipulate, "personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary"[116] because Section 3[117] of Act 3135 only requires the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation.

In this case, the parties stipulated in paragraph 11 of the Mortgage that:

11. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extra-judicial action shall be sent to the Mortgagor at xxx or at the address that may hereafter be given in writing by the Mortgagor or the Mortgagee;[118]

However, no notice of the extrajudicial foreclosure was sent by DBP to petitioners about the foreclosure sale scheduled on July 11, 1994. The letters dated January 28, 1994 and March 11, 1994 advising petitioners to immediately pay their obligation to avoid the impending foreclosure of their mortgaged properties are not the notices required in paragraph 11 of the Mortgage. The failure of DBP to comply with their contractual agreement with petitioners, i.e., to send notice, is a breach sufficient to invalidate the foreclosure sale.

In *Metropolitan Bank and Trust Company v. Wong*,[119] we explained that:

x x x a contract is the law between the parties and, that absent any showing that its provisions are wholly or in part contrary to law, morals, good customs, public order, or public policy, it shall be enforced to the letter by the courts. Section 3, Act No. 3135 reads:

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city.

The Act only requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation. Personal notice to the mortgagor is not necessary. Nevertheless, the parties to the mortgage contract are not precluded from exacting additional requirements. In this case, petitioner and respondent in entering into a contract of real estate mortgage, agreed inter alia:

all correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extra-judicial action shall be sent to the MORTGAGOR at 40-42 Aldeguer St. Iloilo City, or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE.

Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might

take on the subject property, thus according him the opportunity to safeguard his rights. When petitioner failed to send the notice of foreclosure sale to respondent, he committed a contractual breach sufficient to render the foreclosure sale on November 23, 1981 null and void.[120] (Emphasis supplied)

In view of foregoing, the CA erred in finding the foreclosure sale valid.

Penalties and interest rates should be expressly stipulated in writing.

As to the imposition of additional interest and penalties not stipulated in the Promissory Notes, this should not be allowed. Article 1956 of the Civil Code specifically states that “no interest shall be due unless it has been expressly stipulated in writing.” Thus, the payment of interest and penalties in loans is allowed only if the parties agreed to it and reduced their agreement in writing.[121]

In this case, petitioners never agreed to pay additional interest and penalties. Hence, we agree with the RTC that these are illegal, and thus, void. Quoted below are the findings of the RTC on the matter, to wit:

Moreover, in its various statements of account, [respondent] Bank charged [petitioners] for additional interests and penalties which were not stipulated in the promissory notes.

In the Promissory Note, Exhibit “A,” for the principal amount of P960,000.00, only the following interest and penalty charges were stipulated:

- (1) interest at the rate of twelve percent (12%) per annum;
- (2) penalty charge of one-third percent (1/3%) per month on overdue amortization;
- (3) attorney’s fees equivalent to ten percent (10%) of the total indebtedness then unpaid; and
- (4) advances and interest thereon at one percent (1%) per month.

[Respondent] bank, however, charged [petitioners] the following items as shown in its Statement of Account for the period as of 31 January 1989, Exhibit “D:”

- (1) regular interest in the amount of P561,037.14;
- (2) advances in the amount of P34,589.45;
- (3) additional interest in the amount of P2,590,786.26; and
- 4) penalty charges in the amount of P1,068,147.19.

The Court finds no basis under the Promissory Note, Exhibit “A,” for charging the additional interest in the amount of P2,590,786.26. Moreover, it is incomprehensible how the penalty charge of 1/3% per month on the overdue amortization could amount to P1,086,147.19 while the regular interest, which was stipulated at the higher rate of 12% per annum, amounted to only P561,037.14 or about half of the amount allegedly due as penalties.

In Exhibit “N,” which is the statement of account x x x as of 15 June 1992, [respondent] bank charged plaintiffs the following items:

- (1) regular interest in the amount of P561,037.14;
- (2) advances in the amount of P106,893.93;
- (3) additional interest on principal in the amount of P1,233,893.79;
- (4) additional interest on regular interest in the amount of P859,966.83;
- (5) additional interest on advances in the amount of P27,206.45;
- (6) penalty charges on principal in the amount of P1,639,331.15;
- (7) penalty charges on regular interest in the amount of P1,146,622.55;
- (8) penalty charges on advances in the amount of P40,520.53.

Again, the Court finds no basis in the Promissory Note, Exhibit “A,” for the imposition of additional interest on

principal in the amount of P1,233,893.79, additional interest on regular interest in the amount of P859,966.83, penalty charges on regular interest in the amount of P1,146,622.55 and penalty charges on advances in the amount of P40,520.53.

In the Promissory Note, Exhibit “C,” for the principal amount of P40,000.00, only the following charges were stipulated:

- (1) interest at the rate of nine percent (9%) per annum;
- (2) all unpaid amortization[s] shall bear interest at the rate of eleven percent (11%) per annum; and,
- (3) attorney’s fees equivalent to ten percent (10%) of the total indebtedness then unpaid.

In its statement of account x x x as of 31 January 1989, Exhibit “E,” [respondent] bank charged [petitioners] with the following items:

- (1) regular interest in the amount of P5,046.97
- (2) additional interest in the amount of P92,113.56; and
- (3) penalty charges in the amount of P39,915.46.

There was nothing in the Promissory Note, Exhibit “C,” which authorized the imposition of additional interest. Again, this Court notes that the additional interest in the amount of P92,113.56 is even larger than the regular interest in the amount of P5,046.97. Moreover, based on the Promissory Note, Exhibit “C,” if the 11% interest on unpaid amortization is considered an “additional interest,” then there is no basis for [respondent] bank to add penalty charges as there is no other provision providing for this charge. If, on the other hand, the 11% interest on unpaid amortization is considered the penalty charge, then there is no basis to separately charge plaintiffs additional interest. The same provision cannot be used to charge plaintiffs both interest and penalties.

In Exhibit “O,” which is the statement of account x x x as of 15 June 1992, [respondent] charged [petitioners] with the following:

- (1) regular interest in the amount of P4,621.25;
- (2) additional interest on principal in the amount of P65,303.33;
- (3) additional interest on regular interest in the amount of P7,544.58;
- (4) penalty charges on principal in the amount of P47,493.33;
- (5) penalty charges on regular interest in the amount of P5,486.97;
- (6) penalty charges on advances in the amount of P40,520.53.

[Respondent] bank failed to show the basis for charging additional interest on principal, additional interest on regular interest and penalty charges on principal and penalty charges on regular interest under items (2), (3), (4) and (5) above.

Moreover, [respondent] bank charged [petitioners] twice under the same provisions in the promissory notes. It categorically admitted that the additional interests and penalty charges separately being charged [petitioners] referred to the same provision of the Promissory Notes, Exhibits “A” and “C.” Thus, for the Lim Account in the amount of P40,000.00, [respondent’s] Mr. Ancheta stated:

Q:

In Exhibit 14, it is stated that for a principal amount of P40,000.00 you imposed an additional interest in the amount of P65,303.33 in addition to the regular interest of P7,544.58, can you tell us looking [at] the mortgage contract and promissory note what is your basis for charging that additional interest?

A:

The same as that when I answered Exhibit No. 3, which shall cover amortization on the principal and interest at the above-mentioned rate. All unpaid amortization[s] shall bear interest at the rate of eleven per centum (11%) per annum.

Q:

You also imposed penalty which is on the principal in the amount of P40,000.00 in the amount of P47,493.33 in addition to regular interest of P5,486.96. Can you point what portion of Exhibit 3 gives DBP the right to impose such penalty?

A:

The same paragraph as stated.

Q:

Can you please read the portion referring to penalty?

A:

All unpaid amortization shall bear interest at the rate of 11% per annum.

Q:

The additional interest is based on 11% per annum and the penalty is likewise based on the same rate?

A:

Yes, it is combined (TSN, 28 May 1996, pp. 39-40.)

With respect to the Diamond L. Ranch account in the amount of P960,000.00, Mr. Ancheta testified as follows:

Q:

Going back to Exhibit 14 Statement of Accounts. Out of the principal of P939,973.33 you imposed an additional interest of P1,233,893.79 plus P859,966.83 plus P27,206.45. Can you tell us what is the basis of the imposition?

A:

As earlier stated, it is only the Promissory Note as well as the Mortgage Contract.

Q:

Please point to us where in the Promissory Note is the specific portion?

A:

In Exhibit 1: "in case of failure to pay in full any amortization when due, a penalty charge of 1/3% per month on the overdue amortization shall be paid."

Q:

What is the rate?

A:

1/3% per month.

Q:

So, the imposition of the additional interest and the penalty charge is based on the same provision?

A:

Yes (TSN, 28 May 1996, pp. 41-42.)

A perusal of the promissory notes, however, failed to justify [respondent] bank's computation of both interest and penalty under the same provision in each of the promissory notes.

[Respondent] bank also admitted that the additional interests and penalties being charged [petitioners] were not based on the stipulations in the Promissory Notes but were imposed unilaterally as a matter of its internal banking policies. (TSN, 19 March 1996, pp. 23-24.) This banking policy, however, has been declared null and void in *Philippine National Bank vs. CA*, 196 SCRA 536 (1991). The act of [respondent] bank in unilaterally changing the stipulated interest rate is violative of the principle of mutuality of contracts under 1308 of the Civil Code and contravenes 1956 of the Civil Code. [Respondent] bank completely ignored [petitioners'] "right to assent to an important modification in their agreement and (negated) the element of mutuality in contracts." (*Philippine National Bank vs. CA*, G.R. No. 109563, 9 July 1996; *Philippine National Bank vs. CA*, 238 SCRA 20 1994). As in the PNB cases, [petitioners] herein never agreed in writing to pay the additional interest, or the penalties, as fixed by [respondent] bank; hence [respondent] bank's imposition of additional interest and penalties is null and void.[122] (Emphasis supplied)

Consequently, this case should be remanded to the RTC for the proper determination of petitioners' total loan obligation based on the interest and penalties stipulated in the Promissory Notes.

DBP did not act in bad faith or in a wanton, reckless, or oppressive manner.

Finally, as to petitioners' claim for damages, we find the same devoid of merit.

DBP did not act in bad faith or in a wanton, reckless, or oppressive manner in cancelling the Restructuring Agreement. As we have said, DBP had reason to cancel the Restructuring Agreement because petitioners failed to pay the amount required by it when it reconsidered petitioners' request to restructure the loan.

Likewise, DBP's failure to send a notice of the foreclosure sale to petitioners and its imposition of additional interest and penalties do not constitute bad faith. There is no showing that these contractual breaches were done in bad faith or in a wanton, reckless, or oppressive manner.

In *Philippine National Bank v. Spouses Rocamora*, [123] we said that:

Moral damages are not recoverable simply because a contract has been breached. They are recoverable only if the defendant acted fraudulently or in bad faith or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, and oppressive or abusive. Likewise, a breach of contract may give rise to exemplary damages only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

We are not sufficiently convinced that PNB acted fraudulently, in bad faith, or in wanton disregard of its contractual obligations, simply because it increased the interest rates and delayed the foreclosure of the mortgages. Bad faith cannot be imputed simply because the defendant acted with bad judgment or with attendant negligence. Bad faith is more than these; it pertains to a dishonest purpose, to some moral obliquity, or to the conscious doing of a wrong, a breach of a known duty attributable to a motive, interest or ill will that partakes of the nature of fraud. Proof of actions of this character is undisputably lacking in this case. Consequently, we do not find the spouses Rocamora entitled to an award of moral and exemplary damages. Under these circumstances, neither should they recover attorney's fees and litigation expense. These awards

are accordingly deleted.[124] (Emphasis supplied)

WHEREFORE, the Petition is PARTLY GRANTED. The assailed February 22, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 59275 is hereby MODIFIED in accordance with this Decision. The case is hereby REMANDED to the Regional Trial Court of General Santos City, Branch 22, for the proper determination of petitioners' total loan obligations based on the interest and penalties stipulated in the Promissory Notes dated November 24, 1969 and December 30, 1970. The foreclosure sale of the mortgaged properties held on July 11, 1994 is DECLARED void ab initio for failure to comply with paragraph 11 of the Mortgage, without prejudice to the conduct of another foreclosure sale based on the recomputed amount of the loan obligations, if necessary.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Perlas-Bernabe, JJ., concur.

[*] Also referred to as Eduardo Lim in some parts of the records.

[**] Also referred to as Shirley Leocadio Dizon in some parts of the records.

[1] Metropolitan Bank v. Wong, 412 Phil. 207, 220 (2001).

[2] Rollo, pp. 58-156.

[3] CA rollo, pp. 238-284; penned by Associate Justice Teresita Dy-Liacco Flores and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Jane Aurora C. Lantion.

[4] The loan was granted by DBP of Davao Branch. However, on January 14, 1972, the loan account was transferred to DBP General Santos Branch. (Exhibit "38," Folder of Exhibits for DBP)

[5] Records, p. 35.

[6] Deceased.

[7] As per this Court's Resolution dated January 16, 2008, the name of Trinidad D. Chua was dropped as petitioner in the absence of a Special Power of Attorney authorizing petitioner Edmundo T. Lim to sign the verification of the petition in behalf of Trinidad D. Chua (Rollo, p. 550).

[8] The loan was granted by DBP Davao Branch. However, on January 14, 1972, the loan account was transferred to DBP General Santos Branch. (Exhibit "38," Folder of Exhibits for DBP)

[9] Rollo, p. 213.

[10] Records, p. 26.

[11] Id. at 27-34.

[12] Id. at 3.

[13] Id. at 279.

[14] Id.

[15] CA rollo, p. 241.

[16] Records, p. 279.

- [17] Id.
- [18] Exhibit “D,” Folder of Exhibits for petitioners.
- [19] Exhibit “L,” id.
- [20] Records, p. 280.
- [21] Exhibit “F,” Folder of Exhibits for petitioners.
- [22] Exhibit “G,” id.
- [23] Records, p. 282.
- [24] Id.
- [25] Exhibit “H,” Folder of Exhibits for petitioners.
- [26] Records, p. 282.
- [27] Exhibit “I,” Folder of Exhibits for petitioners.
- [28] Records, p. 282.
- [29] Id.
- [30] Id. at 282-283.
- [31] Id. at 283.
- [32] Exhibit “J,” Folder of Exhibits for petitioners.
- [33] Exhibit “K,” id.
- [34] Exhibits “N” and “O,” id.
- [35] Exhibit “M,” id.
- [36] Exhibit “P,” id.
- [37] Records, p. 285.
- [38] CA rollo, p. 257.
- [39] Id.
- [40] Records, p. 285.
- [41] CA rollo, pp. 251-252.
- [42] Records, p. 286.
- [43] Id.
- [44] Id.
- [45] Id.
- [46] Exhibit “R,” Folder of Exhibits for petitioners.
- [47] Exhibit “S,” id.

- [48] Exhibit “V,” id.
- [49] Records, p. 288.
- [50] Exhibit “W,” Folder of Exhibits for petitioners.
- [51] Id.
- [52] Exhibit “X,” id.
- [53] Id.
- [54] Exhibit “Y,” id.
- [55] Id. at 229-230.
- [56] Exhibit “Z,” Folder of Exhibits for petitioners.
- [57] Exhibit “AA,” id.
- [58] CA rollo, p. 259.
- [59] Id.
- [60] Id.
- [61] Exhibit “BB,” Folder of Exhibits for petitioners.
- [62] Exhibit “CCC,” id.
- [63] Records, pp. 291-292.
- [64] Id. at 292
- [65] Id.
- [66] CA rollo, pp. 242-243.
- [67] Records, p. 293.
- [68] Exhibit “HH,” Folder of Exhibits for petitioners.
- [69] CA rollo, p. 265.
- [70] Exhibit “II,” Folder of Exhibits for petitioners.
- [71] Id.
- [72] Id.
- [73] Exhibit “II-1,” id.
- [74] Exhibit “JJ,” id.
- [75] Records, p. 294.
- [76] CA rollo, p. 264.
- [77] Exhibit “49,” Folder of Exhibits for DBP.
- [78] Exhibit “50,” id.

[79] Exhibit “52,” *id.*

[80] CA rollo, p. 268.

[81] Exhibit “KK,” Folder of Exhibits for petitioners.

[82] *Id.*

[83] Records, pp. 1-25.

[84] *Id.* at 23-24.

[85] *Id.* at 62-63.

[86] *Id.* at 129-131.

[87] *Id.* at 146-160.

[88] *Id.* at 150.

[89] *Id.* at 151.

[90] *Id.*

[91] *Id.*

[92] *Id.* at 153.

[93] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES, as amended. Approved March 6, 1924.

[94] Records, p. 152.

[95] *Id.* at 368-420; penned by Judge Teodoro A. Dizon, Jr.

[96] *Id.* at 419-420.

[97] CA rollo, p. 283. Emphases in the original.

[98] Rollo, pp. 578-579.

[99] *Id.* at 584-602.

[100] *Id.* at 603-627.

[101] *Id.* at 639-643.

[102] *Id.* at 636-638.

[103] *Id.* at 643-658.

[104] *Id.* at 658-665.

[105] *Id.* at 665-677.

[106] *Id.* at 712-719.

[107] *Id.* at 714-715.

[108] *Id.* at 715.

[109] Id. at 719-722.

[110] Id. at 722-728.

[111] Id. at 728-731.

[112] CA rollo, p. 275.

[113] Id.

[114] Id. at 242-243.

[115] Asset Privatization Trust v. Court of Appeals, 360 Phil. 768, 796 (1998).

[116] Global Holiday Ownership Corporation v. Metropolitan Bank & Trust Company, G.R. No. 184081, June 19, 2009, 590 SCRA 188, 201.

[117] SEC. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

[118] Exhibit "B," Folder of Exhibits for petitioners.

[119] Supra note 1.

[120] Id. at 216-217.

[121] Prisma Construction & Development Corporation v. Menchavez, G.R. No. 160545, March 9, 2010, 614 SCRA 590, 598.

[122] Records, pp. 385-390.

[123] G.R. No. 164549, September 18, 2009, 600 SCRA 395.

[124] Id. at 411-412.

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