

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.
SPOUSES RUFO TOMELDAN AND SOLEDAD CASTELO, SPOUSES
PEDRO TOMELDAN AND MAGDALENA CABURIAN, SPOUSES
FERNANDO GABRIANA AND CATA...**

G.R. No. 51269. November 17, 1980

Ponente: ABAD SANTOS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-51269/>

ABAD SANTOS, J.:

This is a certiorari petition to set aside the Order, dated November 7, 1978, of the respondent judge which dismissed Civil Case No. D-3888 of the Court of First Instance of Pangasinan, Branch VIII, Dagupan City, on the ground that the cause of action has prescribed.

The facts, in brief, are: The Development Bank of the Philippines (DBP) loaned to the private respondents on June 23, 1963, a sum of money which they promised to pay jointly and severally. The obligation was secured by a real estate mortgage which was extra-judicially foreclosed when the borrowers failed to pay the loan. There was a deficiency or an unpaid balance after the foreclosure so DBP sued the borrowers for the deficiency on March 14, 1977, in Civil Case No. D-3888 aforesaid. All of the defendants were declared in default except for Fernando Gabriela and Catalina Tomeldan who were represented by Atty. Santos Areola.

On November 27, 1978, the respondent judge issued the questioned Order which reads as follows:

"Set for hearing on November 20, 1978 was the preliminary question raised in the answer as to whether the cause of action of the plaintiff has already prescribed. On the said date Atty. Feliciano Gramata appeared for the plaintiff. There was no appearance for defendants despite due notice.

Atty. Gramata argued that plaintiff Bank's cause of action has not prescribed manifesting that on September 15, 1967 plaintiff bank foreclosed extra-judicially the properties subject of the mortgage and sold the same at public auction. The highest bid was put up by the plaintiff bank and because the highest bid was not enough to completely write off the loan there was a deficiency judgment in the sum of more than P26,000.00. Atty. Gramata argued further that the cause of action on the deficiency payment accrued the next day, September 16, 1967 and that the action has not prescribed because it was filed six months before the ten-year period counted from the time of the accrual of the cause of action.

This legal incident was considered submitted for resolution in the said Order of November 20, 1978.

The Court does not agree with the theory of the plaintiff. The cause of action is for deficiency judgment which is in the nature of an action for the recovery of a sum of money.

The Court believes that the cause of action of the plaintiff is covered by the five-year prescriptive period. In a case for recovery of deficiency franchise tax, the Supreme Court ruled that the cause of action is covered by the five-year prescriptive period. (Commissioner of Internal Revenue vs. Iligan Electric and Ice Plant, Inc., et al., 29 SCRA 634). Also, because no express provision covers prescription of action to recover a sum of money, the same must, therefore, fall under Article 1149 of the Civil Code which provides that all other

actions whose periods are not fixed in the code or in other laws must be brought within five years from the time the cause of action accrues.

Atty. Gramata admitted at the hearing of November 20, 1978 that the cause of action on the deficiency payment accrued on September 16, 1967. Accordingly, this action should have been filed within five years from the said date. The complaint for deficiency claim having been filed on March 14, 1977, the cause of action already prescribed at the time the case was filed.

WHEREFORE, this case is hereby dismissed on the ground that the cause of action has prescribed."

Hence the present petition where the only issue is whether or not the cause of action of DBP has already prescribed. Our opinion is that it has not yet prescribed.

There is agreement that DBP's cause of action accrued on September 16, 1967, so that when the case was filed on March 14, 1977, less than ten years had elapsed.

We do not agree with the trial court that DBP's cause of action is a residual one and therefore falls under Article 1149 of the Civil Code which reads: "Art. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues." As will be shown below, specific provisions of the Civil Code are instead applicable. Nor is the case of Commissioner of Internal Revenue vs. Iligan Electric and Ice Plant, Inc., No. L-23081, Sept. 30, 1969, 29 SCRA, which the trial court has cited applicable to the case at bar. In said case We held that an action to recover a sum of money as erroneously refunded franchise tax is covered by the five-year prescriptive period specifically provided in the Tax Code which is a special law and therefore prevails over a general law like the Civil Code.

DBP contends that its cause of action is governed by Art. 1144 of the Civil Code because the obligation of the private respondents to pay the deficiency is one created by law. That article reads:

"Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment."

It has been held that the mortgagee in both real and chattel mortgages has by law the right to claim for the deficiency resulting from the price obtained in the sale of the property at public auction and the outstanding obligation at the time of the foreclosure proceedings. (Philippine Bank of Commerce vs. De Vera, L-18816, Dec. 29, 1962, 6 SCRA 1026; Bank of P.I. vs. Olutanga Lumber Co., 47 Phil. 20 [1924]; Ablaza vs. Ignacio, 103 Phil. 1151 [1958].) Applied to the present case, DBP has the right to claim payment of the deficiency after it had foreclosed and, correlatively, the private respondents have the corresponding obligation created by law to pay such deficiency. Hence, the ten-year period provided in Art. 1144 applies to the case at bar.

It can also be said that DBP's action can be governed by par. (1) of Art. 1144, supra, because in suing for the deficiency it is merely seeking to enforce the written Promissory Note secured by a mortgage which the private respondents executed.

Finally, a suit for the recovery of the deficiency after the foreclosure of a mortgage is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract. Such being the case Article 1142 of the Civil Code is likewise applicable to the instant case. Said provision reads: "Art. 1142. A mortgage action prescribes after ten years."

The fact that DBP has tarried for almost ten years before filing a deficiency suit does not speak well of the

professionalism of its personnel. We note from its complaint that the deficiency as of December 13, 1967, soon after the foreclosure, amounted to only P15,830.56, representing principal, interest and litigation expenses. But that amount has ballooned for DBP's prayer asks, "That defendants be ordered to pay solidarily to the plaintiff the sum of P26,513.72 representing plaintiff's claim for deficiency on defendants' loan amount as of February 28, 1977, principal and interests included, plus interests thereon at the rate of 7% per annum daily commencing on February 9, 1977 until the total obligation is fully paid." in this light, DBP's actuations deserving of severe criticism to say the least. It is our hope that DBP shall exert every effort to effect an equitable compromise with the private respondents with the aid of the trial court.

Let a copy of this decision be sent to the Chairman of the Board of Governors, Development Bank of the Philippines, for his information and guidance.

WHEREFORE, the Order dismissing Civil Case No. D-3888 is set aside and the respondent judge is hereby ordered to continue its trial. No special pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., and De Castro, JJ., concur.

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.