

UNION BANK OF THE PHILIPPINES, PETITIONER, VS. SPOUSES RODOLFO T. TIU AND VICTORIA N. TIU, RESPONDENTS.

G.R. Nos. 173090-91. September 07, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is a Petition for Review on Certiorari seeking to reverse the Joint Decision[1] of the Court of Appeals dated February 21, 2006 in CA-G.R. CV No. 00190 and CA-G.R. SP No. 00253, as well as the Resolution[2] dated June 1, 2006 denying the Motion for Reconsideration.

The factual and procedural antecedents of this case are as follows:

On November 21, 1995, petitioner Union Bank of the Philippines (Union Bank) and respondent spouses Rodolfo T. Tiu and Victoria N. Tiu (the spouses Tiu) entered into a Credit Line Agreement (CLA) whereby Union Bank agreed to make available to the spouses Tiu credit facilities in such amounts as may be approved.[3] From September 22, 1997 to March 26, 1998, the spouses Tiu took out various loans pursuant to this CLA in the total amount of three million six hundred thirty-two thousand dollars (US\$3,632,000.00), as evidenced by promissory notes:

PN No.

Amount in US\$

Date Granted

87/98/111

72,000.00

02/16/98

87/98/108

84,000.00

02/13/98

87/98/152

320,000.00

03/02/98

87/98/075

150,000.00

01/30/98
87/98/211
32,000.00
03/26/98
87/98/071
110,000.00
01/29/98
87/98/107
135,000.00
02/13/98
87/98/100
75,000.00
02/12/98
87/98/197
195,000.00
03/19/98
87/97/761
60,000.00
09/26/97
87/97/768
30,000.00
09/29/97
87/97/767
180,000.00
09/29/97
87/97/970
110,000.00
12/29/97
87/97/747
50,000.00
09/22/97

87/96/944

605,000.00

12/19/97

87/98/191

470,000.00

03/16/98

87/98/198

505,000.00

03/19/98

87/98/090

449,000.00

02/09/98

US\$3,632,000.00[4]

On June 23, 1998, Union Bank advised the spouses Tiu through a letter[5] that, in view of the existing currency risks, the loans shall be redenominated to their equivalent Philippine peso amount on July 15, 1998. On July 3, 1998, the spouses Tiu wrote to Union Bank authorizing the latter to redenominate the loans at the rate of US\$1=P41.40[6] with interest of 19% for one year.[7]

On December 21, 1999, Union Bank and the spouses Tiu entered into a Restructuring Agreement.[8] The Restructuring Agreement contains a clause wherein the spouses Tiu confirmed their debt and waived any action on account thereof. To quote said clause:

- Confirmation of Debt - The BORROWER hereby confirms and accepts that as of December 8, 1999, its outstanding principal indebtedness to the BANK under the Agreement and the Notes amount to ONE HUNDRED FIFTY[-]FIVE MILLION THREE HUNDRED SIXTY[-]FOUR THOUSAND EIGHT HUNDRED PESOS (PHP 155,364,800.00) exclusive of interests, service and penalty charges (the "Indebtedness") and further confirms the correctness, legality, collectability and enforceability of the Indebtedness. The BORROWER unconditionally waives any action, demand or claim that they may otherwise have to dispute the amount of the Indebtedness as of the date specified in this Section, or the collectability and enforceability thereof. It is the understanding of the parties that the BORROWER's acknowledgment, affirmation, and waiver herein are material considerations for the BANK's agreeing to restructure the Indebtedness which would have already become due and payable as of the above date under the terms of the Agreement and the Notes.[9]

The restructured amount (P155,364,800.00) is the sum of the following figures: (1) P150,364,800.00, which is the value of the US\$3,632,000.00 loan as redenominated under the above-mentioned exchange rate of US\$1=P41.40; and (2) P5,000,000.00, an additional loan given to the spouses Tiu to update their interest payments.[10]

Under the same Restructuring Agreement, the parties declared that the loan obligation to be restructured (after deducting the dacion price of properties ceded by the Tiu spouses and adding: [1] the taxes, registration fees and other expenses advanced by Union Bank in registering the Deeds of Dation in Payment; and [2] other fees and charges incurred by the Indebtedness) is one hundred four million six hundred sixty-eight thousand seven hundred

forty-one pesos (P104,668,741.00) (total restructured amount).[11] The Deeds of Dation in Payment referred to are the following:

- Dation of the Labangon properties - Deed executed by Juanita Tiu, the mother of respondent Rodolfo Tiu, involving ten parcels of land with improvements located in Labangon, Cebu City and with a total land area of 3,344 square meters, for the amount of P25,130,000.00. The Deed states that these properties shall be leased to the Tiu spouses at a monthly rate of P98,000.00 for a period of two years.[12]
- Dation of the Mandaue property - Deed executed by the spouses Tiu involving one parcel of land with improvements located in A.S. Fortuna St., Mandaue City, covered by TCT No. T-31604 and with a land area of 2,960 square meters, for the amount of P36,080,000.00. The Deed states that said property shall be leased to the Tiu spouses at a monthly rate of P150,000.00 for a period of two years.[13]

As likewise provided in the Restructuring Agreement, the spouses Tiu executed a Real Estate Mortgage in favor of Union Bank over their "residential property inclusive of lot and improvements" located at P. Burgos St., Mandaue City, covered by TCT No. T-11951 with an area of 3,096 square meters.[14]

The spouses Tiu undertook to pay the total restructured amount (P104,668,741.00) via three loan facilities (payment schemes).

The spouses Tiu claim to have made the following payments: (1) P15,000,000.00 on August 3, 1999; and (2) another P13,197,546.79 as of May 8, 2001. Adding the amounts paid under the Deeds of Dation in Payment, the spouses Tiu postulate that their payments added up to P89,407,546.79.[15]

Asserting that the spouses Tiu failed to comply with the payment schemes set up in the Restructuring Agreement, Union Bank initiated extrajudicial foreclosure proceedings on the residential property of the spouses Tiu, covered by TCT No. T-11951. The property was to be sold at public auction on July 18, 2002.

The spouses Tiu, together with Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu, filed with the Regional Trial Court (RTC) of Mandaue City a Complaint seeking to have the Extrajudicial Foreclosure declared null and void. The case was docketed as Civil Case No. MAN-4363.[16] Named as defendants were Union Bank and Sheriff IV Veronico C. Ouano (Sheriff Oano) of Branch 55, RTC, Mandaue City. Complainants therein prayed for the following: (1) that the spouses Tiu be declared to have fully paid their obligation to Union Bank; (2) that defendants be permanently enjoined from proceeding with the auction sale; (3) that Union Bank be ordered to return to the spouses Tiu their properties as listed in the Complaint; (4) that Union Bank be ordered to pay the plaintiffs the sum of P10,000,000.00 as moral damages, P2,000,000.00 as exemplary damages, P3,000,000.00 as attorney's fees and P500,000.00 as expenses of litigation; and (5) a writ of preliminary injunction or temporary restraining order be issued enjoining the public auction sale to be held on July 18, 2002.[17]

The spouses Tiu claim that from the beginning the loans were in pesos, not in dollars. Their office clerk, Lilia Gutierrez, testified that the spouses Tiu merely received the peso equivalent of their US\$3,632,000.00 loan at the rate of US\$1=P26.00. The spouses Tiu further claim that they were merely forced to sign the Restructuring Agreement and take up an additional loan of P5,000,000.00, the proceeds of which they never saw because this amount was immediately applied by Union Bank to interest payments.[18]

The spouses Tiu allege that the foreclosure sale of the mortgaged properties was invalid, as the loans have already been fully paid. They also allege that they are not the owners of the improvements constructed on the lot because the real owners thereof are their co-petitioners, Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu.[19]

The spouses Tiu further claim that prior to the signing of the Restructuring Agreement, they entered into a Memorandum of Agreement with Union Bank whereby the former deposited with the latter several certificates of shares of stock of various companies and four certificates of title of various parcels of land located in Cebu. The spouses Tiu claim that these properties have not been subjected to any lien in favor of Union Bank, yet the latter continues to hold on to these properties and has not returned the same to the former.[20]

On the other hand, Union Bank claims that the Restructuring Agreement was voluntarily and validly entered into by both parties. Presenting as evidence the Warranties embodied in the Real Estate Mortgage, Union Bank contends that the foreclosure of the mortgage on the residential property of the spouses Tiu was valid and that the improvements thereon were absolutely owned by them. Union Bank denies receiving certificates of shares of stock of various companies or the four certificates of title of various parcels of land from the spouses Tiu. However, Union Bank also alleges that even if said certificates were in its possession it is authorized under the Restructuring Agreement to retain any and all properties of the debtor as security for the loan.[21]

The RTC issued a Temporary Restraining Order[22] and, eventually, a Writ of Preliminary Injunction[23] preventing the sale of the residential property of the spouses Tiu. [24]

On December 16, 2004, the RTC rendered its Decision[25] in Civil Case No. MAN-4363 in favor of Union Bank. The dispositive portion of the Decision read:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the Complaint and lifting and setting aside the Writ of Preliminary Injunction. No pronouncement as to damages, attorney's fees and costs of suit.[26]

In upholding the validity of the Restructuring Agreement, the RTC held that the spouses Tiu failed to present any evidence to prove either fraud or intimidation or any other act vitiating their consent to the same. The exact obligation of the spouses Tiu to Union Bank is therefore P104,668,741.00, as agreed upon by the parties in the Restructuring Agreement. As regards the contention of the spouses Tiu that they have fully paid their indebtedness, the RTC noted that they could not present any detailed accounting as to the total amount they have paid after the execution of the Restructuring Agreement.[27]

On January 4, 2005, Union Bank filed a Motion for Partial Reconsideration,[28] protesting the finding in the body of the December 16, 2004 Decision that the residential house on Lot No. 639 is not owned by the spouses Tiu and therefore should be excluded from the real properties covered by the real estate mortgage. On January 6, 2005, the spouses Tiu filed their own Motion for Partial Reconsideration and/or New Trial.[29] They alleged that the trial court failed to rule on their fourth cause of action wherein they mentioned that they turned over the following titles to Union Bank: TCT Nos. 30271, 116287 and 116288 and OCT No. 0-3538. They also prayed for a partial new trial and for a declaration that they have fully paid their obligation to Union Bank.[30]

On January 11, 2005, the spouses Tiu received from Sheriff Oano a Second Notice of Extra-judicial Foreclosure Sale of Lot No. 639 to be held on February 3, 2005. To prevent the same, the Tiu spouses filed with the Court of Appeals a Petition for Prohibition and Injunction with Application for TRO/Writ of Preliminary Injunction.[31] The petition was docketed as CA-G.R. SP No. 00253. The Court of Appeals issued a Temporary Restraining Order on January 27, 2005.[32]

On January 19, 2005, the RTC issued an Order denying Union Bank's Motion for Partial Reconsideration and the Tiu spouses' Motion for Partial Reconsideration and/or New Trial.[33]

Both the spouses Tiu and Union Bank appealed the case to the Court of Appeals.[34] The two appeals were given a single docket number, CA-G.R. CEB-CV No. 00190. Acting on a motion filed by the spouses Tiu, the Court of

Appeals consolidated CA-G.R. SP No. 00253 with CA-G.R. CEB-CV No. 00190.[35]

On April 19, 2005, the Court of Appeals issued a Resolution finding that there was no need for the issuance of a Writ of Preliminary Injunction as the judgment of the lower court has been stayed by the perfection of the appeal therefrom.[36]

On May 9, 2005, Sheriff Oano proceeded to conduct the extrajudicial sale. Union Bank submitted the lone bid of P18,576,000.00.[37] On June 14, 2005, Union Bank filed a motion with the Court of Appeals praying that Sheriff Oano be ordered to issue a definite and regular Certificate of Sale.[38] On July 21, 2005, the Court of Appeals issued a Resolution denying the Motion and suspending the auction sale at whatever stage, pending resolution of the appeal and conditioned upon the filing of a bond in the amount of P18,000,000.00 by the Tiu spouses.[39] The Tiu spouses failed to file said bond.[40]

On February 21, 2006, the Court of Appeals rendered the assailed Joint Decision in CA-G.R. CV No. 00190 and CA-G.R. SP No. 00253. The Court of Appeals dismissed the Petition for Prohibition, CA-G.R. SP No. 00253, on the ground that the proper venue for the same is with the RTC.[41]

On the other hand, the Court of Appeals ruled in favor of the spouses Tiu in CA-G.R. CV No. 00190. The Court of Appeals held that the loan transactions were in pesos, since there was supposedly no stipulation the loans will be paid in dollars and since no dollars ever exchanged hands. Considering that the loans were in pesos from the beginning, the Court of Appeals reasoned that there is no need to convert the same. By making it appear that the loans were originally in dollars, Union Bank overstepped its rights as creditor, and made unwarranted interpretations of the original loan agreement. According to the Court of Appeals, the Restructuring Agreement, which purportedly attempts to create a novation of the original loan, was not clearly authorized by the debtors and was not supported by any cause or consideration. Since the Restructuring Agreement is void, the original loan of P94,432,000.00 (representing the amount received by the spouses Tiu of US\$3,632,000.00 using the US\$1=P26.00 exchange rate) should subsist. The Court of Appeals likewise invalidated (1) the P5,000,000.00 charge for interest in the Restructuring Agreement, for having been unilaterally imposed by Union Bank; and (2) the lease of the properties conveyed in dacion en pago, for being against public policy. [42]

In sum, the Court of Appeals found Union Bank liable to the spouses Tiu in the amount of P927,546.79. For convenient reference, we quote relevant portion of the Court of Appeal's Decision here:

To summarize the obligation of the Tiu spouses, they owe Union Bank P94,432,000.00. The Tiu spouses had already paid Union Bank the amount of P89,407,546.79. On the other hand, Union Bank must return to the Tiu spouses the illegally collected rentals in the amount of P5,952,000.00. Given these findings, the obligation of the Tiu spouses has already been fully paid. In fact, it is the Union Bank that must return to the Tiu spouses the amount of NINE HUNDRED TWENTY[-]SEVEN THOUSAND FIVE HUNDRED FORTY[-]SIX PESOS AND SEVENTY[-]NINE CENTAVOS (P927,546.79).[43]

With regard to the ownership of the improvements on the subject mortgaged property, the Court of Appeals ruled that it belonged to respondent Rodolfo Tiu's father, Jose Tiu, since 1981. According to the Court of Appeals, Union Bank should not have relied on warranties made by debtors that they are the owners of the property. The appellate court went on to permanently enjoin Union Bank from foreclosing the mortgage not only of the property covered by TCT No. T-11951, but also any other mortgage over any other property of the spouses Tiu.[44]

The Court of Appeals likewise found Union Bank liable to return the certificates of stocks and titles to real properties of the spouses Tiu in its possession. The appellate court held that Union Bank made judicial admissions of such possession in its Reply to Plaintiff's Request for Admission.[45] In the event that Union Bank can no longer return these certificates and titles, it was mandated to shoulder the cost for their replacement.[46]

Finally, the Court of Appeals took judicial notice that before or during the financial crisis, banks actively convinced debtors to make dollar loans in the guise of benevolence, saddling borrowers with loans that ballooned twice or thrice their original loans. The Court of Appeals, noting "the cavalier way with which banks exploited and manipulated the situation,"[47] held Union Bank liable to the spouses Tiu for P100,000.00 in moral damages, P100,000.00 in exemplary damages, and P50,000.00 in attorney's fees.[48]

The Court of Appeals disposed of the case as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us permanently enjoining Union Bank from foreclosing the mortgage of the residential property of the Tiu spouses which is covered by Transfer Certificate of Title No. 11951 and from pursuing other foreclosure of mortgages over any other properties of the Tiu spouses for the above-litigated debt that has already been fully paid. If a foreclosure sale has already been made over such properties, this Court orders the cancellation of such foreclosure sale and the Certificate of Sale thereof if any has been issued. This Court orders Union Bank to return to the Tiu spouses the amount of NINE HUNDRED TWENTY[-]SEVEN THOUSAND FIVE HUNDRED FORTY[-]SIX PESOS AND SEVENTY[-]NINE CENTAVOS (P927,546.79) representing illegally collected rentals. This Court also orders Union Bank to return to the Tiu spouses all the certificates of shares of stocks and titles to real properties of the Tiu spouses that were deposited to it or, in lieu thereof, to pay the cost for the replacement and issuance of new certificates and new titles over the said properties. This Court finally orders Union Bank to pay the Tiu spouses ONE HUNDRED THOUSAND PESOS (P100,000.00) in moral damages, ONE HUNDRED THOUSAND PESOS (P100,000.00) in exemplary damages, FIFTY THOUSAND PESOS (P50,000.00) in attorney's fees and cost, both in the lower court and in this Court.[49]

On June 1, 2006, the Court of Appeals rendered the assailed Resolution denying Union Bank's Motion for Reconsideration.

Hence, this Petition for Review on Certiorari, wherein Union Bank submits the following issues for the consideration of this Court:

- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT CONCLUDED THAT THERE WERE NO DOLLAR LOANS OBTAINED BY [THE] TIU SPOUSES FROM UNION BANK DESPITE [THE] CLEAR ADMISSION OF INDEBTEDNESS BY THE BORROWER-MORTGAGOR TIU SPOUSES.
- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT NULLIFIED THE RESTRUCTURING AGREEMENT BETWEEN TIU SPOUSES AND UNION BANK FOR LACK OF CAUSE OR CONSIDERATION DESPITE THE ADMISSION OF THE BORROWER-MORTGAGOR TIU SPOUSES OF THE DUE AND VOLUNTARY EXECUTION OF SAID RESTRUCTURING AGREEMENT.
- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT PERMANENTLY ENJOINED UNION BANK FROM FORECLOSING THE MORTGAGE ON THE RESIDENTIAL PROPERTY OF THE TIU SPOUSES DESPITE THE ADMISSION OF NON-PAYMENT OF THEIR OUTSTANDING LOAN TO THE BANK BY THE BORROWER-MORTGAGOR TIU SPOUSES;
- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT FIXED THE AMOUNT OF THE OBLIGATION OF RESPONDENT SPOUSES CONTRARY TO THE PROVISIONS OF THE PROMISSORY NOTES, RESTRUCTURING AGREEMENT AND [THE] VOLUNTARY ADMISSIONS BY BORROWER-MORTGAGOR TIU SPOUSES;
- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT RULED ON THE ALLEGED RENTALS PAID BY RESPONDENT SPOUSES WITHOUT ANY

FACTUAL BASIS;

- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT HELD WITHOUT ANY FACTUAL BASIS THAT THE LOAN OBLIGATION OF TIU SPOUSES HAS BEEN FULLY PAID;

- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT HELD WITHOUT ANY FACTUAL BASIS THAT THE HOUSE INCLUDED IN THE REAL ESTATE MORTGAGE DID NOT BELONG TO THE TIU SPOUSES.

- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN ORDERING UNION BANK TO RETURN THE CERTIFICATES OF SHARES OF STOCK AND TITLES TO REAL PROPERTIES OF TIU SPOUSES ALLEGEDLY IN THE POSSESSION OF UNION BANK.

- WHETHER OR NOT THE COURT OF APPEALS VIOLATED THE DOCTRINES AND PRINCIPLES ON APPELLATE JURISDICTION.

- WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN AWARDING DAMAGES AGAINST UNION BANK.[50]

Validity of the Restructuring Agreement

As previously discussed, the Court of Appeals declared that the Restructuring Agreement is void on account of its being a failed novation of the original loan agreements. The Court of Appeals explained that since there was no stipulation that the loans will be paid in dollars, and since no dollars ever exchanged hands, the original loan transactions were in pesos.[51] Proceeding from this premise, the Court of Appeals held that the Restructuring Agreement, which was meant to convert the loans into pesos, was unwarranted. Thus, the Court of Appeals reasoned that:

Be that as it may, however, since the loans of the Tiu spouses from Union Bank were peso loans from the very beginning, there is no need for conversion thereof. A Restructuring Agreement should merely confirm the loans, not add thereto. By making it appear in the Restructuring Agreement that the loans were originally dollar loans, Union Bank overstepped its rights as a creditor and made unwarranted interpretations of the original loan agreement. This Court is not bound by such interpretations made by Union Bank. When one party makes an interpretation of a contract, he makes it at his own risk, subject to a subsequent challenge by the other party and a modification by the courts. In this case, that party making the interpretation is not just any party, but a well entrenched and highly respected bank. The matter that was being interpreted was also a financial matter that is within the profound expertise of the bank. A normal person who does not possess the same financial proficiency or acumen as that of a bank will most likely defer to the latter's esteemed opinion, representations and interpretations. It has been often stated in our jurisprudence that banks have a fiduciary duty to their depositors. According to the case of *Bank of the Philippine Islands vs. IAC* (G.R. No. 69162, February 21, 1992), "as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship." Such fiduciary relationship should also extend to the bank's borrowers who, more often than not, are also depositors of the bank. Banks are in the business of lending while most borrowers hardly know the basics of such business. When transacting with a bank, most borrowers concede to the expertise of the bank and consider their procedures, pronouncements and representations as unassailable, whether such be true or not. Therefore, when there is a doubtful banking transaction, this Court will tip the scales in favor of the borrower.

Given the above ruling, the Restructuring Agreement, therefore, between the Tiu spouses and Union Bank does not operate to supersede all previous loan documents, as claimed by Union Bank. But the said Restructuring

Agreement, as it was crafted by Union Bank, does not merely confirm the original loan of the Tiu spouses but attempts to create a novation of the said original loan that is not clearly authorized by the debtors and that is not supported by any cause or consideration. According to Article 1292 of the New Civil Code, in order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. Such is not the case in this instance. No valid novation of the original obligation took place. Even granting arguendo that there was a novation, the sudden change in the original amount of the loan to the new amount declared in the Restructuring Agreement is not supported by any cause or consideration. Under Article 1352 of the Civil Code, contracts without cause, or with unlawful cause, produce no effect whatever. A contract whose cause did not exist at the time of the transaction is void. Accordingly, Article 1297 of the New Civil Code mandates that, if the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished at any event. Since the Restructuring Agreement is void and since there was no intention to extinguish the original loan, the original loan shall subsist.[52]

Union Bank does not dispute that the spouses Tiu received the loaned amount of US\$3,632,000.00 in Philippine pesos, not dollars, at the prevailing exchange rate of US\$1=P26.[53] However, Union Bank claims that this does not change the true nature of the loan as a foreign currency loan,[54] and proceeded to illustrate in its Memorandum that the spouses Tiu obtained favorable interest rates by opting to borrow in dollars (but receiving the equivalent peso amount) as opposed to borrowing in pesos.[55]

We agree with Union Bank on this point. Although indeed, the spouses Tiu received peso equivalents of the borrowed amounts, the loan documents presented as evidence, i.e., the promissory notes,[56] expressed the amount of the loans in US dollars and not in any other currency. This clearly indicates that the spouses Tiu were bound to pay Union Bank in dollars, the amount stipulated in said loan documents. Thus, before the Restructuring Agreement, the spouses Tiu were bound to pay Union Bank the amount of US\$3,632,000.00 plus the interest stipulated in the promissory notes, without converting the same to pesos. The spouses Tiu, who are in the construction business and appear to be dealing primarily in Philippine currency, should therefore purchase the necessary amount of dollars to pay Union Bank, who could have justly refused payment in any currency other than that which was stipulated in the promissory notes.

We disagree with the finding of the Court of Appeals that the testimony of Lila Gutierrez, which merely attests to the fact that the spouses Tiu received the peso equivalent of their dollar loan, proves the intention of the parties that such loans should be paid in pesos. If such had been the intention of the parties, the promissory notes could have easily indicated the same.

Such stipulation of payment in dollars is not prohibited by any prevailing law or jurisprudence at the time the loans were taken. In this regard, Article 1249 of the Civil Code provides:

Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

Although the Civil Code took effect on August 30, 1950, jurisprudence had upheld[57] the continued effectivity of Republic Act No. 529, which took effect earlier on June 16, 1950. Pursuant to Section 1[58] of Republic Act No. 529, any agreement to pay an obligation in a currency other than the Philippine currency is void; the most that could be demanded is to pay said obligation in Philippine currency to be measured in the prevailing rate of exchange at the time the obligation was incurred.[59] On June 19, 1964, Republic Act No. 4100 took effect, modifying Republic Act No. 529 by providing for several exceptions to the nullity of agreements to pay in foreign currency.[60]

On April 13, 1993, Central Bank Circular No. 1389[61] was issued, lifting foreign exchange restrictions and

liberalizing trade in foreign currency. In cases of foreign borrowings and foreign currency loans, however, prior Bangko Sentral approval was required. On July 5, 1996, Republic Act No. 8183 took effect,[62] expressly repealing Republic Act No. 529 in Section 2[63] thereof. The same statute also explicitly provided that parties may agree that the obligation or transaction shall be settled in a currency other than Philippine currency at the time of payment.[64]

Although the Credit Line Agreement between the spouses Tiu and Union Bank was entered into on November 21, 1995,[65] when the agreement to pay in foreign currency was still considered void under Republic Act No. 529, the actual loans,[66] as shown in the promissory notes, were taken out from September 22, 1997 to March 26, 1998, during which time Republic Act No. 8183 was already in effect. In *United Coconut Planters Bank v. Beluso*,[67] we held that:

[O]pening a credit line does not create a credit transaction of loan or mutuum, since the former is merely a preparatory contract to the contract of loan or mutuum. Under such credit line, the bank is merely obliged, for the considerations specified therefor, to lend to the other party amounts not exceeding the limit provided. The credit transaction thus occurred not when the credit line was opened, but rather when the credit line was availed of. x x x.[68]

Having established that Union Bank and the spouses Tiu validly entered into dollar loans, the conclusion of the Court of Appeals that there were no dollar loans to novate into peso loans must necessarily fail.

Similarly, the Court of Appeals' pronouncement that the novation was not supported by any cause or consideration is likewise incorrect. This conclusion suggests that when the parties signed the Restructuring Agreement, Union Bank got something out of nothing or that the spouses Tiu received no benefit from the restructuring of their existing loan and was merely taken advantage of by the bank. It is important to note at this point that in the determination of the nullity of a contract based on the lack of consideration, the debtor has the burden to prove the same. Article 1354 of the Civil Code provides that "[a]lthough the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary."

In the case at bar, the Restructuring Agreement was signed at the height of the financial crisis when the Philippine peso was rapidly depreciating. Since the spouses Tiu were bound to pay their debt in dollars, the cost of purchasing the required currency was likewise swiftly increasing. If the parties did not enter into the Restructuring Agreement in December 1999 and the peso continued to deteriorate, the ability of the spouses Tiu to pay and the ability of Union Bank to collect would both have immensely suffered. As shown by the evidence presented by Union Bank, the peso indeed continued to deteriorate, climbing to US\$1=P50.01 on December 2000.[69] Hence, in order to ensure the stability of the loan agreement, Union Bank and the spouses Tiu agreed in the Restructuring Agreement to peg the principal loan at P150,364,800.00 and the unpaid interest at P5,000,000.00.

Before this Court, the spouses Tiu belatedly argue that their consent to the Restructuring Agreement was vitiated by fraud and mistake, alleging that (1) the Restructuring Agreement did not take into consideration their substantial payment in the amount of P40,447,185.60 before its execution; and (2) the dollar loans had already been redenominated in 1997 at the rate of US\$1=P26.34.[70]

We have painstakingly perused over the records of this case, but failed to find any documentary evidence of the alleged payment of P40,447,185.60 before the execution of the Restructuring Agreement. In paragraph 16 of their Amended Complaint, the spouses Tiu alleged payment of P40,447,185.60 for interests before the conversion of the dollar loan.[71] This was specifically denied by Union Bank in paragraph 5 of its Answer with Counterclaim.[72] Respondent Rodolfo Tiu testified that they made "50 million plus" in cash payment plus "other monthly interest payments,"[73] and identified a computation of payments dated July 17, 2002 signed by

himself.[74] Such computation, however, was never formally offered in evidence and was in any event, wholly self-serving.

As regards the alleged redenomination of the same dollar loans in 1997 at the rate of US\$1=P26.34, the spouses Tiu merely relied on the following direct testimony of Herbert Hojas, one of the witnesses of Union Bank:

Q:

Could you please describe what kind of loan was the loan of the spouses Rodolfo Tiu, the plaintiffs in this case?

A:

It was originally an FCDU, meaning a dollar loan.

Q:

What happened to this FCDU loan or dollar loan?

A:

The dollar loan was re-denominated in view of the very unstable exchange of the dollar and the peso at that time,

Q:

Could you still remember what year this account was re-denominated from dollar to peso?

A:

I think it was on the year 1997.

Q:

Could [you] still remember what was then the prevailing exchange rate between the dollar and the peso at that year 1997?

A:

Yes. I have here the list of the dollar exchange rate from January 1987 (sic). It was P26.34 per dollar.[75]

Neither party presented any documentary evidence of the alleged redenomination in 1997. Respondent Rodolfo Tiu did not even mention it in his testimony. Furthermore, Hojas was obviously uncertain in his statement that said redenomination was made in 1997.

As pointed out by the trial court, the Restructuring Agreement, being notarized, is a public document enjoying a prima facie presumption of authenticity and due execution. Clear and convincing evidence must be presented to overcome such legal presumption.[76] The spouses Tiu, who attested before the notary public that the Restructuring Agreement "is their own free and voluntary act and deed,"[77] failed to present sufficient evidence to prove otherwise. It is difficult to believe that the spouses Tiu, veteran businessmen who operate a multi-million peso company, would sign a very important document without fully understanding its contents and consequences.

This Court therefore rules that the Restructuring Agreement is valid and, as such, a valid and binding novation of loans of the spouses Tiu entered into from September 22, 1997 to March 26, 1998 which had a total amount of US\$3,632,000.00.

Validity of the Foreclosure of Mortgage

The spouses Tiu challenge the validity of the foreclosure of the mortgage on two grounds, claiming that: (1) the debt had already been fully paid; and (2) they are not the owners of the improvements on the mortgaged property.

(1) Allegation of full payment of the mortgage debt

In the preceding discussion, we have ruled that the Restructuring Agreement is a valid and binding novation of loans of the spouses Tiu entered into from September 22, 1997 to March 26, 1998 in the total amount of US\$3,632,000.00. Thus, in order that the spouses Tiu can be held to have fully paid their loan obligation, they should present evidence showing their payment of the total restructured amount under the Restructuring Agreement which was P104,668,741.00. As we have discussed above, however, while respondent Rodolfo Tiu appeared to have identified during his testimony a computation dated July 17, 2002 of the alleged payments made to Union Bank,[78] the same was not formally offered in evidence. Applying Section 34, Rule 132[79] of the Rules of Court, such computation cannot be considered by this Court. We have held that a formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. It has several functions: (1) to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence; (2) to allow opposing parties to examine the evidence and object to its admissibility; and (3) to facilitate review by the appellate court, which will not be required to review documents not previously scrutinized by the trial court.[80] Moreover, even if such computation were admitted in evidence, the same is self-serving and cannot be given probative weight. In the case at bar, the records do not contain even a single receipt evidencing payment to Union Bank.

The Court of Appeals, however, held that several payments made by the spouses Tiu had been admitted by Union Bank. Indeed, Section 11, Rule 8 of the Rules of Court provides that an allegation not specifically denied is deemed admitted. In such a case, no further evidence would be required to prove the antecedent facts. We should therefore examine which of the payments specified by the spouses Tiu in their Amended Complaint[81] were not specifically denied by Union Bank.

The allegations of payment are made in paragraphs 16 to 21 of the Amended Complaint:

16. Before conversion of the dollar loan into a peso loan[,] the spouses Tiu had already paid the defendant bank the amount of P40,447,185.60 for interests;

17. On August 3, 1999 and August 12, 1999, plaintiffs made payments in the amount of P15,000,000.00;

18. In order to lessen the obligation of plaintiffs, the mother of plaintiff Rodolfo T. Tiu, plaintiff Juanita T. Tiu, executed a deed of dacion in payment in favor of defendant involving her 10 parcels of land located in Labangon, Cebu City for the amount of P25,130,000.00. Copy of the deed was attached to the original complaint as Annex "C";

19. For the same purpose, plaintiffs spouses Tiu also executed a deed of dacion in payment of their property located at A.S. Fortuna St., Mandaue City for the amount of P36,080,000.00. Copy of the deed was attached to the original complaint as Annex "D";

20. The total amount of the two dacions in payment made by the plaintiffs was P61,210,000.00;

21. Plaintiffs spouses Tiu also made other payment of the amount of P13,197,546.79 as of May 8, 2001;[82]

In paragraphs 4 and 5 of their Answer with Counterclaim,[83] Union Bank specifically denied the allegation in paragraph 9 of the Complaint, but admitted the allegations in paragraphs 17, 18, 19, 20 and 21 thereof. Paragraphs 18, 19 and 20 allege the two deeds of dacion. However, these instruments were already incorporated in the computation of the outstanding debt (i.e., subtracted from the confirmed debt of P155,364,800.00), as can be gleaned from the following provisions in the Restructuring Agreement:

a.) The loan obligation to the BANK to be restructured herein after deducting from the Indebtedness of the BORROWER the dacion price of the properties subject of the Deeds of Dacion and adding to the Indebtedness all the taxes, registration fees and other expenses advanced by the bank in registering the Deeds of Dacion, and also adding to the Indebtedness the interest, and other fees and charges incurred by the Indebtedness, amounts to ONE HUNDRED FOUR MILLION SIX HUNDRED SIXTY-EIGHT THOUSAND SEVEN HUNDRED FORTY-ONE PESOS (PHP104,668,741.00) (the "TOTAL RESTRUCTURED AMOUNT").[84]

As regards the allegations of cash payments in paragraphs 17 and 21 of the Amended Complaint, the date of the alleged payment is critical as to whether they were included in the Restructuring Agreement. The payment of P15,000,000.00 alleged in paragraph 17 of the Amended Complaint was supposedly made on August 3 and 12, 1999. This payment was before the date of execution of the Restructuring Agreement on December 21, 1999, and is therefore already factored into the restructured obligation of the spouses.[85] On the other hand, the payment of P13,197,546.79 alleged in paragraph 21 of the Amended Complaint was dated May, 8, 2001. Said payment cannot be deemed included in the computation of the spouses Tiu's debt in the Restructuring Agreement, which was assented to more than a year earlier. This amount (P13,197,546.79) is even absent[86] in the computation of Union Bank of the outstanding debt, in contrast with the P15,000,000.00 payment which is included[87] therein. Union Bank did not explain this discrepancy and merely relied on the spouses Tiu's failure to formally offer supporting evidence. Since this payment of P13,197,546.79 on May 8, 2001 was admitted by Union Bank in their Answer with Counterclaim, there was no need on the part of the spouses Tiu to present evidence on the same. Nonetheless, if we subtract this figure from the total restructured amount (P104,668,741.00) in the Restructuring Agreement, the result is that the spouses Tiu still owe Union Bank P91,471,194.21.

(2) Allegation of third party ownership of the improvements on the mortgaged lot

The Court of Appeals, taking into consideration its earlier ruling that the loan was already fully paid, permanently enjoined Union Bank from foreclosing the mortgage on the property covered by Transfer Certificate of Title No. 11951 (Lot No. 639) and from pursuing other foreclosure of mortgages over any other properties of the spouses Tiu. The Court of Appeals ruled:

The prayer, therefore, of the Tiu spouses to enjoin the foreclosure of the real estate mortgage over their residential property has merit. The loan has already been fully paid. It should also be noted that the house constructed on the residential property of the Tiu spouses is not registered in the name of the Tiu spouses, but in the name of Jose Tiu (Records, pp. 127-132), the father of appellant and petitioner Rodolfo Tiu, since 1981. It had been alleged by the Tiu spouses that Jose Tiu died on December 18, 1983, and, that consequently upon his death, Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu became owners of the house (Records, p. 116). This allegation has not been substantially denied by Union Bank. All that the Union Bank presented to refute this allegation are a Transfer Certificate of Title and a couple of Tax Declarations which do not indicate that a residential house is titled in the name of the Tiu spouses. In fact, in one of the Tax Declarations, the market value of the improvements is worth only P3,630.00. Certainly, Union Bank should have been aware that this Tax Declaration did not cover the residential house. Union Bank should also not rely on warranties made by debtors that they are the owners of the property. They should investigate such representations. The courts have made consistent rulings that a bank, being in the business of lending, is obligated to verify the true ownership of the properties mortgaged to them. Consequently, this Court permanently enjoins Union Bank from foreclosing the mortgage of the residential property of the Tiu spouses which is covered by Transfer Certificate of Title No. 11951 and from pursuing other foreclosure of mortgages over any other properties of the Tiu spouses. If a foreclosure sale has already been made over such properties, this Court orders the cancellation of such foreclosure sale and the Certificate of Sale thereof if any has been issued, and the return of the title to the Tiu spouses.[88]

We disagree. Contrary to the ruling of the Court of Appeals, the burden to prove the spouses Tiu's allegation - that

they do not own the improvements on Lot No. 639, despite having such improvements included in the mortgage - is on the spouses Tiu themselves. The fundamental rule is that he who alleges must prove.[89] The allegations of the spouses Tiu on this matter, which are found in paragraphs 35 to 39[90] of their Amended Complaint, were specifically denied in paragraph 9 of Union Bank's Answer with Counterclaim.[91]

Upon careful examination of the evidence, we find that the spouses Tiu failed to prove that the improvements on Lot No. 639 were owned by third persons. In fact, the evidence presented by the spouses Tiu merely attempt to prove that the improvements on Lot No. 639 were declared for taxes in the name of respondent Rodolfo Tiu's father, Jose Tiu, who allegedly died on December 18, 1983. There was no effort to show how their co-plaintiffs in the original complaint, namely Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu, became co-owners of the house. The spouses Tiu did not present evidence as to (1) who the heirs of Jose Tiu are; (2) if Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu are indeed included as heirs; and (3) why petitioner Rodolfo Tiu is not included as an heir despite being the son of Jose Tiu. No birth certificate of the alleged heirs, will of the deceased, or any other piece of evidence showing judicial or extrajudicial settlement of the estate of Jose Tiu was presented.

In light of the foregoing, this Court therefore sets aside the ruling of the Court of Appeals permanently enjoining Union Bank from foreclosing the mortgage on Lot No. 639, including the improvements thereon.

Validity of Alleged Rental Payments on the Properties Conveyed to the Bank via Dacion en Pago

The Court of Appeals found the lease contracts over the properties conveyed to Union Bank via dacion en pago to be void for being against public policy. The appellate court held that since the General Banking Law of 2000[92] mandates banks to immediately dispose of real estate properties that are not necessary for its own use in the conduct of its business, banks should not enter into two-year contracts of lease over properties paid to them through dacion.[93] The Court of Appeals thus ordered Union Bank to return the rentals it collected. To determine the amount of rentals paid by the spouses Tiu to Union Bank, the Court of Appeals simply multiplied the monthly rental stipulated in the Restructuring Agreement by the stipulated period of the lease agreement:

For the Labangon property, the Tiu spouses paid rentals in the amount of P98,000.00 per month for two years, or a total amount of P2,352,000.00. For the A.S. Fortuna property, the Tiu spouses paid rentals in the amount of P150,000.00 per month for two years, or a total amount of P3,600,000.00. The total amount in rentals paid by the Tiu spouses to Union Bank is FIVE MILLION NINE HUNDRED FIFTY- TWO THOUSAND PESOS (P5,952,000.00). This Court finds that the return of this amount to the Tiu spouses is called for since it will better serve public policy. These properties that were given by the Tiu spouses to Union Bank as payment should not be used by the latter to extract more money from the former. This situation is analogous to having a debtor pay interest for a debt already paid. Instead of leasing the properties, Union Bank should have instructed the Tiu spouses to vacate the said properties so that it could dispose of them.[94]

The Court of Appeals committed a serious error in this regard. As pointed out by petitioner Union Bank, the spouses Tiu did not present any proof of the alleged rental payments. Not a single receipt was formally offered in evidence. The mere stipulation in a contract of the monthly rent to be paid by the lessee is certainly not evidence that the same has been paid. Since the spouses Tiu failed to prove their payment to Union Bank of the amount of P5,952,000.00, we are constrained to reverse the ruling of the Court of Appeals ordering its return.

Even assuming arguendo that the spouses Tiu had duly proven that it had paid rent to Union Bank, we nevertheless disagree with the finding of the Court of Appeals that it is against public policy for banks to enter into two-year contracts of lease of properties ceded to them through dacion en pago. The provisions of law cited

by the Court of Appeals, namely Sections 51 and 52 of the General Banking Law of 2000, merely provide:

SECTION 51. Ceiling on Investments in Certain Assets. -- Any bank may acquire real estate as shall be necessary for its own use in the conduct of its business: Provided, however, That the total investment in such real estate and improvements thereof, including bank equipment, shall not exceed fifty percent (50%) of combined capital accounts: Provided, further, That the equity investment of a bank in another corporation engaged primarily in real estate shall be considered as part of the bank's total investment in real estate, unless otherwise provided by the Monetary Board.

SECTION 52. Acquisition of Real Estate by Way of Satisfaction of Claims. -- Notwithstanding the limitations of the preceding Section, a bank may acquire, hold or convey real property under the following circumstances:

52.1. Such as shall be mortgaged to it in good faith by way of security for debts;

52.2. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or

52.3. Such as it shall purchase at sales under judgments, decrees, mortgages, or trust deeds held by it and such as it shall purchase to secure debts due it.

Any real property acquired or held under the circumstances enumerated in the above paragraph shall be disposed of by the bank within a period of five (5) years or as may be prescribed by the Monetary Board: Provided, however, That the bank may, after said period, continue to hold the property for its own use, subject to the limitations of the preceding Section.

Section 52.2 contemplates a dacion en pago. Thus, Section 52 undeniably gives banks five years to dispose of properties conveyed to them in satisfaction of debts previously contracted in the course of its dealings, unless another period is prescribed by the Monetary Board. Furthermore, there appears to be no legal impediment for a bank to lease the real properties it has received in satisfaction of debts, within the five-year period that such bank is allowed to hold the acquired realty.

We do not dispute the interpretation of the Court of Appeals that the purpose of the law is to prevent the concentration of land holdings in a few hands, and that banks should not be allowed to hold on to the properties contemplated in Section 52 beyond the five-year period unless such bank has exerted its best efforts to dispose of the property in good faith but failed. However, inquiries as to whether the banks exerted best efforts to dispose of the property can only be done if said banks fail to dispose of the same within the period provided. Such inquiry is furthermore irrelevant to the issues in the case at bar.

Order to Return Certificates Allegedly in
Union Bank's Possession

In the Amended Complaint, the spouses Tiu alleged^[95] that they delivered several certificates and titles to Union Bank pursuant to a Memorandum of Agreement. These certificates and titles were not subjected to any lien in favor of Union Bank, but the latter allegedly continued to hold on to said properties.

The RTC failed to rule on this issue. The Court of Appeals, tackling this issue for the first time, ruled in favor of the Tiu spouses and ordered the return of these certificates and titles. The appellate court added that if Union Bank can no longer return these certificates or titles, it should shoulder the cost for their replacement.^[96]

Union Bank, asserting that the Memorandum of Agreement did not, in fact, push through, denies having received the subject certificates and titles. Union Bank added that even assuming arguendo that it is in possession of said documents, the Restructuring Agreement itself allows such possession.^[97]

The evidence on hand lends credibility to the allegation of Union Bank that the Memorandum of Agreement did not push through. The copy of the Memorandum of Agreement attached by the spouses Tiu themselves to their original complaint did not bear the signature of any representative from Union Bank and was not notarized.[98]

We, however, agree with the finding of the Court of Appeals that despite the failure of the Memorandum of Agreement to push through, the certificates and titles mentioned therein do appear to be in the possession of Union Bank. As held by the Court of Appeals:

Lastly, this Court will order, as it hereby orders, Union Bank to return to the Tiu spouses all the certificates of shares of stocks and titles to real properties of the Tiu spouses in its possession. Union Bank cannot deny possession of these items since it had made judicial admissions of such possession in their document entitled "Reply to Plaintiffs' request for Admission" (records, pp. 216-217). While in that document, Union Bank only admitted to the possession of four real estate titles, this Court is convinced that all the certificates and titles mentioned in the unconsummated Memorandum of Agreement (Records, pp. 211-213) were given by the Tiu spouses to Union Bank for appraisal. This finding is further bolstered by the admission of the Union Bank that it kept the titles for safekeeping after it rejected the Memorandum of Agreement. Since Union Bank rejected these certificates and titles of property, it should return the said items to the Tiu spouses. If Union Bank can no longer return these certificates and titles or if it has misplaced them, it shall shoulder the cost for the replacement and issuance of new certificates and new titles over the said properties.[99]

As regards Union Bank's argument that it has the right to retain said documents pursuant to the Restructuring Agreement, it is referring to paragraph 11(b), which provides that:

11. Effects of Default - When the BORROWER is in default, such default shall have the following effects, alternative, concurrent and cumulative with each other:

x x x x

(b) The BANK shall be entitled to all the remedies provided for and further shall have the right to effect or apply against the partial or full payment of any and all obligations of the BORROWER under this Restructuring Agreement any and all moneys or other properties of the BORROWER which, for any reason, are or may hereafter come into the possession of the Bank or the Bank's agent. All such moneys or properties shall be deemed in the BANK's possession as soon as put in transit to the BANK by mail or carrier.[100]

In the first place, notwithstanding the foregoing provision, there is no clear intention on the part of the spouses Tiu to deliver the certificates over certain shares of stock and real properties as security for their debt. From the terms of the Memorandum of Agreement, these certificates were surrendered to Union Bank in order that the said properties described therein be given their corresponding loan values required for the restructuring of the spouses Tiu's outstanding obligations. However, in the event the parties fail to agree on the valuation of the subject properties, Union Bank agrees to release the same.[101] As Union Bank itself vehemently alleges, the Memorandum of Agreement was not consummated. Moreover, despite the fact that the Bank was aware, or in possession, of these certificates,[102] at the time of execution of the Restructuring Agreement, only the mortgage over the real property covered by TCT No. T-11951 was expressly mentioned as a security in the Restructuring Agreement. In fact, in its Reply to Request for Admission,[103] Union Bank admitted that (1) the titles to the real properties were submitted to it for appraisal but were subsequently rejected, and (2) no real estate mortgages were executed over the said properties. There being no agreement that these properties shall secure respondents' obligation, Union Bank has no right to retain said certificates.

Assuming arguendo that paragraph 11(b) of the Restructuring Agreement indeed allows the retention of the certificates (submitted to the Bank ostensibly for safekeeping and appraisal) as security for spouses Tiu's debt, Union Bank's position still cannot be upheld. Insofar as said provision permits Union Bank to apply properties of

the spouses Tiu in its possession to the full or partial payment of the latter's obligations, the same appears to impliedly allow Union Bank to appropriate these properties for such purpose. However, said provision cannot be validly applied to the subject certificates and titles without violating the prohibition against pactum commissorium contained in Article 2088 of the Civil Code, to the effect that "[t]he creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them[;] [a]ny stipulation to the contrary is null and void." Applicable by analogy to the present case is our ruling in *Nakpil v. Intermediate Appellate Court*,^[104] wherein property held in trust was ceded to the trustee upon failure of the beneficiary to answer for the amounts owed to the former, to wit:

For, there was to be automatic appropriation of the property by Valdes in the event of failure of petitioner to pay the value of the advances. Thus, contrary to respondent's manifestations, all the elements of a pactum commissorium were present: there was a creditor-debtor relationship between the parties; the property was used as security for the loan; and, there was automatic appropriation by respondent of Pulong Maulap in case of default of petitioner.^[105] (Emphases supplied.)

This Court therefore affirms the order of the Court of Appeals for Union Bank to return to the spouses Tiu all the certificates of shares of stock and titles to real properties that were submitted to it or, in lieu thereof, to pay the cost for the replacement and issuance of new certificates and new titles over the said properties.

Validity of the Award of Damages

The Court of Appeals awarded damages in favor of the spouses Tiu based on its taking judicial notice of the alleged exploitation by many banks of the Asian financial crisis, as well as the foreclosure of the mortgage of the home of the spouses Tiu despite the alleged full payment by the latter. As regards the alleged manipulation of the financial crisis, the Court of Appeals held:

As a final note, this Court observes the irregularity in the circumstances [surrounding] dollar loans granted by banks right before or during the Asian financial crisis. It is of common knowledge that many banks, around that time, actively pursued and convinced debtors to make dollar loans or to convert their peso loans to dollar loans allegedly because of the lower interest rate of dollar loans. This is a highly suspect behavior on the part of the banks because it is irrational for the banks to voluntarily and actively proffer a conversion that would give them substantially less income. In the guise of benevolence, many banks were able to convince borrowers to make dollar loans or to convert their peso loans to dollar loans. Soon thereafter, the Asian financial crisis hit, and many borrowers were saddled with loans that ballooned to twice or thrice the amount of their original loans. This court takes judicial notice of these events or matters which are of public knowledge. It is inconceivable that the banks were unaware of the looming Asian financial crisis. Being in the forefront of the financial world and having access to financial data that were not available to the average borrower, the banks were in such a position that they had a higher vantage point with respect to the financial landscape over their average clients. The cavalier way with which banks exploited and manipulated the situation is almost too palpable that they openly and unabashedly struck heavy blows on the Philippine economy, industries and businesses. The banks have a fiduciary duty to their clients and to the Filipino people to be transparent in their dealings and to make sure that the latter's interest are not prejudiced by the former's interest. Article 1339 of the New Civil Code provides that the failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. Undoubtedly, the banks and their clients are bound by confidential relations. The almost perfect timing of the banks in convincing their clients to shift to dollar loans just when the Asian financial crisis struck indicates that the banks not only failed to disclose facts to their clients of the looming crisis, but also suggests of the insidious design to take advantage of these undisclosed facts.^[106]

We have already held that the foreclosure of the mortgage was warranted under the circumstances. As regards the alleged exploitation by many banks of the Asian financial crisis, this Court rules that the generalization made by

the appellate court is unfounded and cannot be the subject of judicial notice. "It is axiomatic that good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof thereof, the presumption of good faith prevails." [107] The alleged insidious design of many banks to betray their clients during the Asian financial crisis is certainly not of public knowledge. The deletion of the award of moral and exemplary damages in favor of the spouses Tiu is therefore in order.

WHEREFORE, the Petition is PARTIALLY GRANTED. The Joint Decision of the Court of Appeals in CA-G.R. CV No. 00190 and CA-G.R. SP No. 00253 dated February 21, 2006 is hereby AFFIRMED insofar as it ordered petitioner Union Bank of the Philippines to return to the respondent spouses Rodolfo T. Tiu and Victoria N. Tiu all the certificates of shares of stock and titles to real properties that were submitted to it or, in lieu thereof, to pay the cost for the replacement and issuance of new certificates and new titles over the said properties. The foregoing Joint Decision is hereby SET ASIDE: (1) insofar as it permanently enjoined Union Bank of the Philippines from foreclosing the mortgage of the residential property of respondent spouses Rodolfo T. Tiu and Victoria N. Tiu which is covered by Transfer Certificate of Title No. 11951; (2) insofar as it ordered Union Bank of the Philippines to return to the respondent spouses Rodolfo T. Tiu and Victoria N. Tiu the amount of P927,546.79 representing illegally collected rentals; and (3) insofar as it ordered Union Bank of the Philippines to pay the respondent spouses Rodolfo T. Tiu and Victoria N. Tiu P100,000.00 in moral damages, P100,000.00 in exemplary damages, P50,000.00 in attorney's fees and cost, both in the lower court and in this Court.

No further pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 74-96; penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring.

[2] Id. at 97-100.

[3] Records, pp. 12-13.

[4] Id. at 14.

[5] Id.

[6] Written in the document as "@ 41.40%".

[7] Records, p. 333.

[8] Id. at 334-344.

[9] Id. at 335.

[10] Id. at 115.

[11] Id. at 335.

[12] Id. at 354-357.

[13] Id. at 350-353.

- [14] Id. at 339.
- [15] Id. at 114.
- [16] Id. at 2-11.
- [17] Id. at 10.
- [18] Rollo, pp. 163-164.
- [19] Id. at 169.
- [20] Id. at 168.
- [21] Id. at 42-61.
- [22] Records, pp. 97-98.
- [23] Id. at 420-423.
- [24] Rollo, pp. 75-78.
- [25] Id. at 101-120.
- [26] Id. at 120.
- [27] Id. at 117-118.
- [28] Records, pp. 787-794.
- [29] Id. at 799-815.
- [30] Id. at 814-815.
- [31] CA rollo (CA-G.R. SP No. 00253), pp. 2-8.
- [32] Id. at 90-91.
- [33] Records, p. 828.
- [34] Id. at 830-831, 836-837.
- [35] CA rollo (CA-G.R. SP No. 00253), pp. 140-141.
- [36] CA rollo (CA-G.R. SP No. 00190), pp. 92-95.
- [37] Id. at 253.
- [38] Id. at 250-256.
- [39] Id. at 305-307.
- [40] Rollo, p. 78.
- [41] Id. at 79.
- [42] Id. at 83-91.
- [43] Id. at 92.
- [44] Id. at 92-93.

[45] Id. at 91.

[46] Id. at 91-92.

[47] Id. at 93.

[48] Id. at 93-95.

[49] Id. at 95-96.

[50] Id. at 282-283.

[51] Id. at 83.

[52] Id. at 85-87.

[53] Id. at 292.

[54] Id. at 293.

[55] Id. at 293-295.

[56] Records, pp. 252-278.

[57] *Eastboard Navigation, Ltd. v. Juan Ysmael and Co., Inc.*, 102 Phil. 1, 9 (1957); *Arrieta v. National Rice and Corn Corporation*, 119 Phil. 339, 349-350 (1964).

[58] SECTION 1. Every provision contained in, or made with respect to, any obligation which provision purports to give the obligee the right to require payment in gold or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, be as it is hereby declared against public policy, and null, void and of no effect, and no such provision shall be contained in, or made with respect to, any obligation hereafter incurred. Every obligation heretofore or hereafter incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts: Provided, That, if the obligation was incurred prior to the enactment of this Act and required payment in a particular kind of coin or currency other than Philippine currency, it shall be discharged in Philippine currency measured at the prevailing rates of exchange at the time the obligation was incurred, except in case of a loan made in a foreign currency stipulated to be payable in the same currency in which case the rate of exchange prevailing at the time of the stipulated date of payment shall prevail. All coin and currency, including Central Bank notes, heretofore or hereafter issued and declared by the Government of the Philippines shall be legal tender for all debts, public and private.

[59] *Eastboard Navigation, Ltd. v. Juan Ysmael and Co., Inc.*, supra note 57.

[60] SEC. 1. Every provision contained in, or made with respect to, any domestic obligation to wit, any obligation contracted in the Philippines which provisions purports to give the obligee the right to require payment in gold or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, be as it is hereby declared against public policy, and null, void, and of no effect, and no such provision shall be contained in, or made with respect to, any obligation hereafter incurred. The above prohibition shall not apply to (a) transactions where the funds involved are the proceeds of loans or investments made directly or indirectly, through bona fide intermediaries or agents, by foreign governments, their agencies and instrumentalities, and international financial and banking institutions so long as the funds are identifiable, as having emanated from the sources enumerated above; (b) transactions affecting high-priority economic projects

for agricultural, industrial and power development as may be determined by the National Economic Council which are financed by or through foreign funds; (c) forward exchange transactions entered into between banks or between banks and individuals or juridical persons; (d) import-export and other international banking, financial investment and industrial transactions. With the exception of the cases enumerated in items (a), (b), (c) and (d) in the foregoing provision, in which bases the terms of the parties' agreement shall apply, every other domestic obligation heretofore or hereafter incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts: Provided, That if the obligation was incurred prior to the enactment of this Act and required payment in a particular kind of coin or currency other than Philippine currency, it shall be discharged in Philippine currency measured at the prevailing rates of exchange at the time the obligation was incurred, except in case of a loan made in a foreign currency stipulated to be payable in the same currency in which case the rate of exchange prevailing at the time of the stipulated date of payment shall prevail. All coin and currency, including Central Bank notes, heretofore and hereafter issued and declared by the Government of the Philippines shall be legal tender for all debts, public and private.

[61] Otherwise known as the Consolidated Foreign Exchange Rules and Regulations.

[62] Republic Act No. 8183 provides that it shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) national newspapers of general circulation. It was published in Malaya and the Manila Times on June 20, 1996.

[63] SECTION 2. Republic Act Numbered Five Hundred Twenty-Nine (R.A. No. 529), as amended entitled "An Act to Assure Uniform Value of Philippine Coin and Currency," is hereby repealed.

[64] SECTION 1. All monetary obligations shall be settled in the Philippine currency which is legal tender in the Philippines. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment.

[65] Records, pp. 12-13.

[66] Id. at 252-278.

[67] G.R. No. 159912, August 17, 2007, 530 SCRA 567.

[68] Id. at 599.

[69] TSN, October 8, 2004, pp. 8-9.

[70] Rollo, pp. 247-248.

[71] Records, p. 114.

[72] Id. at 232.

[73] TSN, October 1, 2002, pp. 38-39.

[74] Id. at 18-19.

[75] TSN, October 8, 2004, pp. 4-5.

[76] *Domingo v. Robles*, 493 Phil. 916, 921 (2005).

[77] Records, p. 344; Restructuring Agreement, p. 11.

[78] TSN, October 1, 2002, pp. 18-19.

[79] SEC. 34. Offer of Evidence. -- The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[80] Heirs of Pedro Pasag v. Parocha, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

[81] Records, pp. 110-119.

[82] Id. at 114.

[83] Id. at 232.

[84] Id. at 335.

[85] See records, pp. 134-135.

[86] Id.

[87] Id. at 134.

[88] Rollo, pp. 92-93.

[89] Spouses Bejoc v. Cabreros, 502 Phil. 336, 343 (2005).

[90] 35. That in 1983, the Spouses Jose Tiu and Juanita Tiu, and during the existence of their marriage, constructed their house on Lot No. 639 and declared the same for taxation purposes in the name of Jose Tiu;

36. That Jose Tiu died on December 18, 1983;

37. That consequently upon his death, the plaintiffs Juanita T. Tiu, Rosalinda T. King, Rufino T. Tiu, Rosalie T. Young and Rosenda T. Tiu became owners of the aforesaid house;

38. That the herein plaintiffs have not executed any real estate mortgage on their house constructed on plaintiffs spouses Tiu's lot in favor of defendant bank;

39. Consequently, the extra-judicial foreclosure sale of said house is null and void as the real owners of the same have not mortgaged the said house to defendant bank; (Records, p. 116.)

[91] Records, pp. 232-233.

[92] Republic Act No. 8791.

[93] Rollo, pp. 90-91.

[94] Id. at 91.

[95] 40. Before the execution of the restructuring agreement, the plaintiffs and the defendant bank entered into a memorandum of agreement, whereby the plaintiffs turned over to defendant bank in the meanwhile the following real and personal properties:

a) Shares of stock of the Borrower/Mortgagor in Grand Convention Center, Cebu Country Club, Subic Bay Yacht Club, Alta Vista Golf and Country Club and Cebu Grand Salinas Development Corporation,

b) Real Estate properties:

TCT number

Registry of Deeds

Location

116288

Cebu City

Panganiban St., Cebu City

116287

Cebu City

Panganiban St., Cebu City

OCT No. 0-3538

Cebu City

Panganiban St., Cebu City

30271

Cebu City

Minglanilla, Cebu Province

Copy of the memorandum of agreement was attached to the original complaint as Annex "I";

41. As can be seen from the Restructuring Agreement, only the lot subject of the sheriff's notice of extrajudicial foreclosure sale was mortgaged to guarantee plaintiff's obligation;

42. None of the properties mentioned in paragraph 40 hereof have been subjected to any lien in favor of defendant bank but the defendant bank continues to hold on to said properties and has not returned the same to the plaintiffs spouses Tiu (Records, p. 117).

[96] Rollo, pp. 91-92.

[97] Id. at 317.

[98] Records, pp. 41-42.

[99] Rollo, pp. 91-92.

[100] Records, p. 341.

[101] Id. at 41.

[102] Id. at 209; see Acknowledgement Receipt dated November 24, 1999.

[103] Id. at 216-217.

[104] G.R. No. 74449, August 20, 1993, 225 SCRA 456.

[105] Id. at 467-468.

[106] Rollo, pp. 93-94.

[107] Pacific Basin Securities Co., Inc. v. Oriental Petroleum And Minerals Corp., G.R. Nos. 143972, 144056 and 144056, August 31, 2007, 531 SCRA 667, 689.

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