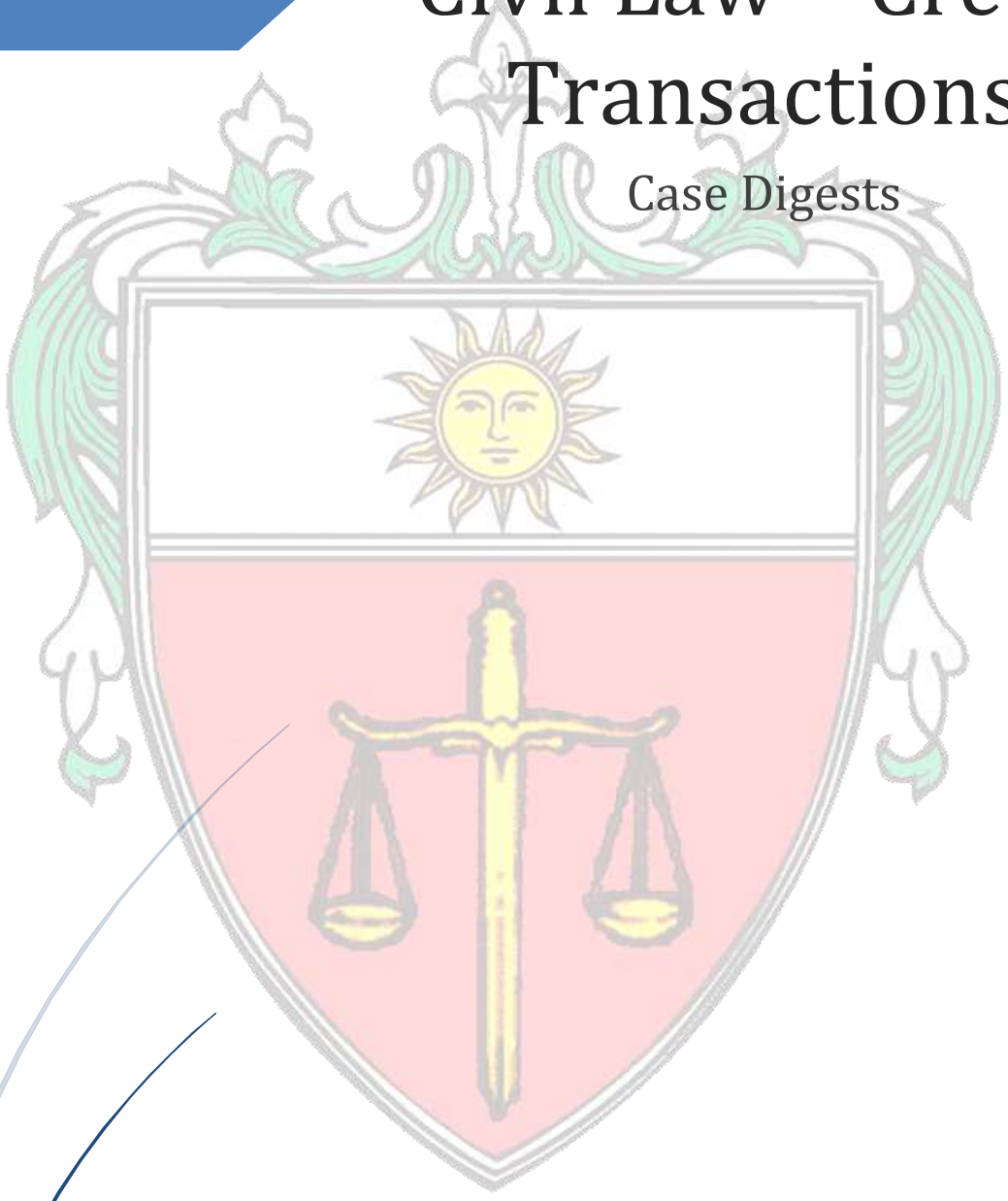
Civil Law – Credit Transactions

Case Digests



UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

LIST OF CASES
Credit Transactions

Jalandoni v. Encomienda G.R. No. 205578	March 1, 2017
WT Construction v. The Province of CebuG.R. Nos. 208984	September 16, 2015
Eastern Shipping Lines vs. CA	234 SCRA 78
Estores v. Supangan G.R. No. 175139	April 18, 2012
Nacar v. Gallery Frames	August 13, 2013
Abella v. Abella G.R. No. 195166	July 08, 2015
Florendo vs. CA	265 SCRA 678
PNB vs. CA	238 SCRA 20
Gullas vs. PNB	62 Phil. 519
Guingona vs. City Fiscal	128 SCRA 577
Reyes vs. BPI	254 SCRA
Traders Insurance vs. Dy Eng Giok	104 Phil 806
Spouses Toh vs. Solidbank G.R. No. 154183	August 7, 2003
CCC Insurance vs. Kawasaki &FFMCCIG.R. No. 156162	June 22, 2015 (2079)
Dizon vs. Suntay	47 SCRA 160
Ramos v. Obispo (2085)	692 SCRA 240
Bangko Sentral v. Liboon GR. No. 173864	November 23, 2015
Land Bank v. Musni et. Al. G.R. No. 206343	February 22, 2017
Miles v. Lao G.R. No. 209544	November 22, 2017
Uy Tong vs. CA	161 SCRA 383
Yap v Dy - G.R. No. 171868 (2089)	July 27, 2011
Midway Maritime v. Castro G.R. No. 189061	August 6, 2014
PNB v. Maranon G.R. NO. 189316 (Article 2127)	July 1, 2013
Garcia v Villar - G.R. No. 158891 (2130)	June 27, 2012
Claudio v. Saraza G.R. NO. 213286,	26 August 2015
Caubang v. Crisologo GR. NO. 174581	4 February 2015
Acme Shoe Rubber vs. CA	260 SCRA 714
Roxas vs. CA	221 SCRA 729
Cerna vs. CA	220 SCRA 517
Northern Motors vs. Coquia	66 SCRA 374
Northern Motors vs. Coquia	68 SCRA 414
Makati Leasing vs. Wearever Textile	122 SCRA 296
Associated Insurance vs. Iya	103 Phil. 972
BPI v Avenido G.R. No. 175816 (Deficiency)	December 7, 2011
BPI v. Reyes G.R. No. 182769(Deficiency)	February 1, 2012
Rabat v PNB - G.R. No. 158755	June 18, 2012
Mahinay v. Dura Tire G.R. 194152 (S6 3135)	June 5, 2017
Ermitano vs. Paglas G.R. NO. 174436(S.7 3135)	January 23, 2013
Rural Bank of Sta. Barbara v. Centeno G.R. NO. 200667	March 11, 2013
PDIC v. BIR GR 172892	June 13, 2013
Republic vs. Peralta	150 SCRA 37
DBP vs. NLRC	236 SCRA 117

RECENT JURISPRUDENCE

Extrajudicial Rescission under Art 1191
Nissan Car Lease Philippines vs. Lica Management GR No. 176896 13 January 2016

Adverse Claim vs. Lis Pendens
Valderama vs. Arguelles GR No. 223660 02 April 2018

Unconscionable stipulated interest rate
Isla vs. Estorga GR No. 233974 02 July 2018

Floating Rate of Interest
Security Bank vs. Spouses Mercado GR Nos. 192934 & 197010 27 July 2018

Expiration of Redemption Period and Right to the Fruits
Spouses Teves vs. Integrated Credit Corporation GR No. 216714 04 April 2018

Earnest Money in Contract to Sell
Raceles vs. Spouses Javier GR No. 189609 29 January 2018

Mistake as Fraud
Poole-Blunden vs. Union Bank, GR No. 205838, 29 November 2017

Prescription of Undated Checks
Evangelista vs. Screenex, Inc. GR No. 211564, 20 November 2017

CREDIT TRANSACTIONS

GEORGIA OSMEÑA-JALANDONI, *Petitioner*, - *versus* - CARMEN A. ENCOMIENDA, *Respondent*.
G.R. No. 205578, SECOND DIVISION, March 01, 2017, PERALTA, *J.*

In case of loans between friends and relatives, the absence of acknowledgment receipts or promissory notes is more natural and real.The law is explicit that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. In this case, Encomienda immediately offered a helping hand when a friend asked for it. But this does not mean that she had already waived her right to collect in the future.

FACTS:

Respondent Encomienda narrated that she met petitioner Osmeña-Jalandoni in Cebu on October 24, 1995, when the former was purchasing a condominium unit and the latter was the real estate broker. Thereafter, Encomienda and Jalandoni became close friends. On March 2, 1997, Jalandoni called Encomienda to ask if she could borrow money for the search and rescue operation of her children in Manila, who were allegedly taken by their father. Encomienda handed P100,000.00 in a sealed envelope to the latter's security guard. While in Manila, Jalandoni again borrowed money. On April 1, 1997, Jalandoni borrowed P1 Million from Encomienda. This was followed by several requests for money. On May 26, 1997, now crying, Jalandoni asked if Encomienda could lend her an additional P900,000.00. Encomienda still acceded. All in all, Encomienda spent around P3,245,836.02 and $6,638.20 for Jalandoni.

When Encommienda felt that Jalandoni was starting to avoid her, the former gave the latter six weeks to settle her debts. Despite several demands, no payment was made. Jalandoni insisted that the amounts given were not in the form of loans. Jalandoni said she would talk to her lawyer first, but she never came back. Hence, Encomienda filed a complaint.

Jalandoni claimed that there was never a discussion or even just an allusion about a loan. She confirmed that Encomienda would indeed deposit money in her bank account and pay her bills in Cebu. But when asked, Encomienda would tell her that she just wanted to extend some help and that it was not a loan.

ISSUE:

Whether or not Encomienda is entitled to be reimbursed for the amounts she defrayed for Jalandoni.

RULING:

Jalandoni would have the Court believe that Encomienda volunteered to spend about P3,245,836.02 and $6,638.20 of her hard-earned money in a span of eight months for her and her family simply out of pure generosity and the kindness of her heart, without expecting anything in return. **Such presupposition is incredible, highly unusual, and contrary to common experience,** unless the benefactor is a billionaire philanthropist who usually spends his days distributing his fortune to the needy. It is a notable fact that Jalandoni was married to one of the richest hacienderos of Iloilo and

belong to the privileged and affluent Osmeña family. Jalandoni is not one to be convincing object of anyone's charitable acts.
Jalandoni also contends that the amounts she received from Encomienda were mostly provided and paid without her prior knowledge and thus she could not have consented to any loan agreement.

The second paragraph of Article 1236 of the Civil Code provides:

> Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, **he can recover only insofar as the payment has been beneficial to the debtor.**

Clearly, Jalandoni greatly benefited from the purportedly unauthorized payments. Thus, even if she asseverates that Encomienda's payment of her household bills was without her knowledge or against her will, she cannot deny the fact that the same still inured to her benefit and Encomienda must therefore be consequently reimbursed for it.

In fact, in case of loans between friends and relatives, the absence of acknowledgment receipts or promissory notes is more natural and real. In a similar case, the Court upheld the CA's pronouncement that the existence of a contract of loan cannot be denied merely because it was not reduced in writing. The law is explicit that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. Encomienda immediately offered a helping hand when a friend asked for it. But this does not mean that she had already waived her right to collect in the future.

The fact that Encomienda kept the receipts even for the smallest amounts she had advanced, repeatedly sent demand letters, and immediately filed the instant case when Jalandoni stubbornly refused to heed her demands sufficiently disproves the latter's belief that all the sums of money she received were merely given out of charity.

The principle of unjust enrichment finds application in this case. There is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it. The CA is then correct when it ruled that allowing Jalandoni to keep the amounts received from Encomienda will certainly cause an unjust enrichment on Jalandoni's part and to Encomienda's damage and prejudice.

WT CONSTRUCTION, INC., *Petitioner*, - *versus* - THE PROVINCE OF CEBU, *Respondent*.
G.R. No. 208984, FIRST DIVISION, September 16, 2015, PERLAS-BERNABE, *J.*

PROVINCE OF CEBU, *Petitioner*, - *versus* - WT CONSTRUCTION, INC., *Respondent*.
G.R. No. 209245, FIRST DIVISION, September 16, 2015, PERLAS-BERNABE, *J.*

Forbearance of money, goods, or credit refers to arrangements other than loan agreements where a person acquiesces to the temporary use of his money, goods or credits pending the happening of certain events or fulfilment of certain conditions such that if these conditions are breached, the said person is entitled not only to the return of the principal amount given, but also to compensation for the use of his money equivalent to the legal interest since the use or deprivation of funds is akin to a loan.

In this case, the Court finds that the liability of the Province of Cebu to WTCI is not in the nature of a forbearance of money as it does not involve an acquiescence to the temporary use of WTCI's money, goods or credits. Rather, this case involves WTCI's performance of a particular service

FACTS:

Sometime in 2005, the Province of Cebu was to host the 12th ASEAN Summit. To cater to the event, it decided to construct the Cebu International Convention Center (CICC). Accordingly, the Province of Cebu conducted a public bidding for the project and WTCI emerged as the winning bidder for the construction of Phase I thereof which consists of the substructure of CICC. After completing Phase I and receiving payment therefor, WTCI again won the bidding for Phase II of the project.

As Phase II neared completion, the Province of Cebu caused WTCI to perform additional works on the project. Cognizant of the need to complete the project in time for the ASEAN Summit, and with the repeated assurances that it would be promptly paid, WTCI agreed to perform the additional works notwithstanding the lack of public bidding. Weeks before the scheduled ASEAN Summit, WTCI completed the project, including the additional works and, accordingly, demanded payment therefor.

WTCI billed the Province of Cebu the amount of P175,951,478.69. In a separate letter, WTCI billed the Province of Cebu the amount of P85,266,407.97 representing the cost for the additional electrical and plumbing works. The Province of Cebu, however, refused to pay, thereby prompting WTCI to send a Final Billing where it demanded payment of the aggregate sum of P261,217,886.66.

WTCI filed a complaint for collection of sum of money before the RTC where the Province of Cebu admitted the existence of the additional works but maintained that there was no contract between it and WTCI therefor. It also claimed that the additional works did not undergo public bidding as required by law.

Upon joint verification by the parties, the value of the additional works was pegged at P263,263,261.41. The RTC ruled in favor of WTCI and ordered the Province of Cebu to pay. RTC found that there was a perfected oral contract between the parties for the additional works on CICC, and that WTCI must be duly compensated therefor under the doctrine of *quantum meruit.* Subsequently, the RTC granted in part the motion for reconsideration and reduced the amount of actual damages from P263,263,261.41 to P257,413,911.73. The CA affirmed the RTC's Order dated September 22, 2009 but reduced the interest rate to 6% per annum.

ISSUE:

(a) Whether or not the liability of the Province of Cebu is in the nature of a loan or forbearance of money.

(b) Whether or not the interest due should be computed from the date of the filing of the complaint or from the time extrajudicial demand was made.

RULING:

(a)In *Sunga-Chan v. CA*, the Court characterized a transaction involving forbearance of money as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable.

In *Estores v. Supangan*, the Court explained that forbearance of money, goods, or credit refers to arrangements other than loan agreements where a person acquiesces to the temporary use of his money, goods or credits pending the happening of certain events or fulfilment of certain conditions such that if these conditions are breached, the said person is entitled not only to the return of the principal amount given, but also to compensation for the use of his money equivalent to the legal interest since the use or deprivation of funds is akin to a loan.

Applying the foregoing standards to the case at hand, the Court finds that **the liability of the Province of Cebu to WTCI is not in the nature of a forbearance of money as it does not involve an acquiescence to the temporary use of WTCI's money, goods or credits.** Rather, this case involves WTCI's performance of a particular service

Verily, the Court has repeatedly recognized that liabilities arising from construction contracts do not partake of loans or forbearance of money but are in the nature of contracts of service. The Court, therefore, sustains the CA's ruling that the rate of legal interest imposable on the liability of the Province of Cebu to WTCI is 6% per annum

The guidelines have been updated in *Nacar v. Gallery Frames*, pursuant to BSP Circular No. 799, series of 2013, which reduced the rate of legal interest for loans or transactions involving forbearance of money, goods, or credit from 12% to 6% per annum. Nevertheless, the rate of legal interest for obligations not constituting loans or forbearance such as the one subject of this case remains unchanged at 6% per annum.

(b) Coming now to the issue of whether the RTC and the CA erred in computing the interest due WTCI from the time of the filing of the complaint, the Court finds merit in WTCI's argument that the same should be reckoned from the time WTCI made the extrajudicial demand for the payment of the principal. The Court observes, however, that WTCI neither appealed from nor sought a reconsideration of the Judgment of the RTC which awarded interest to it computed from the time of the filing of the complaint on January 22, 2008. Accordingly, the RTC's determination of the interest's reckoning point had already become final as against WTCI since it was not one of the assigned errors considered on appeal. It is settled that a decision becomes final as against a party who does not appeal the same. Consequently, the present petition of WTCI questioning the RTC's determination on the reckoning point of the legal interest awarded can no longer be given due course. The Court is, therefore, constrained to uphold the rulings of the RTC and the CA that the legal interest shall be computed from the time of the filing of the complaint.

Lastly, the Court agrees with the CA that the legal interest rate of 6% shall be imposed from the finality of the herein judgment until satisfaction thereof. This is in view of the principle that in the interim, the obligation assumes the nature of a forbearance of credit which, pursuant to Eastern Shipping Lines, Inc. as modified by Nacar, is subject to legal interest at the rate of 6% per annum.

EASTERN SHIPPING LINES, INC., Petitioner, -versus- HON. COURT OF APPEALS AND MERCANTILE INSURANCE COMPANY, INC., Respondents.

The Court laid down the following rules of thumb for future guidance:

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

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

FACTS:

On December 4, 1981, two fiber drums of riboflavin were shipped from Yokohama, Japan for delivery vessel "SS EASTERN COMET" owned by defendant Eastern Shipping Lines under Bill of Lading No. YMA-8. The shipment was insured under plaintiff's Marine Insurance Policy No. 81/01177 for P36,382,466.38.

Upon arrival of the shipment in Manila on December 12, 1981, it was discharged unto the custody of defendant Metro Port Service, Inc. The latter excepted to one drum, said to be in bad order, which damage was unknown to plaintiff.

On January 7, 1982 defendant Allied Brokerage Corporation received the shipment from defendant Metro Port Service, Inc., one drum opened and without seal (per "Request for Bad Order Survey." Exh. D). Thereafter, defendant Allied Brokerage Corporation made deliveries of the shipment to the

consignee's warehouse. The latter excepted to one drum which contained spillages, while the rest of the contents was adulterated/fake.

Plaintiff contended that due to the losses/damage sustained by said drum, the consignee suffered losses totaling P19,032.95, due to the fault and negligence of defendants. Claims were presented against defendants who failed and refused to pay the same.

As a consequence of the losses sustained, plaintiff was compelled to pay the consignee P19,032.95 under the aforestated marine insurance policy, so that it became subrogated to all the rights of action of said consignee against defendants (per "Form of Subrogation", "Release" and Philbanking check, Exhs. M, N, and O).

Defendants filed their respective answers, traversing the material allegations of the complaint. As for defendant Eastern Shipping it alleged that the shipment was discharged in good order from the vessel unto the custody of Metro Port Service so that any damage/losses incurred after the shipment was incurred after the shipment was turned over to the latter, is no longer its liability. Metroport averred that although subject shipment was discharged unto its custody, portion of the same was already in bad order. Allied Brokerage alleged that plaintiff has no cause of action against it, not having negligent or at fault for the shipment was already in damage and bad order condition when received by it, but nonetheless, it still exercised extra ordinary care and diligence in the handling/delivery of the cargo to consignee in the same condition shipment was received by it.

The trial court ordered the defendants to pay plaintiff, jointly and severally the amount of P19,032.95, with the present legal interest of 12% *per annum* from October 1, 1982, the date of filing of the complaints, until fully paid.

Dissatisfied, the defendant appealed to the CA, which affirmed in toto the judgment of the trial court. Hence, this petition.

ISSUE:

Whether the appellate court erred when it held that the grant of interest on the claim of private respondent should commence from the date of the filing of the complaint at the rate of 12% *per annum.* (YES)

RULING:

There have been seeming variances on the major rulings of the Court. The cases can perhaps be classified into two groups according to the similarity of the issues involved and the corresponding rulings rendered by the court. The "first group" would consist of the cases of *Reformina v. Tomol* (1985), *Philippine Rabbit Bus Lines v. Cruz*(1986), *Florendo v. Ruiz* (1989) and *National Power Corporation v. Angas* (1992). In the "second group" would be *Malayan Insurance Company v.Manila Port Service* (1969), *Nakpil and Sons v. Court of Appeals* (1988), and *American Express International v.Intermediate Appellate Court* (1988).

In the "first group", the basic issue focuses on the application of either the 6% (under the Civil Code) or 12% (under the Central Bank Circular) interest *per annum*. It is easily discernible in these cases that there has been a consistent holding that the Central Bank Circular imposing the 12%

interest *per annum* applies only to loans or forbearance of money, goods or credits, as well as to judgments involving such loan or forbearance of money, goods or credits, and that the 6% interest under the Civil Code governs when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general. Observe, too, that in these cases, a common time frame in the computation of the 6% interest *per annum* has been applied, *i.e.*, from the time the complaint is filed until the adjudged amount is fully paid.

The "second group", did not alter the pronounced rule on the application of the 6% or 12% interest *per annum*, depending on whether or not the amount involved is a loan or forbearance, on the one hand, or one of indemnity for damage, on the other hand. Unlike, however, the "first group" which remained consistent in holding that the running of the legal interest should be from the time of the filing of the complaint until fully paid, the "second group" varied on the commencement of the running of the legal interest.

Malayan held that the amount awarded should *bear legal interest from the date of the decision of the court a quo,*explaining that "if the suit were for damages, 'unliquidated and not known until definitely ascertained, assessed and determined by the courts after proof,' then, interest 'should be from the date of the decision.'" *American Express International v. IAC,* introduced a different time frame for reckoning the 6% interest by ordering it to be "*computed from the finality of (the) decision until paid*." The Nakpil and Sons case ruled that 12% interest *per annum* should be imposed from the finality of the decision until the judgment amount is paid.

The Court laid down the following rules of thumb for future guidance:

III. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

IV. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

4. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded.In the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169of the Civil Code.
5. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty.Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification

of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

6. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

Therefore, the legal interest to be paid is 6% on the amount due computed from the decision date, dated February 3, 1988, of the court a quo. A12% interest, in lieu of 6%, shall be imposed on such amount upon finality of this decision until the payment thereof.

HERMOJINA ESTORES, Petitioner, -versus- SPOUSES ARTURO and LAURA SUPANGAN, Respondents.

Forbearance of money, goods or credits should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions. In this case, the respondent-spouses parted with their money even before the conditions were fulfilled. They have therefore allowed or granted forbearance to the seller (petitioner) to use their money pending fulfillment of the conditions. They were deprived of the use of their money for the period pending fulfillment of theconditions and when those conditions were breached, they are entitled not only to the return of the principal amount paid, but also to compensation for the use of their money. And the compensation for the use of their money, absent any stipulation, should be the same rate of legal interest applicable to a loan since the use or deprivation of funds is similar to a loan.

FACTS:

On October 3, 1993, petitioner Hermojina Estores and respondent-spouses Arturo and Laura Supangan entered into a Conditional Deed of Salewhereby petitioner offered to sell, and respondent-spouses offered to buy, a parcel of land covered by Transfer Certificate of Title No. TCT No. 98720 located at Naic, Cavite for the sum of ₱4.7 million.

After almost seven years from the time of the execution of the contract and notwithstanding payment of ₱3.5 million on the part of respondent-spouses, petitioner still failed to comply with her obligations. Hence, in a letterdated September 27, 2000, respondent-spouses demanded the return of the amount of ₱3.5 million within 15 days from receipt of the letter. In reply, petitioner acknowledged receipt of the ₱3.5 million and promised to return the same within 120 days. Respondent-spouses were amenable to the proposal provided an interest of 12% compounded annually shall be imposed on the ₱3.5 million. When petitioner still failed to return the amount despite demand, respondent-spouses were constrained to file a Complaintfor sum of money before the Regional Trial Court (RTC) of Malabon against herein petitioner as well as Roberto U. Arias who allegedly acted as petitioner's agent. The case was docketed as Civil Case No. 3201-MN and raffled off to Branch 170.

In their Answer with Counterclaim, petitioner and Arias averred that they are willing to return the principal amount of ₱3.5 million but without any interest as the same was not agreed upon. In their Pre-Trial Brief, they reiterated that the only remaining issue between the parties is the imposition

of interest. They argued that since the Conditional Deed of Sale provided only for the return of the downpayment in case of breach, they cannot be held liable to pay legal interest as well.

On May 7, 2004, the RTC rendered its Decisionfinding respondent-spouses entitled to interest but only at the rate of 6% per annum and not 12% as prayed by them.

Aggrieved, petitioner and Arias filed their notice of appeal.On May 12, 2006, the CA affirmed the ruling of the RTC finding the imposition of 6% interest proper. However, the same shall start to run only from September 27, 2000 when respondent-spouses formally demanded the return of their money and not from October 1993 when the contract was executed as held by the RTC.

Petitioner moved for reconsideration which was denied in the August 31, 2006 Resolution of the CA. Hence, this petition.

ISSUES:

Whether the interest at the rate of 12% is applicable in the instant case. (YES)

RULING:

The interest at the rate of 12% is applicable in the instant case.

Anent the interest rate, the general rule is that the applicable rate of interest "shall be computed in accordance with the stipulation of the parties." Absent any stipulation, the applicable rate of interest shall be 12% per annum "when the obligation arises out of a loan or a forbearance of money, goods or credits. In other cases, it shall be 6%." In this case, the parties did not stipulate as to the applicable rate of interest.

The contract involved in this case is admittedly not a loan but a Conditional Deed of Sale. However, the contract provides that the seller (petitioner) must return the payment made by the buyer (respondent-spouses) if the conditions are not fulfilled. There is no question that they have in fact, not been fulfilled as the seller (petitioner) has admitted this. Notwithstanding demand by the buyer (respondent-spouses), the seller (petitioner) has failed to return the money andshould be considered in default from the time that demand was made on September 27, 2000.

In Crismina Garments, Inc. v. Court of Appeals,"forbearance" was defined as a "contractual obligation of lender or creditor to refrain during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable." This definition describes a loan where a debtor is given a period within which to pay a loan or debt. In such case, "forbearance of money, goods or credits" will have no distinct definition from a loan. We believe however, that the phrase "forbearance of money, goods or credits" is meant to have a separate meaning from a loan, otherwise there would have been no need to add that phrase as a loan is already sufficiently defined in the Civil Code.Forbearance of money, goods or credits should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions. In this case, the respondent-spouses parted with their money even before the conditions were fulfilled. They have therefore allowed or granted forbearance to the seller (petitioner) to use their money pending fulfillment of the conditions. They were deprived of the use of their money for the period pending

fulfillment of the conditions and when those conditions were breached, they are entitled not only to the return of the principal amount paid, but also to compensation for the use of their money. And the compensation for the use of their money, absent any stipulation, should be the same rate of legal interest applicable to a loan since the use or deprivation of funds is similar to a loan.

Petitioner's unwarranted withholding of the money which rightfully pertains to respondent-spouses amounts to forbearance of money which can be considered as an involuntary loan. Thus, the applicable rate of interest is 12% per annum.

DARIO NACAR, *Petitioner*, -versus-GALLERY FRAMES AND/OR FELIPE BORDEY, JR., *Respondents*.
G.R. No. 189871, EN BANC, August 13, 2013, PERALTA, *J.*

The instant case is similar to the case of Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division), wherein the issue submitted to the Court for resolution was the propriety of the computation of the awards made, and whether this violated the principle of immutability of judgment. Like in the present case, it was a distinct feature of the judgment of the Labor Arbiter in the above-cited case that the decision already provided for the computation of the payable separation pay and backwages due and did not further order the computation of the monetary awards up to the time of the finality of the judgment. Also in Session Delights, the dismissed employee failed to appeal the decision of the labor arbiter. The Court clarified, thus:

In concrete terms, the question is whether a re-computation in the course of execution of the labor arbiter's original computation of the awards made, pegged as of the time the decision was rendered and confirmed with modification by a final CA decision, is legally proper. The question is posed, given that the petitioner did not immediately pay the awards stated in the original labor arbiter's decision; it delayed payment because it continued with the litigation until final judgment at the CA level.

That the amount respondents shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the Labor Arbiter's decision. Article 279 provides for the consequences of illegal dismissal in no uncertain terms, qualified only by jurisprudence in its interpretation of when separation pay in lieu of reinstatement is allowed. When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.

FACTS:

Petitioner Dario Nacar filed a complaint for constructive dismissal before the Arbitration Branch of the National Labor Relations Commission (NLRC) against respondents Gallery Frames (GF) and/or Felipe Bordey, Jr., docketed as NLRC NCR Case No. 01-00519-97.

On October 15, 1998, the Labor Arbiter rendered a Decision in favor of petitioner and found that he was dismissed from employment without a valid or just cause. Thus, petitioner was awarded backwages and separation pay in lieu of reinstatement in the amount of ₱158,919.92.

Respondents appealed to the NLRC, but it was dismissed for lack of merit in the Resolution dated February 29, 2000. Accordingly, the NLRC sustained the decision of the Labor Arbiter. Respondents filed a motion for reconsideration, but it was denied.

Dissatisfied, respondents filed a Petition for Review on Certiorari before the CA. On August 24, 2000, the CA issued a Resolution dismissing the petition. Respondents filed a Motion for Reconsideration, but it was likewise denied in a Resolution dated May 8, 2001.

Respondents then sought relief before the Supreme Court, docketed as G.R. No. 151332. Finding no reversible error on the part of the CA, this Court denied the petition in the Resolution dated April 17, 2002.

An Entry of Judgment was later issued certifying that the resolution became final and executory on May 27, 2002. The case was, thereafter, referred back to the Labor Arbiter. A pre-execution conference was consequently scheduled, but respondents failed to appear.

On November 5, 2002, petitioner filed a Motion for Correct Computation, praying that his backwages be computed from the date of his dismissal on January 24, 1997 up to the finality of the Resolution of the Supreme Court on May 27, 2002. Upon recomputation, the Computation and Examination Unit of the NLRC arrived at an updated amount in the sum of ₱471,320.31.

On December 2, 2002, a Writ of Execution was issued by the Labor Arbiter ordering the Sheriff to collect from respondents the total amount of ₱471,320.31. Respondents filed a Motion to Quash Writ of Execution, arguing, among other things, that since the Labor Arbiter awarded separation pay of ₱62,986.56 and limited backwages of ₱95,933.36, no more recomputation is required to be made of the said awards. They claimed that after the decision becomes final and executory, the same cannot be altered or amended anymore. On January 13, 2003, the Labor Arbiter issued an Order denying the motion. Thus, an Alias Writ of Execution was issued on January 14, 2003.

Respondents again appealed before the NLRC, which on June 30, 2003 issued a Resolution granting the appeal in favor of the respondents and ordered the recomputation of the judgment award.

On August 20, 2003, an Entry of Judgment was issued declaring the Resolution of the NLRC to be final and executory. Consequently, another pre-execution conference was held, but respondents failed to appear on time. Meanwhile, petitioner moved that an Alias Writ of Execution be issued to enforce the earlier recomputed judgment award in the sum of ₱471,320.31.

Petitioner then moved that a writ of execution be issued ordering respondents to pay him the original amount as determined by the Labor Arbiter in his Decision dated October 15, 1998, pending the final computation of his backwages and separation pay.

On January 14, 2003, the Labor Arbiter issued an Alias Writ of Execution to satisfy the judgment award that was due to petitioner in the amount of ₱147,560.19, which petitioner eventually received.

Petitioner then filed a Manifestation and Motion praying for the re-computation of the monetary award to include the appropriate interests.

On May 10, 2005, the Labor Arbiter issued an Order granting the motion, but only up to the amount of ₱11,459.73.

Petitioner then appealed before the NLRC, which appeal was denied by the NLRC in its Resolution dated September 27, 2006. Petitioner filed a Motion for Reconsideration, but it was likewise denied in the Resolution dated January 31, 2007.

Aggrieved, petitioner then sought recourse before the CA, docketed as CA-G.R. SP No. 98591.

On September 23, 2008, the CA rendered a Decision denying the petition.

Petitioner filed a Motion for Reconsideration, but it was denied in the Resolution dated October 9, 2009.

ISSUE:

Whether or not the Honorable Court of Appeals seriously erred, committed grave abuse of discretion and decided contrary to law in upholding the questioned resolutions of the NLRC which, in turn, sustained the may 10, 2005 order of Labor Arbiter Magat making the dispositive portion of the October 15, 1998 Decision of Labor Arbiter Lustria subservient to an opinion expressed in the body of the same decision.(YES)

RULING:

Petitioner argues that notwithstanding the fact that there was a computation of backwages in the Labor Arbiter's decision, the same is not final until reinstatement is made or until finality of the decision, in case of an award of separation pay. Petitioner maintains that considering that the October 15, 1998 decision of the Labor Arbiter did not become final and executory until the April 17, 2002 Resolution of the Supreme Court in G.R. No. 151332 was entered in the Book of Entries on May 27, 2002, the reckoning point for the computation of the backwages and separation pay should be on May 27, 2002 and not when the decision of the Labor Arbiter was rendered on October 15, 1998. Further, petitioner posits that he is also entitled to the payment of interest from the finality of the decision until full payment by the respondents.

The instant case is similar to the case of *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*, wherein the issue submitted to the Court for resolution was the propriety of the computation of the awards made, and whether this violated the principle of immutability of judgment. Like in the present case, it was a distinct feature of the judgment of the Labor Arbiter in the above-cited case that the decision already provided for the computation of the payable separation pay and backwages due and did not further order the computation of the monetary awards up to the time of the finality of the judgment. Also in *Session Delights*, the dismissed employee failed to appeal the decision of the labor arbiter. The Court clarified, thus:

In concrete terms, the question is whether a re-computation in the course of execution of the labor arbiter's original computation of the awards made, pegged as of the time the decision was rendered and confirmed with modification by a final CA decision, is legally proper. The question is posed, given that the petitioner did not immediately pay the awards stated in the original labor arbiter's

decision; it delayed payment because it continued with the litigation until final judgment at the CA level.

That the labor arbiter's decision, at the same time that it found that an illegal dismissal had taken place, also made a computation of the award, is understandable in light of Section 3, Rule VIII of the then NLRC Rules of Procedure which requires that a computation be made. This Section in part states:

[T]he Labor Arbiter of origin, in cases involving monetary awards and at all events, as far as practicable, shall embody in any such decision or order the detailed and full amount awarded.

Clearly implied from this original computation is its currency up to the finality of the labor arbiter's decision. As we noted above, this implication is apparent from the terms of the computation itself, and no question would have arisen had the parties terminated the case and implemented the decision at that point.

However, the petitioner disagreed with the labor arbiter's findings on all counts - i.e., on the finding of illegality as well as on all the consequent awards made. Hence, the petitioner appealed the case to the NLRC which, in turn, affirmed the labor arbiter's decision. By law, the NLRC decision is final, reviewable only by the CA on jurisdictional grounds.

The petitioner appropriately sought to nullify the NLRC decision on jurisdictional grounds through a timely filed Rule 65 petition for certiorari. The CA decision, finding that NLRC exceeded its authority in affirming the payment of 13th month pay and indemnity, lapsed to finality and was subsequently returned to the labor arbiter of origin for execution.

It was at this point that the present case arose. Focusing on the core illegal dismissal portion of the original labor arbiter's decision, the implementing labor arbiter ordered the award re-computed; he apparently read the figures originally ordered to be paid to be the computation due had the case been terminated and implemented at the labor arbiter's level. Thus, the labor arbiter re-computed the award to include the separation pay and the backwages due up to the finality of the CA decision that fully terminated the case on the merits. Unfortunately, the labor arbiter's approved computation went beyond the finality of the CA decision (July 29, 2003) and included as well the payment for awards the final CA decision had deleted - specifically, the proportionate 13th month pay and the indemnity awards. Hence, the CA issued the decision now questioned in the present petition.

We see no error in the CA decision confirming that a re-computation is necessary as it essentially considered the labor arbiter's original decision in accordance with its basic component parts as we discussed above. The first part contains the finding of illegality and its monetary consequences; the second part is the computation of the awards or monetary consequences of the illegal dismissal, computed as of the time of the labor arbiter's original decision.

Consequently, from the above disquisitions, under the terms of the decision which is sought to be executed by the petitioner, no essential change is made by a recomputation as this step is a necessary consequence that flows from the nature of the illegality of dismissal declared by the Labor Arbiter in that decision. A recomputation (or an original computation, if no previous computation has been made) is a part of the law – specifically, Article 279 of the Labor Code and the

established jurisprudence on this provision – that is read into the decision. By the nature of an illegal dismissal case, the reliefs continue to add up until full satisfaction, as expressed under Article 279 of the Labor Code. The recomputation of the consequences of illegal dismissal upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. The illegal dismissal ruling stands; only the computation of monetary consequences of this dismissal is affected, and this is not a violation of the principle of immutability of final judgments.

That the amount respondents shall now pay has greatly increased is a consequence that it cannot avoid as it is the risk that it ran when it continued to seek recourses against the Labor Arbiter's decision. Article 279 provides for the consequences of illegal dismissal in no uncertain terms, qualified only by jurisprudence in its interpretation of when separation pay in lieu of reinstatement is allowed. When that happens, the finality of the illegal dismissal decision becomes the reckoning point instead of the reinstatement that the law decrees. In allowing separation pay, the final decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.

Finally, anent the payment of legal interest. The Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum - as reflected in the case of Eastern Shipping Lines and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 - but will now be six percent (6%) per annum effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable.

Nonetheless, with regard to those judgments that have become final and executory prior to July 1, 2013, said judgments shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

> I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

The Labor Arbiter is hereby ORDERED to make another recomputation of the total monetary benefits awarded and due to petitioner in accordance with this Decision.

SPOUSES SALVADOR ABELLA AND ALMA ABELLA, ***Petitioners***, **-versus- SPOUSES ROMEO ABELLA AND ANNIE ABELLA**, ***Respondents***.
G.R. No. 195166, SECOND DIVISION, July 08, 2015, LEONEN, *J.*

Article 1956 of the Civil Code spells out the basic rule that "[n]o interest shall be due unless it has been expressly stipulated in writing."

On the matter of interest, the text of the acknowledgment receipt is simple, plain, and unequivocal. It attests to the contracting parties' intent to subject to interest the loan extended by petitioners to respondents. The controversy, however, stems from the acknowledgment receipt's failure to state the exact rate of interest.

it remains that where interest was stipulated in writing by the debtor and creditor in a simple loan or mutuum, but no exact interest rate was mentioned, the legal rate of interest shall apply. At present, this is 6% per annum, subject to Nacar's qualification on prospective application.

Applying this, the loan obtained by respondents from petitioners is deemed subjected to conventional interest at the rate of 12% per annum, the legal rate of interest at the time the parties executed their agreement. Moreover, should conventional interest still be due as of July 1, 2013, the rate of 12% per annum shall persist as the rate of ***conventional interest****.*

This is so because interest in this respect is used as a surrogate for the parties' intent, as expressed as of the time of the execution of their contract. In this sense, the legal rate of interest is an affirmation of the contracting parties' intent; that is, by their contract's silence on a specific rate, the then prevailing legal rate of interest shall be the cost of borrowing money. This rate, which by their contract the parties have settled on, is deemed to persist regardless of shifts in the legal rate of interest. Stated otherwise, the legal rate of interest, when applied as conventional interest, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.

FACTS:

The assailed September 30, 2010 Decision of the Court of Appeals reversed and set aside the December 28, 2005 Decision of the Regional Trial Court, Branch 8, Kalibo, Aklan in Civil Case No. 6627. It directed petitioners to pay respondents P148,500.00 (plus interest), which was the amount respondents supposedly overpaid. The assailed January 4, 2011 Resolution of the Court of Appeals denied petitioners' Motion for Reconsideration.

The Regional Trial Court's December 28, 2005 Decision ordered respondents to pay petitioners the supposedly unpaid loan balance of P300,000.00 plus the allegedly stipulated interest rate of 30% per annum, as well as litigation expenses and attorney's fees.

On July 31, 2002, petitioners Spouses Salvador and Alma Abella filed a Complaintfor sum of money and damages with prayer for preliminary attachment against respondents Spouses Romeo and Annie Abella before the Regional Trial Court, Branch 8, Kalibo, Aklan. The case was docketed as Civil Case No. 6627.

In their Complaint, petitioners alleged that respondents obtained a loan from them in the amount of P500,000.00. The loan was evidenced by an acknowledgment receipt dated March 22, 1999 and

was payable within one (1) year. Petitioners added that respondents were able to pay a total of P200,000.00—P100,000.00 paid on two separate occasions—leaving an unpaid balance of P300,000.00.

In their Answer(with counterclaim and motion to dismiss), respondents alleged that the amount involved did not pertain to a loan they obtained from petitioners but was part of the capital for a joint venture involving the lending of money.

Specifically, respondents claimed that they were approached by petitioners, who proposed that if respondents were to "undertake the management of whatever money [petitioners] would give them, [petitioners] would get 2.5% a month with a 2.5% service fee to [respondents]."The 2.5% that each party would be receiving represented their sharing of the 5% interest that the joint venture was supposedly going to charge against its debtors. Respondents further alleged that the one year averred by petitioners was not a deadline for payment but the term within which they were to return the money placed by petitioners should the joint venture prove to be not lucrative. Moreover, they claimed that the entire amount of P500,000.00 was disposed of in accordance with their agreed terms and conditions and that petitioners terminated the joint venture, prompting them to collect from the joint venture's borrowers. They were, however, able to collect only to the extent of P200,000.00; hence, the P300,000.00 balance remained unpaid.

In the Decision dated December 28, 2005, the Regional Trial Court ruled in favor of petitioners. It noted that the terms of the acknowledgment receipt executed by respondents clearly showed that: (a) respondents were indebted to the extent of P500,000.00; (b) this indebtedness was to be paid within one (1) year; and (c) the indebtedness was subject to interest. Thus, the trial court concluded that respondents obtained a simple loan, although they later invested its proceeds in a lending enterprise. The Regional Trial Court adjudged respondents solidarity liable to petitioners.

In the Order dated March 13, 2006,the Regional Trial Court denied respondents' Motion for Reconsideration.

On respondents' appeal, the Court of Appeals ruled that while respondents had indeed entered into a simple loan with petitioners, respondents were no longer liable to pay the outstanding amount of P300,000.00.

The Court of Appeals reasoned that the loan could not have earned interest, whether as contractually stipulated interest or as interest in the concept of actual or compensatory damages. As to the loan's not having earned stipulated interest, the Court of Appeals anchored its ruling on Article 1956 of the Civil Code, which requires interest to be stipulated in writing for it to be due.The Court of Appeals noted that while the acknowledgement receipt showed that interest was to be charged, no particular interest rate was specified.Thus, at the time respondents were making interest payments of 2.5% per month, these interest payments were invalid for not being properly stipulated by the parties.

In the Resolution dated January 4, 2011, the Court of Appeals denied petitioners' Motion for Reconsideration.

ISSUE:

Whether or not the Court of Appeals erred in completely striking off interest despite the parties' written agreement stipulating it, as well as in ordering them to reimburse and pay interest to respondents. (YES)

RULING:

As noted by the Court of Appeals and the Regional Trial Court, respondents entered into a simple loan or *mutuum*, rather than a joint venture, with petitioners.

Respondents' claims, as articulated in their testimonies before the trial court, cannot prevail over the clear terms of the document attesting to the relation of the parties. "If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

Articles 1933 and 1953 of the Civil Code provide the guideposts that determine if a contractual relation is one of simple loan or *mutuum*:

Art. 1933. By the contract of loan, *one of the parties delivers to another*, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, *upon the condition that the same amount of the same kind and quality shall be paid*, in which case the contract is simply called a loan or mutuum.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.

....

Art. 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality. (*Emphasis supplied*)

On March 22, 1999, respondents executed an acknowledgment receipt to petitioners, which states:

Batan, Aklan
March 22, 1999

This is to acknowledge receipt of the Amount of Five Hundred Thousand (P500,000.00) Pesos from Mrs. Alma R. Abella, payable within one (1) year from date hereof *with interest*.
Annie C. Abella (sgd.) Romeo M. Abella (sgd.)(*Emphasis supplied*)

The text of the acknowledgment receipt is uncomplicated and straightforward. It attests to: first, respondents' receipt of the sum of P500,000.00 from petitioner Alma Abella; second, respondents' duty to pay tack this amount within one (1) year from March 22, 1999; and third, respondents' duty to pay interest. Consistent with what typifies a simple loan, petitioners delivered to respondents with the corresponding condition lat respondents shall pay the same amount to petitioners within one (1) year.

Although we have settled the nature of the contractual relation between petitioners and respondents, controversy persists over respondents' duty to pay conventional interest, i.e., interest as the cost of borrowing money.

Article 1956 of the Civil Code spells out the basic rule that "[n]o interest shall be due unless it has been expressly stipulated in writing."

On the matter of interest, the text of the acknowledgment receipt is simple, plain, and unequivocal. It attests to the contracting parties' intent to subject to interest the loan extended by petitioners to respondents. The controversy, however, stems from the acknowledgment receipt's failure to state the exact rate of interest.

Jurisprudence is clear about the applicable interest rate if a written instrument fails to specify a rate. In *Spouses Toring v. Spouses Olan*, this court clarified the effect of Article 1956 of the Civil Code and noted that the legal rate of interest (then at 12%) is to apply: "In a loan or forbearance of money, according to the Civil Code, the interest due should be that stipulated in writing, and *in the absence thereof, the rate **shall** be 12% per annum*."

Spouses Toring cites and restates (practically verbatim) what this court settled in *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*: "In a loan or forbearance of money, the interest due should be that stipulated in writing, and *in the absence thereof the rate **shall** be 12% per annum*."

Security Bank also refers to *Eastern Shipping Lines, Inc. v. Court of Appeals*, which, in turn, stated:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. *In the absence of stipulation, the rate of interest **shall** be 12% per annum* to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. (*Emphasis supplied*)

The rule is not only definite; it is cast in mandatory language. From *Eastern Shipping* to *Security Bank* to *Spouses Toring*, jurisprudence has repeatedly used the word "shall," a term that has long been settled to denote something imperative or operating to impose a duty. Thus, the rule leaves no room for alternatives or otherwise does not allow for discretion. It *requires* the application of the legal rate of interest.

Our intervening Decision in *Nacar v. Gallery Frames* recognized that the legal rate of interest has been reduced to 6% per annum:

Recently, however, the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, *in the absence of an express contract as to such rate of interest, **shall** be six percent (6%) per annum*.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, *the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum* — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — *but will now be six percent (6%) per annum effective July 1, 2013*. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable.(*Emphasis supplied*, citations omitted)

Nevertheless, both Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 and Nacar retain the definite and mandatory framing of the rule articulated in *Eastern Shipping, Security Bank*, and *Spouses Toring*. *Nacar* even restates *Eastern Shipping*:

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

....

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a Joan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. *In the absence of stipulation, the rate of interest **shall** be 6% per annum* to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. (*Emphasis supplied*, citations omitted)

Thus, it remains that where interest was stipulated in writing by the debtor and creditor in a simple loan or mutuum, but no exact interest rate was mentioned, the legal rate of interest shall apply. At present, this is 6% per annum, subject to *Nacar*'s qualification on prospective application.

Applying this, the loan obtained by respondents from petitioners is deemed subjected to conventional interest at the rate of 12% per annum, the legal rate of interest at the time the parties executed their agreement. Moreover, *should conventional interest still be due as of July 1, 2013, the rate of 12% per annum shall persist as the rate of* ***conventional interest***.

This is so because interest in this respect is used as a surrogate for the parties' intent, as expressed as of the time of the execution of their contract. In this sense, the legal rate of interest is an affirmation of the contracting parties' intent; that is, by their contract's silence on a specific rate, the then prevailing legal rate of interest shall be the cost of borrowing money. This rate, which by their contract the parties have settled on, is deemed to persist regardless of shifts in the legal rate of interest. Stated otherwise, the legal rate of interest, *when applied as conventional interest*, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.

Petitioners, however, insist on conventional interest at the rate of 2.5% per month or 30% per annum. They argue that the acknowledgment receipt fails to show the complete and accurate intention of the contracting parties. They rely on Article 1371 of the Civil Code, which provides that the contemporaneous and subsequent acts of the contracting parties shall be considered should there be a need to ascertain their intent.In addition, they claim that this case falls under the exceptions to the Parol Evidence Rule, as spelled out in Rule 130, Section 9 of the Revised Rules on Evidence.

It is a basic precept in legal interpretation and construction that a rule or provision that treats a subject with specificity prevails over a rule or provision that treats a subject in general terms.

The rule spelled out in *Security Bank* and *Spouses Toring* is anchored on Article 1956 of the Civil Code and specifically governs simple loans or *mutuum*. Mutuum is a type of nominate contract that is specifically recognized by the Civil Code and for which the Civil Code provides a specific set of governing rules: Articles 1953 to 1961. In contrast, Article 11371 is among the Civil Code provisions generally dealing with contracts. As this case particularly involves a simple loan, the specific rule spelled out in *Security Bank* and *Spouses Toring* finds preferential application as against Article 1371.

Contrary to petitioners' assertions, there is no room for entertaining extraneous (or parol) evidence.

Even if it can be shown that the parties have agreed to monthly interest at the rate of 2.5%, this is unconscionable. As emphasized in *Castro v. Tan*,the willingness of the parties to enter into a relation involving an unconscionable interest rate is inconsequential to the validity of the stipulated rate.

The legal rate of interest is the presumptive reasonable compensation for borrowed money. While parties are free to deviate from this, any deviation must be reasonable and fair. Any deviation that is far-removed is suspect. Thus, in cases where stipulated interest is more than twice the prevailing

legal rate of interest, it is for the creditor to prove that this rate is required by prevailing market conditions. Here, petitioners have articulated no such justification.

In sum, Article 1956 of the Civil Code, read in light of established jurisprudence, prevents the application of any interest rate other than that specifically provided for by the parties in their loan document or, in lieu of it, the legal rate. Here, as the contracting parties failed to make a specific stipulation, the legal rate must apply. Moreover, the rate that petitioners adverted to is unconscionable. The conventional interest due on the principal amount loaned by respondents from petitioners is held to be 12% per annum.

Apart from respondents' liability for conventional interest at the rate of 12% per annum, outstanding conventional interest—if any is due from respondents—shall itself earn legal interest from the time judicial demand was made by petitioners, i.e., on July 31, 2002, when they filed their Complaint. This is consistent with Article 2212 of the Civil Code, which provides:

Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

So, too, *Nacar* states that "the interest due shall itself earn legal interest from the time it is judicially demanded."

Consistent with *Nacar*, as well as with our ruling in *Rivera v. Spouses Chua*,the interest due on conventional interest shall be at the rate of 12% per annum from July 31, 2002 to June 30, 2013. Thereafter, or starting July 1, 2013, this shall be at the rate of 6% per annum.

Proceeding from these premises, we find that respondents made an overpayment in the amount of P3,379.17.

As respondents made an overpayment, the principle of *solutio indebiti* as provided by Article 2154 of the Civil Codeapplies. Article 2154 reads:

Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

SPOUSES MARIANO and GILDA FLORENDO, petitioners, vs. COURT OF APPEALS and LAND BANK OF THE PHILIPPINES, respondents.

G.R. No. 101771, THIRD DIVISION, December 17, 1996, Panganiban, J.

Without such CB issuance, any proposed increased rate will never become effective.

FACTS:

Gilda Florendo was an employee of Land Bank from May 17, 1976 until August 16, 1984 when she voluntarily resigned. However, before her resignation, she applied for a housing loan payable within 25 years from Land Bank's Provident Fund on July 20, 1983; On March 19, 1985, Lankd Bank increased the interest rate on Florendo's loan from 9% per annum to 17%, the said increase to take effect on March 19, 1985 The details of the increase are embodied in Landbank's ManCom Resolution No. 85-08 and in a Provident Fund Memorandum Circular. Land Bank kept on

demanding that Florendo pay the increased interest or the new monthly installments based on the increased interest rate, but Florendo just as vehemently maintained that the said increase is unlawful and unjustifiable.

ISSUE:

Whether or not Land Bank has a valid and legal basis to impose an increased interest rate on the petitioners' housing loan?

RULING:

No. The court held that the retroactive enforcement of the ManCom Resolution as against petitioner-employee is invalid since in the case at bar, there is in fact no Central Bank rule, regulation or other issuance which would have triggered an application of the escalation clause as to petitioner's factual situation. The loan was perfected on July 20, 1983. PD No. 116 became effective on January 29, 1973. CB Circular No. 416 was issued on July 29, 1974. CB Circ. 504 was issued February 6, 1976. CB Circ. 706 was issued December 1, 1979. CB Circ. 905, lifting any interest rate ceiling prescribed under or pursuant to the Usury Law, as amended, was promulgated in 1982. These and other relevant CB issuances had already come into existence prior to the perfection of the housing loan agreement and mortgage contract, and thus it may be said that these regulations had been taken into consideration by the contracting parties when they first entered into their loan contract. ManCom Resolution No. 85-08, which is neither a rule nor a resolution of the Monetary Board, cannot be used as basis for the escalation in lieu of CB issuances, since paragraph (f) of the mortgage contract very categorically specifies that any interest rate increase be in accordance with "prevailing rules, regulations and circulars of the Central Bank . . . as the Provident Fund Board . . . may prescribe."

PHILIPPINE NATIONAL BANK, Petitioner, v. THE HON. COURT OF APPEALS and AMBROSIO PADILLA, Respondents.

G.R. No. 88880, FIRST DIVISION, April 30, 1991, Grino-Aquino, J.

Removal of Usury Law Ceiling on interest rates does not authorize banks to unilaterally and successively increase interest rates.

FACTS:

Ambrosio Padilla, private respondents, was granted by petitioner Philippine National Bank, a credit line, secured by a real estate mortgage, for a term of 2 years, with 18% interest per annum. Private respondent executed in favor of the PNB a Credit Agreement, 2 promissory notes in the amount of P900,000.00 each, and a Real Estate Mortgage Contract. Stipulations in the PN authorizes PNB to increase the stipulated 18% interest per annum "within the limits allowed by law at any time depending on whatever policy it [PNB] may adopt in the future; Provided, that, the interest rate on this note shall be correspondingly decreased in the event that the applicable maximum interest rate is reduced by law or by the Monetary Board." Padilla requested to the increase in the rate of interest from 18% be fixed at 21% or 24% but was denied by PNB.

ISSUE:

Whether PNB, within the term of the loan which it granted to the private respondent, may unilaterally change or increase the interest rate stipulated therein at will and as often as it pleased.

RULING:

No. Central Bank Circular No. 905, Series of 1982 removed the Usury law ceiling on interest rates, however, it did not authorize the PNB, or any bank for that matter, to unilaterally and successively increase the agreed interest rates from 18% to 48% within a span of four (4) months, in violation of P.D. 116 which limits such changes to "once every twelve months".

PAULINO GULLAS, plaintiff-appellant, vs.
THE PHILIPPINE NATIONAL BANK, defendant-appellant.
G.R. No. L-43191, EN BANC, November 13, 1935, MALCOLM, *J.*

As to a depositor who has funds sufficient to meet payment of a check drawn by him in favor of a third party, it has been held that he has a right of action against the bank for its refusal to pay such a check in the absence of notice to him that the bank has applied the funds so deposited in extinguishment of past due claims held against him. The decision cited represents the minority doctrine, for on principle it would seem that notice is not necessary to a maker because the right is based on the doctrine that the relationship is that of creditor and debtor. ***However this may be, as to an indorser the situation is different, and notice should actually have been given him in order that he might protect his interests.***

We accordingly are of the opinion that the action of the bank was prejudicial to Gullas.

FACTS:

The parties to the case are Paulino Gullas and the Philippine National Bank. The first named is a member of the Philippine Bar, resident in the City of Cebu. The second named is a banking corporation with a branch in the same city. Attorney Gullas has had a current account with the bank.

It appears from the record that the Treasurer of the United States for the United States Veterans Bureau issued a Warrant ipayable to the order of Francisco Bacos. Paulino Gullas and Pedro Lopez signed were the endorsers of this check. Thereupon it was cashed by the Philippine National Bank. Subsequently the treasury warrant was dishonored by the Insular Treasurer.

At that time the outstanding balance of Attorney Gullas on the books of the bank was P509. Against this balance he had issued certain checks which could not be paid when the money was sequestered.

The bank on learning of the dishonor of the treasury warrant sent notices by mail to Mr. Gullas which could not be delivered to him at that time because he was in Manila. In the bank's letter Gulla and Lopez were informed that the United States Treasury has been returned by the Manila office with the notation that the payment of his check has been stopped by the Insular Treasurer. And in view of that they have applied the outstanding balances of Mr. Gullas' current accounts.

As a consequence of these happenings, two occurrences transpired which inconvenienced Attorney Gullas. In the first place, checks including one for his insurance were not paid because of the lack of funds standing to his credit in the bank. In the second place, periodicals in the vicinity gave prominence to the news to the great mortification of Gullas.*lawphil.net*

ISSUE:

The main issues are two, namely,

(1) Whether or not PNB has the Right of Set Off. (NO)
(2) Whether or not Gullas is entitled to damages. (YES)

RULING:

The Civil Code contains provisions regarding compensation (set off) and deposit. The portions of Philippine law provide that compensation shall take place when two persons are reciprocally creditor and debtor of each other. In this connection, it has been held that the relation existing between a depositor and a bank is that of creditor and debtor.

The Negotiable Instruments Law contains provisions establishing the liability of a general indorser and giving the procedure for a notice of dishonor. The general indorser of negotiable instrument engages that if he be dishonored and the, necessary proceedings of dishonor be duly taken, he will pay the amount thereof to the holder. this connection, it has been held a long line of authorities that notice of dishonor is in order to charge all indorser and that the right of action against him does not accrue until the notice is given.

As a general rule, a bank has a right of set off of the deposits in its hands for the payment of any indebtedness to it on the part of a depositor. In Louisiana, however, a civil law jurisdiction, the rule is denied, and it is held that a bank has no right, without an order from or special assent of the depositor to retain out of his deposit an amount sufficient to meet his indebtedness. The basis of the Louisiana doctrine is the theory of confidential contracts arising from irregular deposits, *e. g.,* the deposit of money with a banker. With freedom of selection and after full preference to the minority rule as more in harmony with modern banking practice.

Starting, therefore, from the premise that the Philippine National Bank had with respect to the deposit of Gullas a right of set off, we next consider if that remedy was enforced properly. The fact we believe is undeniable that prior to the mailing of notice of dishonor, and without waiting for any action by Gullas, the bank made use of the money standing in his account to make good for the treasury warrant. At this point recall that Gullas was merely an indorser and had issued in good faith.

As to a depositor who has funds sufficient to meet payment of a check drawn by him in favor of a third party, it has been held that he has a right of action against the bank for its refusal to pay such a check in the absence of notice to him that the bank has applied the funds so deposited in extinguishment of past due claims held against him. The decision cited represents the minority doctrine, for on principle it would seem that notice is not necessary to a maker because the right is based on the doctrine that the relationship is that of creditor and debtor. **However this may be, as**

to an indorser the situation is different, and notice should actually have been given him in order that he might protect his interests.

We accordingly are of the opinion that the action of the bank was prejudicial to Gullas. But to follow up that statement with others proving exact damages is not so easy. For instance, for alleged libelous articles the bank would not be primarily liable. The same remark could be made relative to the loss of business which Gullas claims but which could not be traced definitely to this occurrence. Also Gullas having eventually been reimbursed lost little through the actual levy by the bank on his funds. On the other hand, it was not agreeable for one to draw checks in all good faith, then, leave for Manila, and on return find that those checks had not been cashed because of the action taken by the bank. That caused a disturbance in Gullas' finances, especially with reference to his insurance, which was injurious to him. All facts and circumstances considered, we are of the opinion that Gullas should be awarded nominal damages because of the premature action of the bank against which Gullas had no means of protection, and have finally determined that the amount should be P250.

TEOFISTO GUINGONA, JR., ANTONIO I. MARTIN, and TERESITA SANTOS, petitioners, vs. **THE CITY FISCAL OF MANILA, HON. JOSE B. FLAMINIANO, ASST. CITY FISCAL FELIZARDO N. LOTA and CLEMENT DAVID,** respondents.
G.R. No. L-60033, SECOND DIVISION, April 4, 1984, MAKASIAR, *Actg. C.J.*

[W]hile it is true that novation does not extinguish criminal liability, it may however, prevent the rise of criminal liability as long as it occurs prior to the filing of the criminal information in court. xxx

In the case at bar, there is no dispute that petitioners Guingona and Martin executed a promissory note on June 17, 1981 assuming the obligation of the bank to private respondent David; while the criminal complaint for estafa was filed on December 23, 1981 with the Office of the City Fiscal. Hence, it is clear that novation occurred long before the filing of the criminal complaint with the Office of the City Fiscal.

Consequently, as aforestated, any incipient criminal liability would be avoided but there will still be a civil liability on the part of petitioners Guingona and Martin to pay the assumed obligation.

FACTS:

The instant petition seeks to prohibit public respondents from proceeding with the preliminary investigation of I.S. No. 81-31938, in which petitioners were charged by private respondent Clement David, with estafa and violation of Central Bank Circular No. 364 and related regulations regarding foreign exchange transactions principally, on the ground of lack of jurisdiction in that the allegations of the charged, as well as the testimony of private respondent's principal witness and the evidence through said witness, showed that petitioners' obligation is civil in nature.

ISSUE:

Whether public respondents acted without jurisdiction when they investigated the charges of estafa and violation of CB Circular No. 364 and related regulations regarding foreign exchange transactions. (YES)

RULING:

[W]hile it is true that novation does not extinguish criminal liability, it may however, prevent the rise of criminal liability as long as it occurs prior to the filing of the criminal information in court. xxx

In the case at bar, there is no dispute that petitioners Guingona and Martin executed a promissory note on June 17, 1981 assuming the obligation of the bank to private respondent David; while the criminal complaint for estafa was filed on December 23, 1981 with the Office of the City Fiscal. Hence, it is clear that novation occurred long before the filing of the criminal complaint with the Office of the City Fiscal.

Consequently, as aforestated, any incipient criminal liability would be avoided but there will still be a civil liability on the part of petitioners Guingona and Martin to pay the assumed obligation.

Petitioners herein were likewise charged with violation of Section 3 of Central Bank Circular No. 364 and other related regulations regarding foreign exchange transactions by accepting foreign currency deposit in the amount of US$75,000.00 without authority from the Central Bank. They contend however, that the US dollars intended by respondent David for deposit were all converted into Philippine currency before acceptance and deposit into Nation Savings and Loan Association.

In conclusion, considering that the liability of the petitioners is purely civil in nature and that there is no clear showing that they engaged in foreign exchange transactions, We hold that the public respondents acted without jurisdiction when they investigated the charges against the petitioners. Consequently, public respondents should be restrained from further proceeding with the criminal case for to allow the case to continue, even if the petitioners could have appealed to the Ministry of Justice, would work great injustice to petitioners and would render meaningless the proper administration of justice.

While as a rule, the prosecution in a criminal offense cannot be the subject of prohibition and injunction, this court has recognized the resort to the extraordinary writs of prohibition and injunction in extreme cases.

SPS. FRANCISCO AND RUBY REYES, *Petitioners,* - versus - BPI FAMILY SAVINGS BANK, INC., and MAGDALENA L. LOMETILLO, in her capacity as ex-officio Provincial Sheriff for Iloilo, *Respondents*.

G.R. Nos. 149840-41, FIRST DIVISION, March 31, 2006, CORONA, J.

Thus, the well-settled rule is that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.

BPI-FSB and Transbuilders only extended the repayment term of the loan from one year to twenty quarterly installments at 18% interest per annum. There was absolutely no intention by the parties to supersede or abrogate the old loan contract secured by the real estate mortgage executed by petitioners in favor of BPI-FSB.

FACTS:

On March 24, 1995, the Reyes spouses executed a real estate mortgage on their property in Iloilo City in favor of respondent BPI Family Savings Bank, Inc. (BPI-FSB) to secure a P15,000,000 loan of Transbuilders Resources and Development Corporation (Transbuilders). The mortgage contract between petitioners and BPI-FSB provided, among others:

> That for and in consideration of the above-mentioned sum received by way of a loan, *and other credit accommodations of whatever nature* obtained by the Borrower/Mortgagor, the Borrower/Mortgagor by this Agreement, hereby constitutes a first mortgage

When Transbuilders failed to pay its P15M loan within the stipulated period of one year, the bank restructured the loan through a promissory note executed by Transbuilders in its favor.

Petitioners aver that they were not informed about the restructuring of Transbuilders' loan. In fact, when they learned of the new loan agreement, they wrote BPI-FSB requesting the cancellation of their mortgage and the return of their certificate of title to the mortgaged property. They claimed that the new loan novated the loan agreement of March 24, 1995. Because the novation was without their knowledge and consent, they were allegedly released from their obligation under the mortgage.

ISSUE:

Whether there was a novation to free petitioners from their obligation arising from the mortgage.

(NONE)

RULING:

Novation is defined as the extinguishment of an obligation by the substitution or change of the obligation by a subsequent one which terminates the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or subrogating a third person in the rights of the creditor.

The cancellation of the old obligation by the new one is a necessary element of novation which may be effected either expressly or impliedly. While there is really no hard and fast rule to determine what might constitute sufficient change resulting in novation, the touchstone, however, is irreconcilable incompatibility between the old and the new obligations.

The legal doctrine is that an obligation to pay a sum of money is not novated in a new instrument by changing the term of payment and adding other obligations not incompatible with the old one. It is not proper to consider an obligation novated as in the case at bar by the mere granting of extension of payment which did not even alter its essence. To sustain novation necessitates that the same be declared in unequivocal terms or that there is complete and substantial incompatibility between the two obligations. An obligation to pay a sum of money is not novated in a new instrument wherein the old is ratified by changing only the terms of payment and adding other obligations not incompatible with the old one or wherein the old contract is merely supplementing the old one.

Thus, the well-settled rule is that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.

BPI-FSB and Transbuilders only extended the repayment term of the loan from one year to twenty quarterly installments at 18% interest per annum. There was absolutely no intention by the parties to supersede or abrogate the old loan contract secured by the real estate mortgage executed by petitioners in favor of BPI-FSB. In fact, the intention of the new agreement was precisely to revive the old obligation after the original period expired and the loan remained unpaid. The novation of a contract cannot be presumed. In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point.

Moreover, under the real estate mortgage executed by them in favor of BPI-FSB, petitioners undertook to secure the P15M loan of Transbuilders to BPI-FSB "and other credit accommodations of whatever nature obtained by the Borrower/Mortgagor." While this stipulation proved to be onerous to petitioners, neither the law nor the courts will extricate a party from an unwise or undesirable contract entered into with all the required formalities and with full awareness of its consequences.

TRADERS INSURANCE and SURETY COMPANY, *plaintiff-appellant* – versus - DY ENG GIOK, PEDRO LOPEZ DEE and PEDRO E. DY-LIACCO, *defendants-appellees*.
G.R. No. L-9073, EN BANC, November 17, 1958, REYES, J.B.L., J.

In the absence of express stipulation, a guaranty or suretyship operates prospectively and not retroactively; that is to say, it secures only the debts contracted after the guaranty takes effect This rule is a consequence of the statutory directive that a guaranty is not presumed, but must be express, and can not extend to more than what is stipulated. (New Civil Code, Art. 2055). To apply the payments made by the principal debtor to the obligations he contracted prior to the guaranty is, in effect, to make the surety answer for debts incurred outside of the guaranteed period, and this can not be done without the express consent of the guarantor. Note that the suretyship agreement, Annex A, did not guarantee the payment of any outstanding balance due from the principal debtor, Dy Eng Giok; but only that he would turn over the proceeds of the sales to the "Destilleria Lim Tuaco & Co., Inc.", and this he has done, since his remittances during the period of the guaranty exceed the value of his sales.

FACTS:

Destilleria Lim Tuaco & Co., Inc. requires its agent to set up a bond for the products delivered to them. One of its sales agent, Dy eng Giok engaged Traders Insurance (Traders) for the bond. Dy Eng giok then subscribed into a indemnity agreement in favor of Traders. Dy Eng Giok has an outstanding balance to the corporation prior to the setting of bond. Dy Eng Giok then received products from the corporation. Dy Eng Giok made a remittance in favor of the corporation. The remittance was sufficient to cover the new set of products delivered, however, the corporation applied it to the previous balance of Dy. When the corporation demanded from Traders the recovery of the deficiency, Traders immediately pay. When Traders demand from Dy Eng Giok the indemnity, Dy Eng Giok refused on the ground that the obligation covered by the bond was already paid.

ISSUE:

Whether Dy Eng Giok is liable to pay by virtue of the indemnity agreement. (NO – the obligation covered by the indemnity agreement is already extinguished)

RULING:

There are two reasons why the remittances by Dy Eng Giok should be applied to the obligation contracted by him **during the period covered by the suretyship agreement**. The first is that, in the absence of express stipulation, a guaranty or suretyship operates prospectively and not retroactively; that is to say, it secures only the debts contracted after the guaranty takes effect This rule is a consequence of the statutory directive that a guaranty is not presumed, but must be express, and can not extend to more than what is stipulated. (New Civil Code, Art. 2055). To apply the payments made by the principal debtor to the obligations he contracted prior to the guaranty is, in effect, to make the surety answer for debts incurred outside of the guaranteed period, and this can not be done without the express consent of the guarantor. Note that the suretyship agreement, Annex A, did not guarantee the payment of any outstanding balance due from the principal debtor, Dy Eng Giok; but only that he would turn over the proceeds of the sales to the "Destilleria Lim Tuaco & Co., Inc.", and this he has done, since his remittances during the period of the guaranty exceed the value of his sales. There is no evidence that these remittances did not come from his sales.

The second reason is that, since the obligations of Dy Eng Giok between August 4, 1951 to August 4, 1952, were guaranteed, while his indebtedness prior to that period was not secured, then in the absence of express application by the debtor, or of any receipt issued by the creditor specifying a particular imputation of the payment (New Civil Code, Art. 1252), any partial payments made by him should be imputed or applied to the debts that were guaranteed, since they are regarded as the more onerous debts from the standpoint of the debtor (New Civil Code, Art. 1254).

SPOUSES VICKY TAN TOH and LUIS TOH, *Petitioners,*
-versus-
SOLID BANK CORPORATION, FIRST BUSINESS PAPER CORPORATION, KENNETH NG LI and MA. VICTORIA NG LI, *Respondents.*
G.R. No. 154183, SECOND DIVISION, August 7, 2003, BELLOSILLO, *J*.

Certainly, while the Bank may extend the due date at its discretion pursuant to the Continuing Guaranty, it should nonetheless comply with the requirements that domestic letters of credit be supported by fifteen percent (15%) marginal deposit extendible three (3) times for a period of thirty (30) days for each extension, subject to twenty-five percent (25%) partial payment per extension. This reading of the Continuing Guaranty is consistent with Philippine National Bank v. Court of Appeals that any doubt on the terms and conditions of the surety agreement should be resolved in favor of the surety.

Stated otherwise, an extension of the period for enforcing the indebtedness does not by itself bring about the discharge of the sureties unless the extra time is not permitted within the terms of the waiver, i.e., where there is no payment or there is deficient settlement of the marginal deposit and the twenty-five percent (25%) consideration, in which case the illicit extension releases the sureties. Under

Art. 2055 of the Civil Code, the liability of a surety is measured by the terms of his contract, and while he is liable to the full extent thereof, his accountability is strictly limited to that assumed by its terms.

FACTS:

RESPONDENT SOLID BANK CORPORATION AGREED TO EXTEND an "omnibus line" credit facility worth P10 million in favor of respondent First Business Paper Corporation (FBPC). The terms and conditions of the agreement as well as the checklist of documents necessary to open the credit line were stipulated in a "letter-advise" of the Bank addressed to FBPC and to its President, respondent Kenneth Ng Li.

The spouses Luis Toh and Vicky Tan Toh were then Chairman of the Board and Vice-President, respectively, of FBPC, while respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li were President and General Manager, respectively, of the same corporation.

More than thirty (30) days from date of the "letter-advise," petitioner-spouses Luis Toh and Vicky Tan Toh and respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li signed the subject Continuing Guaranty, as required, which was embodied in a public document prepared solely by respondent Bank. The terms of the instrument defined the contract arising therefrom as a surety agreement and provided for the solidary liability of the signatories thereto for and in consideration of "loans or advances" and "credit in any other manner to, or at the request or for the account" of FBPC.

The Continuing Guaranty set forth no maximum limit on the indebtedness that respondent FBPC may incur and for which the sureties may be liable, stating that the credit facility "covers any and all existing indebtedness of, and such other loans and credit facilities which may hereafter be granted to FIRST BUSINESS PAPER CORPORATION." The surety also contained a *de facto* acceleration clause if "default be made in the payment of any of the instruments, indebtedness, or other obligation" guaranteed by petitioners and respondents. To strengthen this security, the Continuing Guaranty waived rights of the sureties against delay or absence of notice or demand on the part of respondent Bank, and gave future consent to the Bank's action to "extend or change the time payment, and/or the manner, place or terms of payment," including renewal, of the credit facility or any part thereof in such manner and upon such terms as the Bank may deem proper without notice to or further assent from the sureties.

Respondent FBPC started to avail of the credit facility and procure letters of credit. FBPC opened thirteen (13) letters of credit and obtained loans totaling P15,227,510.00. As the letters of credit were secured, FBPC through its officers Kenneth Ng Li, Ma. Victoria Ng Li and Redentor Padilla as signatories executed a series of trust receipts over the goods allegedly purchased from the proceeds of the loans.

Later, respondent Bank received information that respondent-spouses Kenneth Ng Li and Ma. Victoria Ng Li had fraudulently departed from their conjugal home. As a result, the Bank served a demand letter upon FBPC and petitioner Luis Toh invoking the acceleration clause in the trust receipts of FBPC and claimed payment for unpaid overdue accounts on the letters of credit plus interests and penalties within twenty-four (24) hours from receipt thereof. The Bank also invoked the Continuing Guaranty executed by petitioner-spouses Luis Toh and Vicky Tan Toh who were the

only parties known to be within national jurisdiction to answer as sureties for the credit facility of FBPC.

Respondent Bank filed a complaint for sum of money with ex parte application for a writ of preliminary attachment against FBPC, spouses Kenneth Ng Li and Ma. Victoria Ng Li, and spouses Luis Toh and Vicky Tan Toh Alias summonses were served upon FBPC and spouses Luis Toh and Vicky Tan Toh but not upon Kenneth Ng Li and Ma. Victoria Ng Li who had apparently absconded.

The trial court promulgated its *Decision*, finding respondent FBPC liable to pay respondent Solid Bank Corporation the principal of P10,539,758.68 plus twelve percent (12%) interest *per annum* from finality of the *Decision* until fully paid, but absolving petitioner-spouses Luis Toh and Vicky Tan Toh of any liability to respondent Bank.

On appeal, the Court of Appeals modified the *Decision* of the trial court and held that by signing the Continuing Guaranty, petitioner-spouses became solidarily liable with FBPC to pay respondent Bank the amount of P10,539,758.68 as principal with twelve percent (12%) interest *per annum* from finality of the judgment until completely paid. The Court of Appeals ratiocinated that the provisions of the surety agreement did not "indicate that Spouses Luis and Vicky Toh x x x signed the instrument in their capacities as Chairman of the Board and Vice-President, respectively, of FBPC only."

ISSUE:

Whether or not Spouses Toh are relieved of their obligations as sureties (YES)

RULING:

This Court holds that the Continuing Guaranty is a valid and binding contract of petitioner-spouses as it is a public document that enjoys the presumption of authenticity and due execution. Although petitioners as appellees may raise issues that have not been assigned as errors by respondent Bank as party-appellant, i.e., unenforceability of the surety contract, we are bound by the consistent finding of the courts a quo that petitioner-spouses Luis Toh and Vicky Tan Toh "voluntarily affixed their signature[s]" on the surety agreement and were thus "at some given point in time willing to be liable under those forms." In the absence of clear, convincing and more than preponderant evidence to the contrary, our ruling cannot be otherwise.

Similarly, there is no basis for petitioners to limit their responsibility thereon so long as they were corporate officers and stockholders of FBPC. Nothing in the Continuing Guaranty restricts their contractual undertaking to such condition or eventuality. In fact, the obligations assumed by them therein subsist "upon the undersigned, the heirs, executors, administrators, successors and assigns of the undersigned, and shall inure to the benefit of, and be enforceable by you, your successors, transferees and assigns," and that their commitment "shall remain in full force and effect until written notice shall have been received by [the Bank] that it has been revoked by the undersigned." But as we bind the spouses Luis Toh and Vicky Tan Toh to the surety agreement they signed, so must we also hold respondent Bank to its representations in the "letter-advise" of 16 May 1993. Particularly, as to the extension of the due dates of the letters of credit, we cannot exclude from the Continuing Guaranty the preconditions of the Bank that were plainly stipulated in the "letter-advise." Fairness and justice dictate our doing so, for the Bank itself liberally applies the provisions

of cognate agreements whenever convenient to enforce its contractual rights, such as, when it harnessed a provision in the trust receipts executed by respondent FBPC to declare its entire indebtedness as due and demandable and thereafter to exact payment thereof from petitioners as sureties. In the same manner, we cannot disregard the provisions of the "letter-advise" in sizing up the panoply of commercial obligations between the parties herein.

Insofar as petitioners stipulate in the Continuing Guaranty that respondent Bank "may at any time, or from time to time, in [its] discretion x x x extend or change the time payment," this provision even if understood as a waiver is confined *per se* to the grant of an extension and does not surrender the prerequisites therefor as mandated in the "letter-advise." In other words, the authority of the Bank to defer collection contemplates only *authorized* extensions, that is, those that meet the terms of the "letter-advise."

Certainly, while the Bank may extend the due date at its discretion pursuant to the Continuing Guaranty, it should nonetheless comply with the requirements that domestic letters of credit be supported by fifteen percent (15%) marginal deposit extendible three (3) times for a period of thirty (30) days for each extension, subject to twenty-five percent (25%) partial payment per extension. This reading of the Continuing Guaranty is consistent with *Philippine National Bank v. Court of Appeals* that any doubt on the terms and conditions of the surety agreement should be resolved in favor of the surety.

Stated otherwise, an extension of the period for enforcing the indebtedness does not by *itself* bring about the discharge of the sureties unless the extra time is *not permitted* within the terms of the waiver, i.e., where there is no payment or there is deficient settlement of the marginal deposit and the twenty-five percent (25%) consideration, in which case the *illicit* extension releases the sureties. Under Art. 2055 of the *Civil Code*, the liability of a surety is measured by the terms of his contract, and while he is liable to the full extent thereof, his accountability is strictly limited to that assumed by its terms.

It is admitted in the *Complaint* of respondent Bank before the trial court that several letters of credit were irrevocably extended for ninety (90) days with alarmingly flawed and inadequate consideration - the indispensable marginal deposit of fifteen percent (15%) and the twenty-five percent (25%) prerequisite for each extension of thirty (30) days. It bears stressing that the requisite marginal deposit and security for every thirty (30) - day extension specified in the "letter-advise" were not set aside or abrogated nor was there any prior notice of such fact, if any was done. The foregoing extensions of the letters of credit made by respondent Bank without observing the rigid restrictions for exercising the privilege are not covered by the waiver stipulated in the Continuing Guaranty. Evidently, they constitute *illicit* extensions prohibited under Art. 2079 of the Civil Code, "[a]n extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty." This act of the Bank is not mere failure or delay on its part to demand payment after the debt has become due, as was the case in unpaid five (5) letters of credit which the Bank did not extend, defer or put off, but comprises conscious, separate and binding agreements to extend the due date, as was admitted by the Bank itself.

As a result of these *illicit* extensions, petitioner-spouses Luis Toh and Vicky Tan Toh are relieved of their obligations as sureties of respondent FBPC under Art. 2079 of the *Civil Code*.

CCC INSURANCE CORPORATION, *Petitioner,*
-versus- KAWASAKI STEEL CORPORATION, F.F. MAÑACOP CONSTRUCTION CO., INC., and FLORANTE F. MAÑACOP, *Respondents.*
G.R. No. 156162, FIRST DIVISION, June 22, 2015, LEONARDO-DE CASTRO, *J.*

The Court cannot give any additional meaning to the plain language of the undertakings in the Surety and Performance Bonds. The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. Article 1370 of the Civil Code provides that "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

It is not disputed that FFMCCI, due to financial difficulties, was unable to repay the advance payment it received from Kawasaki and to finish its scope of work in the Project, thus, FFMCCI defaulted on its obligations to Kawasaki. Given the default of FFMCCI, CCCIC as surety became directly, primarily, and absolutely liable to Kawasaki as the obligee under the Surety and Performance Bonds.

FACTS:

Kawasaki and F.F. Mañacop Construction Company, Inc. (FFMCCI) executed an agreement (Consortium Agreement) to form a consortium (Kawasaki-FFMCCI Consortium), for the purpose of contracting with the Philippine Government for the construction of a fishing port network in Pangasinan (Project). Indeed, the Project was awarded to the Kawasaki-FFMCCI Consortium. The Republic of the Philippines, as owner, and the Kawasaki-FFMCCI Consortium, as contractor, entered into a Contract Agreement entitled Stage I-A Construction of Pangasinan Fishing Port Network (Construction Contract).

In accordance with Article 10 of the Consortium Agreement, "Consortium Leader" Kawasaki secured from the Philippine Commercial International Bank (PCIB) a Letter of Credit in favor of DPWH. Said Letter of Credit guaranteed the faithful performance by Kawasaki-FFMCCI Consortium of its obligation under the Construction Contract. Notably, the Republic made an advance payment for the Project to the Kawasaki-FFMCCI Consortium.

For the release of its share in the advance payment made by the Republic, and also pursuant to Article 10 of the Consortium Agreement, FFMCCI secured from CCCIC the following bonds in favor of Kawasaki: (a) Surety Bond, to counter guarantee the amount of advance payment FFMCCI would receive from Kawasaki; and (b) Performance Bond, to guarantee completion by FFMCCI of its scope of work in the Project.

The Project commenced. However, several months thereafter, FFMCCI ceased performing its work in the Project after suffering business reverses. After discussions, Kawasaki and FFMCCI then executed a new Agreement wherein Kawasaki recognized the "Completed Portion of Work" of FFMCCI, and agreed to take over the unfinished portion of work of FFMCCI, referred to as "Transferred Portion of Work."

Kawasaki informed CCCIC about the cessation of operations of FFMCCI, and the failure of FFMCCI to perform its obligations in the Project and repay the advance payment made by Kawasaki. Consequently, Kawasaki formally demanded that CCCIC, as surety, pay Kawasaki the amounts covered by the Surety and Performance Bonds. Because CCCIC did not act upon its demand,

Kawasaki filed before the RTC a Complaint against CCCIC to collect on the Surety Bond and the Performance Bond. CCCIC filed its Answer.

After trial, the RTC agreed with CCCIC that the Surety and Performance Bonds issued by the insurance company were mere counter-guarantees and the cause of action of Kawasaki based on said Bonds had not yet accrued. Since the Republic did not exercise its right to claim against the PCIB Letter of Credit, nor compelled Kawasaki to perform the unfinished work of FFMCCI, Kawasaki could not claim indemnification from CCCIC. Moreover, the RTC, citing Article 2079 of the Civil Code, ruled that the obligations of CCCIC under the Surety and Performance Bonds were extinguished when the Republic granted the Kawasaki-FFMCCI Consortium a 43-day extension to finish the Project, absent the consent of CCCIC. On appeal by Kawasaki to the Court of Appeals, the appellate court reversed the impugned RTC Decision.

ISSUE:

Whether or not CCCIC may be lawfully ordered to pay Kawasaki under the Surety and Performance Bonds (YES)

RULING:

CCCIC avers that its liabilities under the Surety and Performance Bonds are directly linked with the obligation of the Kawasaki-FFMCCI Consortium to finish the Project for the Republic, so that its liability as surety of FFMCCI will only arise if the Republic made a claim on the PCIB Letter of Credit furnished by Kawasaki, on behalf of the Consortium. Since the Republic has not exercised its right against said Letter of Credit, Kawasaki does not have a cause of action against CCCIC. CCCIC also maintains that its obligations under the Surety and Performance Bonds had been extinguished when (a) the Republic extended the completion period for the Project upon the request of Kawasaki but without the knowledge or consent of CCCIC, based on Article 2079 of the Civil Code; and (b) when Kawasaki and FFMCCI executed the Agreement dated August 24, 1989, without the consent of CCCIC, there being a novation of the Consortium Agreement.

The statutory definition of suretyship is found in Article 2047 of the Civil Code: x x x If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.
Specifically, suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default or miscarriage of another, known as the principal." The Court expounds that "a surety's liability is joint and several, limited to the amount of the bond, and determined strictly by the terms of contract of suretyship in relation to the principal contract between the obligor and the obligee. It bears stressing, however, that although the contract of suretyship is secondary to the principal contract, the surety's liability to the obligee is nevertheless direct, primary, and absolute."

There are two principal contracts in this case: (1) the Consortium Agreement wherein Kawasaki and FFMCCI agreed to jointly enter into a contract with the Republic for the Project, each assuming the performance of specific scopes of work in said Project; and (2) the Construction Contract whereby the Republic awards the Project to the Kawasaki-FFMCCI Consortium. While there is a connection between these two contracts, they are each distinguishable from and enforceable independently of one another: the first governs the rights and obligations between Kawasaki and

FFMCCI, while the second covers contractual relations between the Republic and the Kawasaki-FFMCCI Consortium. The Surety and Performance Bonds from CCCIC guaranteed the performance by FFMCCI of its obligations under the Consortium Agreement; whereas the Letter of Credit from PCIB warranted the completion of the Project by the Kawasaki FFMCCI Consortium.

According to the principle of relativity of contracts in Article 1311 of the Civil Code, a contract takes effect only between the parties, their assigns, and heirs; except when the contract contains a stipulation in favor of a third person, which gives said person the right to demand fulfillment of said stipulation. In this case, the Surety and Performance Bonds are enforceable by and against the parties FFMCCI (the obligor) and CCCIC (the surety), as well as the third person Kawasaki (the obligee) in whose favor said bonds had been explicitly constituted; while the related Consortium Agreement binds the parties Kawasaki and FFMCCI. Since the Republic is neither a party to the Surety and Performance Bonds nor the Consortium Agreement, any action or omission on its part has no effect on the liability of CCCIC under said bonds.

The Surety and Performance Bonds state that their purpose was "to secure the full and faithful performance on [FFMCCI' s] part of said undertaking," particularly, the repayment by FFMCCI of the downpayment advanced to it by Kawasaki (in the case of the Surety Bond) and the full and faithful performance by FFMCCI of its portion of work in the Project (in the case of the Performance Bond).These are the only undertakings expressly guaranteed by the bonds, the fulfillment of which by FFMCCI would release CCCIC from its obligations as surety; or conversely, the non-performance of which would give rise to the liabilities of CCCIC as a surety.

The Surety and Performance Bonds do not contain any condition that CCCIC would be liable only if, in addition to the default on its undertakings by FFMCCI, the Republic also made a claim against the PCIB Letter of Credit furnished by Kawasaki, on behalf of the Kawasaki-FFMCCI Consortium. The Court agrees with the observation of the Court of Appeals that "it is not provided, neither in the Consortium Agreement nor in the subject bonds themselves that before KAWASAKI may proceed against the bonds posted by [FFMCCI] and CCCIC, the Philippine government as employer must first exercise its rights against the bond issued in its favor by the consortium."

The Court cannot give any additional meaning to the plain language of the undertakings in the Surety and Performance Bonds. The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. Article 1370 of the Civil Code provides that "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

It is not disputed that FFMCCI, due to financial difficulties, was unable to repay the advance payment it received from Kawasaki and to finish its scope of work in the Project, thus, FFMCCI defaulted on its obligations to Kawasaki. Given the default of FFMCCI, CCCIC as surety became directly, primarily, and absolutely liable to Kawasaki as the obligee under the Surety and Performance Bonds.

The following pronouncements of the Court in Asset Builders Corporation v. Stronghold Insurance Company, Inc. are relevant herein:

As provided in Article 2047, the surety undertakes to be bound solidarily with the principal obligor. That undertaking makes a surety agreement an ancillary contract as it presupposes the existence of

a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. Let it be stressed that notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking.

To free itself from its liabilities under the Surety and Performance Bonds, CCCIC also cites Article 2079 of the Civil Code, which reads: Art. 2079. An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. The mere failure on the part of the creditor to demand payment after the debt has become due does not of itself constitute any extension of time referred to herein.

The theory behind Article 2079 is that an extension of time given to the principal debtor by the creditor without the surety's consent would deprive the surety of his right to pay the creditor and to be immediately subrogated to the creditor's remedies against the principal debtor upon the maturity date. The surety is said to be entitled to protect himself against the contingency of the principal debtor or the indemnitors becoming insolvent during the extended period.

Again, there are two sets of transactions in the present case covered by two different contracts: the Consortium Agreement between Kawasaki and FFMCCI and the Construction Contract between the Republic and the Kawasaki-FFMCCI Consortium. The Surety and Performance Bonds guaranteed the performance of the obligations of FFMCCI to Kawasaki under the Consortium Agreement. The Republic was not a party in either the Surety and Performance Bonds or the Consortium Agreement. Under these circumstances, there was no creditor-debtor relationship between the Republic and FFMCCI and Article 2079 of the Civil Code did not apply. The extension granted by the Republic to Kawasaki modified the deadline for the completion of the Project under the Construction Contract, but had no effect on the obligations of FFMCCI to Kawasaki under the Consortium Agreement, much less, on the liabilities of CCCIC under the Surety and Performance Bonds.

DOMINADOR DIZON, doing business under the firm name "Pawnshop of Dominador Dizon", petitioner, *vs.* **LOURDES G. SUNTAY,** respondent.
G.R. No. L-30817, EN BANC, September 29, 1972, FERNANDO, *J.*

As was put by Justice Labrador, "a person claimed to be estopped must have knowledge of the fact that his voluntary acts would deprive him of some rights because said voluntary acts are inconsistent with said rights."

In light of these, Dizon cannot assert that his appeal finds support in the doctrine of estoppel. Neither the promptings of equity nor the mandates of moral right and natural justice come to his rescue. He is engaged in a business where presumably ordinary prudence would manifest itself to ascertain whether or not an individual who is offering jewelry by way of a pledge is entitled to do so.

FACTS:

Suntay is the owner of a three-carat diamond ring valued at P5,500.00. In 1962, Suntay and Clarita R. Sison entered into a transaction by virtue of which Suntay's ring was delivered to Clarita for sale

on commission. Suntay had already previously known Clarita. as a close friend of his cousin. In fact, about one year before their transaction, Clarita sold a piece of jewelry belonging to Suntay.

After the lapse of a considerable time without Clarita having returned the ring, Suntay made demands on Clarita for the return said ring but the latter could not comply with the demands because, said ring was pledged by the niece of Clarita's husband with Dizon's pawnshop for P2,600.00

Eventually, Suntay found out that Clarita pledged her ring. Subsequently thereafter, Suntay, through her lawyer, wrote a letter to Dizon asking for the delivery of her ring pledged. Since Dizon refused to return the ring, Dizon filed the present action with the CFI of Manila for the recovery of said ring, with application for the provisional remedy of replevin. The lower court issued the writ of replevin prayed for by Dizon.

Thereafter, the lower court rendered judgment declaring that Suntay had the right to the possession of the ring in question. Dizon sought to have the judgment reversed by the Court of Appeals. CA, however, affirmed the decision of the lower court. Hence, this petition for review.

ISSUE:

Whether or not the principle of estoppel can be invoked? (NO)

RULING:

Estoppel as known to the Rules of Court and prior to that to the Court of Civil Procedure, has its roots in equity. Good faith is its basis. It is a response to the demands of moral right and natural justice. For estoppel to exist though, it is indispensable that there be a declaration, act or omission by the party who is sought to be bound. It is equally a requisite that he, who would claim the benefits of such a principle, must have altered his position, having been so intentionally and deliberately led to comport himself thus, by what was declared or what was done or failed to be done. If thereafter litigation arises, the former would not be allowed to disown such act, declaration or omission. As was put by Justice Labrador, "a person claimed to be estopped must have knowledge of the fact that his voluntary acts would deprive him of some rights because said voluntary acts are inconsistent with said rights."

In light of these, Dizon cannot assert that his appeal finds support in the doctrine of estoppel. Neither the promptings of equity nor the mandates of moral right and natural justice come to his rescue. He is engaged in a business where presumably ordinary prudence would manifest itself to ascertain whether or not an individual who is offering jewelry by way of a pledge is entitled to do so.

So it has always been since *Varela v. Finnick*, a 1907 decision. According to Justice Torres: "In the present case not only has the ownership and the origin of the jewels misappropriated been unquestionably proven but also that the accused, acting fraudulently and in bad faith, disposed of them and pledged them contrary to agreement, with no right of ownership, and to the prejudice of the injured party, who was thereby illegally deprived of said jewels; therefore, in accordance with the provisions of article 464, the owner has an absolute right to recover the jewels from the possession of whosoever holds them."

Dizon ought to have been on his guard before accepting the pledge in question. Evidently there was no such precaution availed of. He therefore, has only himself to blame for the fix he is now in. It would be to stretch the concept of estoppel to the breaking point if his contention were to prevail. Moreover, there should have been a realization on his part that courts are not likely to be impressed with a cry of distress emanating from one who is in a business authorized to impose a higher rate of interest precisely due to the greater risk assumed by him.

SPOUSES NILO RAMOS and ELIADORA RAMOS, Petitioners,
vs. **RAUL OBISPO and FAR EAST BANK AND TRUST COMPANY,** Respondents.
G.R. No. 193804, FIRST DIVISION, February 27, 2013, VILLARAMA, *J.*

It bears stressing that an accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such. It is not always necessary that the accommodation mortgagor be apprised beforehand of the entire amount of the loan nor should it first be determined before the execution of the Special Power of Attorney in favor of the debtor. This is especially true when the words used by the parties indicate that the mortgage serves as a continuing security for credit obtained as well as future loan availments.

Here, Spouses Ramos as owners signed the REM as mortgagors and there is no evidence adduced that suggests fraud or irregularity in its execution. Spouses Ramos are not contracting parties whom the law considers ignorant or disadvantaged but former overseas workers with sufficient education as to be well-aware of the consequences of their personal decisions, consistent with the legal presumption that a person takes ordinary care of his concerns. Hence, it can be reasonably inferred from the facts on record that it was more probable that Spouses Ramos allowed Obispo to use their property as additional collateral so as to avail of his existing credit line with FEBTC instead of them directly applying for a separate loan.

FACTS:

Spouses Ramos filed a **complaint for annulment of real estate mortgage with damages** against FEBTC and Raul Obispo, alleging that sometime in 1996, they executed a Real Estate Mortgage in favour of FEBTC-Fairview Branch, over their property in Quezon City. The Spouses entrusted their property to Obispo to secure their credit accommodations in the amount of ₱250,000.00.

Obispo initially gave them ₱100,000.00 and the balance was given a few months later. After supposedly completing payment of their loan, the Spouses demanded the release of their title but Obispo refused to talk or see them, as he is now hiding from them. Upon verification with the Registry of Deeds of Quezon City, Spouses Ramos said they were surprised to learn that their property was in fact mortgaged for ₱1,159,096.00 and that Obispo had instead used the property as collateral for his personal indebtedness.

Because of the alleged fraud committed upon them by Obispo who made them sign the REM form in blank, petitioners sought to have the REM annulled and their title over the mortgaged property released by FEBTC. They claimed it was Obispo who filled up the REM form contrary to their instructions and faulted FEBTC for being negligent in not ascertaining the authority of Obispo and failing to furnish petitioners with copies of mortgage documents. In other words, Spouses Ramos contend that since their consent to the REM was vitiated, judicial declaration of its nullity is in

order. The RTC granted relief to petitioners while the CA found the subject REM as a valid third-party or accommodation mortgage under Article 2085 of the Civil Code due to petitioners' failure to substantiate their allegations with the requisite quantum of evidence. Spouses Ramos filed a motion for reconsideration but it was denied by the CA. Hence, this petition.

ISSUE

Whether or not Spouses Ramos are accommodation mortgagors of Raul Obispo? (YES)

RULING

The validity of an accommodation mortgage is allowed under Article 2085 of the Civil Code which provides that "[t]hird persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property." An accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such.

It bears stressing that an accommodation mortgagor, ordinarily, is not himself a recipient of the loan, otherwise that would be contrary to his designation as such. It is not always necessary that the accommodation mortgagor be apprised beforehand of the entire amount of the loan nor should it first be determined before the execution of the Special Power of Attorney in favor of the debtor. This is especially true when the words used by the parties indicate that the mortgage serves as a continuing security for credit obtained as well as future loan availments.

Here, Spouses Ramos *as owners* signed the REM as mortgagors and there is no evidence adduced that suggests fraud or irregularity in its execution. Spouses Ramos are not contracting parties whom the law considers ignorant or disadvantaged but former overseas workers with sufficient education as to be well-aware of the consequences of their personal decisions, consistent with the legal presumption that a person takes ordinary care of his concerns. Hence, it can be reasonably inferred from the facts on record that it was more probable that Spouses Ramos allowed Obispo to use their property as additional collateral so as to avail of his existing credit line with FEBTC instead of them directly applying for a separate loan.

With the dearth of evidence to back up Spouses Ramos' story, the CA found implausible the alleged legal infirmities in the execution of the REM. The appellate court thus aptly observed:

While Spouses Ramos claim that they sought the help of Obispo in securing the loan from FEBTC, and not to secure the loans obtained by Obispo himself, **they failed to present any evidence, except for their bare assertion**, that they indeed gave their title to Obispo purportedly to facilitate their loan with FEBTC.

It may be argued that having received the amount of ₱250,000.00, Spouses Ramos became parties to the principal obligation and as such, the provision of the last paragraph of Article 2085 no longer applies. While it is undisputed that Spouses Ramos received the amount of ₱250,000.00, the record, however, reveals that they received the said amount not from FEBTC but from Obispo. It could be inferred that the ₱250,000.00 given by Obispo to Spouses Ramos was some form of remuneration in lending their title to him as security for his credit line with FEBTC.

From all indications, the failure of Obispo to pay his loan resulted to the prejudice of Spouses Ramos which may have led them to disown the Real Estate Mortgage they executed in favor of defendant-appellant FEBTC to accommodate the loan of defendant Obispo.

There being valid consent on the part of Spouses Ramos as accommodation mortgagors, no reversible error was committed by the CA in reversing the trial court's decision which declared the REM as void and awarded damages to the Spouses.

BANGKO SENTRAL NG PILIPINAS, *Petitioner*, -versus- AGUSTIN LIBO-ON, *Respondent*.
G.R. No. 173864, THIRD DIVISION, November 23, 2015, REYES, *J.*

"An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, dation in payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor. It may be in the form of sale, but at times it may constitute a dation in payment, such as ***when a debtor, in order to obtain a release from his debt, assigns to his creditor a credit he has against a third person.****" As a dation in payment, the* ***assignment of credit operates as a mode of extinguishing the obligation****; the delivery and transmission of ownership of a thing (in this case, the credit due from a third person) by the debtor to the creditor is accepted as the equivalent of the performance of the obligation.*

The mere pledge and deposit of the mortgage contract, transfer certificate of title and promissory note executed by the the Rural Bank of Hinigaran in favor o'f BSP, does not produce the effect of giving BSP the authority to intervene with the transaction between the Spouses Libo-on and the Rural Bank of Hinigaran, much less foreclose the mortgaged property of the Spouses Libo-on. In the absence of a notarized deed of assignment, BSP cannot be considered as an assignee who can proceed against the Spouses Libo-on's property.

FACTS:

On August 29, 1997 and September 17, 1997, respondent Agustin Libo-on, together with his wife, Mercedes Libo-on (*Spouses Libo-on*), secured loans from the Rural Bank of Hinigaran, Inc., in the amounts of P100,000.00 and P300,000.00, respectively. The Spouses Libo-on executed promissory notes payable to. the order of the Rural Bank for a period of 360 days or until August 24, 1998 and September 12, 1998, respectively. As security for the loan, the Spouses Libo-on likewise executed a Deed of Real Estate Mortgage over a parcel of land with Transfer Certificate of Title No. T-67129 in favor of the Rural Bank of Hinigaran.

Meanwhile, on September 19, 1997[6] and October 17, 1997,[7] the Rural Bank of Hinigaran, in turn, secured a loan with now petitioner, Bangko Sentral ng Pilipinas (*BSP*) in the amount of P800,000.00 and P640,000.00, respectively. The Rural Bank of Hinigaran executed a document denominated as "promissory note with trust receipt agreement."[8] As a security for the loan, the Rural Bank of Hinigaran pledged and deposited to BSP promissory notes with supporting TCTs, including the promissory note and TCT of the Spouses Libo-ons mortgaged with the former.

On May 3, 2000, BSP demanded from the Spouses Libo-on the payment of their outstanding loan with the Rural Bank of Hinigaran. Despite BSP's demand, the Spouses Libo-on failed to pay. The

loan obligation of the Rural Bank of Hinigaran with BSP likewise fell due and demandable as the former failed to pay its loan from BSP. As a result, BSP filed an application for extrajudicial foreclosure against the mortgage security of the Spouses Libo-on with the Rural Bank of Hinigaran. However, before BSP could complete the auction sale, Agustin Libo-on filed an action against BSP for damages with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction before the RTC.

The Spouses Libo-on contested the extrajudicial foreclosure of their property and the notice of extrajudicial sale pursuant thereto. The Spouses Libo-on argued that there is no privity of contract between him and BSP as the latter was not authorized by the Rural Bank of Hinigaran to act on its behalf nor was the mortgage assigned to it.

ISSUE:

Whether the bsp has the authority to foreclose the subject mortgage. (NO)

RULING:

"An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, *dation* in payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor. It may be in the form of sale, but at times it may constitute a *dation* in payment, such as **when a debtor, in order to obtain a release from his debt, assigns to his creditor a credit he has against a third person.**" As a *dation* in payment, the **assignment of credit operates as a mode of extinguishing the obligation**; the delivery and transmission of ownership of a thing (in this case, the credit due from a third person) by the debtor to the creditor is accepted as the equivalent of the performance of the obligation.

BSP is persistent in claiming that there was a valid assignment of credit by virtue of the promissory note with trust receipt issued by the Rural Bank of Hinigaran in its favor. However, other than BSP's allegation of assignment of credit, there was no document denominated as deed of assignment of credit/mortgage ever presented to show that the Rural Bank of Hinigaran has indeed transferred its rights to BSP. Even if we follow BSP's argument that the promissory note with trust receipt was actually an assignment of credit, the same will still not hold as BSP foiled to comply with the formalities required by law for a valid assignment of credit involving real property. Indeed, a mortgage credit is a real right, thus, the formality required by law for its transfer or assignment, i.e., it must be in a public instrument and must be registered and should be complied with in order to bind third person.

The mere pledge and deposit of the mortgage contract, transfer certificate of title and promissory note executed by the the Rural Bank of Hinigaran in favor o'f BSP, does not produce the effect of giving BSP the authority to intervene with the transaction between the Spouses Libo-on and the Rural Bank of Hinigaran, much less foreclose the mortgaged property of the Spouses Libo-on. In the absence of a notarized deed of assignment, BSP cannot be considered as an assignee who can proceed against the Spouses Libo-on's property.

Moreover, the Rural Bank of Hinigaran in fact has no authority to pledge the security documents to BSP during the term of the real estate mortgage contract between the Rural Bank of Hinigaran and the Spouses Libo-on because if it is within the term of the contract, the mortgaged property remains to be the property of the latter.

LAND BANK OF THE PHILIPPINES, *Petitioner*, -versus- LORENZO MUSNI, EDUARDO SONZA and SPOUSES IRENEO AND NENITA SANTOS, *Respondents*.
G.R. No. 206343, SECOND DIVISION, February 22, 2017, LEONEN, *J.*

The rule on "innocent purchasers or mortgagees for value" is applied more strictly when the purchaser or the mortgagee is a bank. Banks are expected to exercise higher degree of diligence in their dealings, including those involving lands. Banks may not rely simply on the face of the certificate of title.

What further militates against the claim of Land Bank's good faith in this case is the fact that TCT No. 304649 which was mortgaged to the bank, was issued by virtue of a Decision of the Department of Agrarian Reform Adjudication Board Region III dated December 29,1997. The said Decision was, however, inscribed only on February 25, 1998, after the issuance of TCT No. 304649 on February 8, 1998. In addition, the property was mortgaged to Land Bank a few days after the inscription of the alleged Decision of the Department of Agrarian Reform Adjudication Board. This circumstance should have aroused a suspicion on the part of Land Bank and anyone who deliberately ignores a significant fact that would create suspicion in an otherwise reasonable person cannot be considered as a mortgagee in good faith.

FACTS:

Respondent Lorenzo Musni (Musni) was the compulsory heir of Jovita Musni (Jovita), who was the owner of a lot in Comillas, La Paz, Tarlac, under Transfer of Certificate Title (TCT) No. 07043.

Musni filed before the Regional Trial Court of Tarlac City a complaint for reconveyance of land and cancellation of TCT No. 333352 against Spouses Nenita Sonza Santos and Ireneo Santos (Spouses Santos), Eduardo Sonza (Eduardo), and Land Bank of the Philippines (Land Bank).

Musni alleged that Nenita Sonza Santos (Nenita) falsified a Deed of Sale, and caused the transfer of title of the lot in her and her brother Eduardo's names. He claimed that the Spouses Santos and Eduardo mortgaged the lot to Land Bank as security for their loan of ₱1,400,000.00.

Musni said that he was dispossessed of the lot when Land Bank foreclosed the property upon Nenita and Eduardo's failure to pay their loan.

Musni claimed that he filed a criminal case against Nenita and Eduardo for falsification of a public document. The case was filed before the Municipal Trial Court of Tarlac, and was docketed as Criminal Case No. 4066-99 . According to him, the municipal trial court rendered a decision finding Nenita guilty of the imputed crime.

Land Bank filed its Amended Answer with Counterclaim and Cross-claim. It asserted that the transfer of the title in its name was because of a decision rendered by the Department of Agrarian Reform Adjudication Board, Region III. It countered that its transaction with the Spouses Santos and Eduardo was legitimate, and that it verified the authenticity of the title with the Register of

Deeds. Further, the bank loan was secured by another lot owned by the Spouses Santos, and not solely by the lot being claimed by Musni.

On June 27, 2008, the trial court rendered a Decision, in favor of Musni. It relied on the fact that Nenita was convicted of falsification of the Deed of Sale. The trial court also found that Land Bank was not an "innocent purchaser for value." The institution of the criminal case against Nenita should have alerted the bank to ascertain the ownership of the lot before it foreclosed the same.

ISSUE:

Whether petitioner is a mortgagee in good faith and an innocent purchaser for value. (NO)

RULING:

In *Philippine Banking Corporation* v. *Dy, et al.*, this Court explained the concept of a mortgagee, and a purchaser in good faith in relation to banks:

Primarily, it bears noting that the doctrine of "mortgagee in good faith" is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. This is in deference to the public interest in upholding the indefeasibility of a certificate of title as evidence of lawful ownership of the land or of any encumbrance thereon. In the case of banks and other financial institutions, however, greater care and due diligence are required since they are imbued with public interest, failing which renders the mortgagees in bad faith. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner(s) thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.

In this case, during trial, appellant Land Bank presented its Account Officer Randy Quijano who testified that while it conducted a credit investigation and inspection of the subject property as stated in its Credit Investigation Report dated March 17, 1998, a perusal of the report and the testimony of the account officer failed to establish that the bank's standard operating procedure in accepting the property as security, including having investigators visit the subject property and appraise its value were followed.

At the most, the report and the testimonial evidence presented were limited to the credit investigation report conducted by Randy Quijano who, in turn relied on the report made by its field officers. Land Bank's field officers who allegedly visited the property and conducted interviews with the neighbors and verified the status of the property with the courts and the police were not presented. At the most, We find Land Bank's claim of exhaustive investigation was a just generalization of the bank's operating procedure without any showing if the same has been followed by its officers.

Moreover, what further militates against the claim of Land Bank's good faith is the fact that TCT No. 304649 which was mortgaged to the bank, was issued by virtue of a Decision of the Department of Agrarian Reform Adjudication Board Region III dated December 29,1997. The said Decision was,

however, inscribed only on February 25, 1998, after the issuance of TCT No. 304649 on February 8, 1998. In addition, the property was mortgaged to Land Bank a few days after the inscription of the alleged Decision of the Department of Agrarian Reform Adjudication Board. This circumstance should have aroused a suspicion on the part of Land Bank and anyone who deliberately ignores a significant fact that would create suspicion in an otherwise reasonable person cannot be considered as a mortgagee in good faith.

The Court also found that petitioner was not an innocent purchaser for value:

A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he has notice of the adverse claims and interest of another person in the same property. Clearly, the factual circumstances as afore-cited surrounding the acquisition of the disputed property do not make Land Bank an innocent purchaser for value or a purchaser in good faith.

The rule on "innocent purchasers or mortgagees for value" is applied more strictly when the purchaser or the mortgagee is a bank. Banks are expected to exercise higher degree of diligence in their dealings, including those involving lands. Banks may not rely simply on the face of the certificate of title.

Had petitioner exercised the degree of diligence required of banks, it would have ascertained the ownership of one of the properties mortgaged to it.

SPOUSES ELLIS R. MILES and CAROLINA RONQUILLO-MILES, *Petitioners* -versus-
BONNIE BAUTISTA LAO, *Respondent.*
G.R. No. 209544, FIRST DIVISION, November 22, 2017, TIJAM, *J.*

Indeed, a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security, and in the absence of any sign that might arouse suspicion, the mortgagee has no obligation to undertake further investigation. This doctrine presupposes, however, that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the title.

In this case, the title of the property under the name of spouses Ocampo was already registered as early as May 6, 1998, while the real estate mortgage was executed December 16, 1998. Hence, it is clear that respondent had every right to rely on the TCT presented to her insofar as the mortgagors' right of ownership over the subject property is concerned.

FACTS:

Petitioners claimed that on March 28, 1983, they became registered owners in fee simple of a parcel of land in Makati City, covered by Transfer Certificate of Title (TCT) No. 1204275 (subject property). They averred that before they left for the United States, they entrusted the duplicate of the TCT of the subject property to their niece, defendant Rodora Jimenez (Rodora) so that she may offer it to interested buyers. They claimed that no written Special Power of Attorney (SPA) to sell the property was given to Rodora.

They alleged that Rodora and spouses Ocampo conspired and made it appear, through a falsified Deed of Donation dated April 21, 1998, that petitioners were donating the subject property to spouses Ocampo. As a result, TCT No. 120427 was cancelled and a new one, TCT No. 2123146 was issued in the name of spouses Ocampo.

Later on, petitioners claimed that through falsification, evident bad faith and fraud, spouses Ocampo caused the execution of a falsified Real Estate Mortgage in favor of respondent Lao, with the subject property as security, in exchange of a loan in the amount of Php2,500,000. Since the spouses Ocampo failed to pay the loan, respondent foreclosed the mortgage.

Alleging that there was collusion among the defendants, petitioners prayed that TCT No. 21234 in the name of spouses Ocampo be cancelled, and TCT No. 120427 under their name be restored. They also prayed for the nullification of the Deed of Donation dated April 21, 1998, the mortgage executed by spouses Ocampo in favor of respondent and the cancellation of the mortgage inscription on the title of the property.

The RTC ruled in favor of petitioners. The appellate court reversed the trial court and ruled that respondent is a mortgagee in good faith.

ISSUE:

Whether the respondent is a mortgagee in good faith. (YES)

RULING:

Indeed, a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security, and in the absence of any sign that might arouse suspicion, the mortgagee has no obligation to undertake further investigation. This doctrine presupposes, however, that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining Torrens title over the property in his name and that, after obtaining the said title, he succeeds in mortgaging the property to another who relies on what appears on the title.

In this case, the title of the property under the name of spouses Ocampo was already registered as early as May 6, 1998, while the real estate mortgage was executed December 16, 1998. Hence, it is clear that respondent had every right to rely on the TCT presented to her insofar as the mortgagors' right of ownership over the subject property is concerned.

In ascertaining good faith, or the lack of it, which is a question of intention, courts are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. Good faith, or want of it, is capable of being ascertained only from the acts of one claiming its presence, for it is a condition of the mind which can be judged by actual or fancied token or signs. Good faith, or want of it, is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged by actual or fancied token or signs. Good faith connotes an honest intention to abstain from taking unconscientious advantage of another.

In Manaloto, et al. v. Veloso III29, the Court defined good faith as"an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of

the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs. "

In this case, respondent's decision to deal with the mortgagors through a middleman, does not equate to bad faith. At the outset, it bears to stress that the spouses Ocampo were already the registered owners of the property at the time they entered into a mortgage contract with respondent. Hence, respondent was justified in relying on the contents of TCT No. 212314 and is under no legal" obligation to further investigate. Likewise, there is nothing in the records, and neither did petitioners point to anything in the title which would arouse suspicions as to the spouses Ocampo's defective title to the subject property.

SPOUSES UY TONG & KHO PO GIOK, *petitioners*, -versus- HONORABLE COURT OF APPEALS, HONORABLE BIENVENIDO C. EJERCITO, Judge of the Court of First Instance of Manila, Branch XXXVII and BAYANIHAN AUTOMOTIVE CORPORATION, *respondents*.
G.R. No. 77465, THIRD DIVISION, May 21, 1988, CORTES, *J.*

There are two elements for pactum commissorium to exist: (1) that there should be a pledge or mortgage wherein a property is pledged or mortgaged by way of security for the payment of the principal obligation; and (2) that there should be a stipulation for an automatic appropriation by the creditor of the thing pledged or mortgaged in the event of non-payment of the principal obligation within the stipulated period.

A perusal of the terms of the questioned agreement evinces no basis for the application of the pactum commissorium provision. First, there is no indication of 'any contract of mortgage entered into by the parties. It is a fact that the parties agreed on the sale and purchase of trucks.

FACTS:

Petitioners Uy Tong (also known as Henry Uy) and Kho Po Giok (SPOUSES) used to be the owners of Apartment No. 307 of the Ligaya Building, together with the leasehold right for ninety- nine (99) years over the land on which the building stands. The land is registered in the name of Ligaya Investments, Inc. as evidenced by Transfer Certificate of Title No. 79420 of the Registry of Deeds of the City of Manila. It appears that Ligaya Investments, Inc. owned the building which houses the apartment units but sold Apartment No. 307 and leased a portion of the land in which the building stands to the SPOUSES.

In February, 1969, the SPOUSES purchased from private respondent Bayanihan Automotive, Inc. (BAYANIHAN) seven (7) units of motor vehicles for a total amount of P47,700.00 payable in three (3) installments. Their agreement included an undertaking in the part of the spouses that: if *VENDEE should fail to pay her aforementioned obligation to the VENDOR, the latter shall become automatically the owner of the former's apartment which is located at No. 307, Ligaya Building, Alvarado St., Binondo, Manila, with the only obligation on its part to pay unto the VENDEE the amount of Three Thousand Five Hundred Thirty Five (P3,535.00) Pesos, Philippine Currency; and in such event the VENDEE shall execute the corresponding Deed of absolute Sale in favor of the VENDOR and or the Assignment of Leasehold Rights.*

After making a downpayment of P7,700.00, the SPOUSES failed to pay the balance of P40,000.00. Due to these unpaid balances, BAYANIHAN filed an action for specific performance against the SPOUSES docketed as Civil Case No. 80420 with the Court of First Instance of Manila. After hearing, judgment was rendered in favor of BAYANIHAN.

Pursuant to said judgment, an order for execution pending appeal was issued by the trial court and a deed of assignment dated May 27, 1972, was executed by the SPOUSES over Apartment No. 307 of the Ligaya Building together with the leasehold right over the land on which the building stands. The SPOUSES acknowledged receipt of the sum of P3,000.00 more or less, paid by BAYANIHAN pursuant to the said judgment.

Notwithstanding the execution of the deed of assignment the SPOUSES remained in possession of the premises. Subsequently, they were allowed to remain in the premises as lessees for a stipulated monthly rental until November 30,1972.

Despite the expiration of the said period, the SPOUSES failed to surrender possession of the premises in favor of BAYANIHAN. This prompted BAYANIHAN to file an ejectment case against them in the City Court of Manila docketed as Civil Case No. 240019. This action was however dismissed on the ground that BAYANIHAN was not the real party in interest, not being the owner of the building.

On February 7, 1979, after demands to vacate the subject apartment made by BAYANIHAN's counsel was again ignored by the SPOUSES, an action for recovery of possession with damages was filed with the Court of First Instance of Manila, against the SPOUSES and impleading Ligaya Investments, Inc. as party defendant. A decision in said case was rendered in favor of BAYANIHAN. The Court of Appeals affirmed in toto the decision.

ISSUE:

Whether the deed of assignment is null and void because it is in the nature of a pactum commissorium and/or was borne out of the same. (NO)

RULING:

The aforequoted provision furnishes the two elements for pactum commissorium to exist: (1) that there should be a pledge or mortgage wherein a property is pledged or mortgaged by way of security for the payment of the principal obligation; and (2) that there should be a stipulation for an automatic appropriation by the creditor of the thing pledged or mortgaged in the event of non-payment of the principal obligation within the stipulated period.

A perusal of the terms of the questioned agreement evinces no basis for the application of the pactum commissorium provision. First, there is no indication of 'any contract of mortgage entered into by the parties. It is a fact that the parties agreed on the sale and purchase of trucks.

Second, there is no case of automatic appropriation of the property by BAYANIHAN. When the SPOUSES defaulted in their payments of the second and third installments of the trucks they purchased, BAYANIHAN filed an action in court for specific performance. The trial court rendered favorable judgment for BAYANIHAN and ordered the SPOUSES to pay the balance of their obligation

and in case of failure to do so, to execute a deed of assignment over the property involved in this case. The SPOUSES elected to execute the deed of assignment pursuant to said judgment.

Clearly, there was no automatic vesting of title on BAYANIHAN because it took the intervention of the trial court to exact fulfillment of the obligation, which, by its very nature is ". . anathema to the concept of pacto commissorio" [Northern Motors, Inc. v. Herrera, G.R. No. L-32674, February 22, 1973, 49 SCRA 392].

SPOUSES FRANCISCO D. YAP and WHELMA S. YAP, *petitioners*, -versus- SPOUSES ZOSIMO DY, SR. and NATIVIDAD CHIU DY, SPOUSES MARCELINO MAXINO and REMEDIOS L. MAXINO, PROVINCIAL SHERIFF OF NEGROS ORIENTAL and DUMAGUETE RURAL BANK, INC., *respondents*.

G.R. No. 171868 & G.R. No. 171991, FIRST DIVISION, July 27, 2011, VILLARAMA, Jr., J.

A debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied. However, this rule does not apply where the aggregate number of the lots which comprise the collaterals for the mortgage had already been foreclosed and sold at public auction.

Nothing in the law prohibits the piecemeal redemption of properties sold at one foreclosure proceeding. Clearly, the Dys and Maxinos can effect the redemption of even only two of the five properties foreclosed. And since they can effect a partial redemption, they are not required to pay the P216,040.93 considering that it is the purchase price for all the five properties foreclosed.

FACTS:

The spouses Tomas Tirambulo and Salvacion Estorco (Tirambulos) are the registered owners of several parcels of land (herein referred to as Lot 1, 3, 4, 5, 6, 8 and 846) located in Ayungon, Negros Oriental. Tirambulos executed a Real Estate Mortgage over Lots 1, 3, 4, 5, 6, 8 and 846 in favor of the Rural Bank of Dumaguete, Inc., predecessor of Dumaguete Rural Bank, Inc. (DRBI), to secure the two loans extended to them by the bank. Subsequently, the Tirambulos sold all seven mortgaged lots to the spouses Zosimo Dy, Sr. and Natividad Chiu (the Dys) and the spouses Marcelino C. Maxino and Remedios Lasola (the Maxinos) without the consent and knowledge of DRBI and this sale was embodied in a Deed of Absolute Sale. The Tirambulos failed to pay their loan and this prompted DRBI to extrajudicially foreclose the mortgages and had Lots 1, 4, 5, 6 and 8 sold at public auction. DRBI emerged as the highest bidder. It later on sold some of the lots to the spouses Francisco D. Yap and Whelma D. Yap (the Yaps) under a Deed of Sale with Agreement to Mortgage.

Roughly a month before the one-year redemption period was set to expire, the Dys and the Maxinos attempted to redeem Lots 1, 3 and 6. They tendered the amount of P40,000.00 to DRBI and the Yaps, but both refused. Thus, the Dys and the Maxinos went to the Office of the Sheriff of Negros Oriental and paid P50,625.29 to effect the redemption. The Clerk of Court and Provincial Sheriff, issued a Certificate of Redemption in favor of the Dys and the Maxinos only for Lots 1 and 6, and stated in said certificate that Lot 3 is not included in the foreclosure proceedings.

The Yaps refused to take delivery of the redemption price. Thus, the Dys and the Maxinos instead tender the redemption money as a consignation. Meanwhile, the Yaps requested DRBI to consolidate its title over the foreclosed properties by requesting the Provincial Sheriff to execute

the final deed of sale in favor of the bank so that the latter can transfer the titles of the two foreclosed properties to them. Consequently, the Yaps filed Civil Case for consolidation of ownership, annulment of certificate of redemption, and damages against the Dys, the Maxinos, the Provincial Sheriff of Negros Oriental and DRBI.

The RTC held that the Dys and the Maxinos failed to exercise their rights of redemption properly and timely. On appeal, the CA reversed the amended decision of the RTC. It ruled that the redemption made by Spouses Dy and Spouses Maxino with regards to Lot No 1 and 6 as valid. Hence, the consolidated petitions assailing the appellate court's decision.

ISSUE:

Whether the Dys and Maxinos validly redeem Lots 1 and 6. (YES)

RULING:

The requisites of a valid redemption are present in the case at bar. The requisites for a valid redemption are: (1) the redemption must be made within twelve (12) months from the time of the registration of the sale in the Office of the Register of Deeds; (2) payment of the purchase price of the property involved, plus 1% interest per month thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after the purchase, also with 1% interest on such last named amount; and (3) written notice of the redemption must be served on the officer who made the sale and a duplicate filed with the Register of Deeds of the province.

There is no issue as to the first and third requisites. It is undisputed that the Dys and the Maxinos made the redemption within the 12-month period from the registration of the sale. The Dys and Maxinos effected the redemption on May 24, 1984, when they deposited P50,373.42 with the Provincial Sheriff, and on June 19, 1984, when they deposited an additional P83,850.50. Both dates were well within the one-year redemption period reckoned from the June 24, 1983 date of registration of the foreclosure sale. Likewise, the Provincial Sheriff who made the sale was properly notified of the redemption since the Dys and Maxinos deposited with him the redemption money after both DRBI and the Yaps refused to accept it.

The second requisite, the proper redemption price, is the main subject of contention of the opposing parties. The Court did not subscribe to the Yaps' argument on the doctrine of indivisibility of the mortgage since the same does not apply once the mortgage is extinguished by a complete foreclosure thereof as in the instant case. Furthermore, under Article 2089, it is apparent that what the law proscribes is the foreclosure of only a portion of the property or a number of the several properties mortgaged corresponding to the unpaid portion of the debt where before foreclosure proceedings partial payment was made by the debtor on his total outstanding loan or obligation. This also means that the debtor cannot ask for the release of any portion of the mortgaged property or of one or some of the several lots mortgaged unless and until the loan thus, secured has been fully paid, notwithstanding the fact that there has been a partial fulfillment of the obligation.

Hence, it is provided that the debtor who has paid a part of the debt cannot ask for the proportionate extinguishment of the mortgage as long as the debt is not completely satisfied. That the situation obtaining in the case at bar is not within the purview of the aforesaid rule on

indivisibility is obvious since the aggregate number of the lots which comprise the collaterals for the mortgage had already been foreclosed and sold at public auction. There is no partial payment nor partial extinguishment of the obligation to speak of. The aforesaid doctrine, which is actually intended for the protection of the mortgagee, specifically refers to the release of the mortgage which secures the satisfaction of the indebtedness and naturally presupposes that the mortgage is existing. Once the mortgage is extinguished by a complete foreclosure thereof, said doctrine of indivisibility ceases to apply since, with the full payment of the debt, there is nothing more to secure.

Nothing in the law prohibits the piecemeal redemption of properties sold at one foreclosure proceeding. Clearly, the Dys and Maxinos can effect the redemption of even only two of the five properties foreclosed. And since they can effect a partial redemption, they are not required to pay the P216,040.93 considering that it is the purchase price for all the five properties foreclosed.

MIDWAY MARITIME AND TECHNOLOGICAL FOUNDATION, represented by its Chairman/President PhD in Education DR. SABINO M. MANGLICMOT, *petitioner*, -versus- MARISSA E. CASTRO, ET AL., *respondents*.
G.R. No. 189061, FIRST DIVISION, August 6, 2014, REYES, *J.*

The petitioner is a lessee of a parcel of land and disputes the title of the owners of the building built on the land they are leasing. The Supreme Court ruled that it is settled that "[o]nce a contact of lease is shown to exist between the parties, the lessee cannot by any proof, however strong, overturn the conclusive presumption that the lessor has a valid title to or a better right of possession to the subject premises than the lessee." Section 2(b), Rule 131 of the Rules of Court prohibits a tenant from denying the title of his landlord at the time of the commencement of the relation of landlord and tenant between them.

FACTS:

The petitioner MIDWAY MARITIME is a lessee of two parcels of land owned by spouses Manglicmot. The lease contract was executed between the petitioner company and the respondent. Inside the two parcels of land is a building which is the subject of the dispute in the case at bar. The respondent Castro alleges that she is the owner of the building within the parcels of land owned by the spouses. She asserts that what the petitioner spouses only acquired in is the two parcels of land and it does not include the residential building in it. On the other hand, the spouses Manglicmot contend that they are the owners of the said residential building by virtue of the title they acquired from their predecessor-in-interest which is Union Bank which acquired the property from Bancom who, in turn, acquired the property through a public auction.

The Regional Trial Court rendered a decision in favor of the respondents declaring them to be the absolute owners of the residential building. On appeal, the Court of Appeals affirmed the decision of the RTC. Hence, the current petition.

The petitioner MIDWAY MARITIME contests the award of rentals made by the RTC, which was affirmed by the CA, contending that when Tomas bought the two parcels of land from Union Bank in 1993, the sale included the improvements thereon, one of which was the residential house in dispute. The petitioner also argues that the lease between CCC and the respondents already expired at the time of the sale and they are now the current lessees of the property, albeit the residential

house is still standing inside the school compound. The petitioner relies on a decision rendered by the RTC of Cabanatuan City, Branch 26, in Civil Case No. 2939 (AF),which was an appeal from the trial court's dismissal of the complaint for Ejectment with Damages filed by the respondents against the petitioner. In said decision, the RTC stated that "in the advertised sale of the lots covered by TCT Nos. T-45816 and [T-45817] of the land records of Cabanatuan City, all improvements were included, hence, the instant case has no factual and legal basis."

ISSUE:

Whether or not the spouses Manglicmot owns the residential building located within the two parcels of land they own. (NO)

RULING:

No. The Supreme Court affirmed the decision of the Court of Appeals and dismissed the petition filed by the spouses.

Given the existence of the lease, the petitioner's claim denying the respondents' ownership of the residential house must be rejected. According to the petitioner, it is Adoracion who actually owns the residential building having bought the same, together withthe two parcels of land, from her father Tomas, who, in turn, bought it in an auction sale.

It is settled that "[o]nce a contact of lease is shown to exist between the parties, the lessee cannot by any proof, however strong, overturn the conclusive presumption that the lessor has a valid title to or a better right of possession to the subject premises than the lessee." Section 2(b), Rule 131 of the Rules of Court prohibits a tenant from denying the title of his landlord at the time of the commencement of the relation of landlord and tenant between them. In Santos v. National Statistics Office, the Court expounded on the rule on estoppel against a tenant and further clarified that what a tenant is estopped from denying is the title of his landlord at the time of the commencement of the landlord-tenant relation. If the title asserted is one that is alleged to have been acquired subsequent to the commencement of that relation, the presumption will not apply.

More importantly, the respondents' ownership of the residential building is already an established fact. "Nemo dat quod non habet. One can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally."18 It must be pointed out that what Tomas bought from Union Bank in the auction sale were the two parcels of land originally owned and mortgaged by CCC to Bancom, and which mortgage was later assigned by Bancom to Union Bank. Contrary to the petitioner's assertion, the property subject of the mortgage and consequently the auction sale pertains only to these two parcels of land and did not include the residential house. This was precisely the tenor of Castro, Jr. v. CA19 where the Court nullified the writ of possession issued by the trial court insofar as it affected the residential house constructed by the respondents on the mortgaged property as it was not owned by CCC, which was the mortgagor. The Court ruled: [Article 2127 of the Civil Code] extends the effects of the real estate mortgage to accessions and accessories found on the hypothecated property when the secured obligation becomes due. The law is predicated on an assumption that the ownership of such accessions and accessories also belongs to the mortgagor as the owner of the principal. The provision has thus been seen by the Court, x xx, to mean that all improvements subsequently introduced or owned by the mortgagor on the encumbered property are deemed to form part of the

mortgage. That the improvements are to be considered so incorporated only if so owned by the mortgagor is a rule that can hardly be debated since a contract of security, whether real or personal, needs as an indispensable element thereof the ownership by the pledger or mortgagor of the property pledged or mortgaged. The rationale should be clear enough — in the event of default on the secured obligation, the foreclosure sale of the property would naturally be the next step that can expectedly follow. A sale would result in the transmission of title to the buyer which is feasible only if the seller can be in a position to convey ownership of the thing sold (Article 1458, Civil Code). It is to say, in the instant case, that a foreclosure would be ineffective unless the mortgagor has title to the property to be foreclosed. The rule is that "when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors in interest." Such being the case, Castro, which already determined with finality the respondents' ownership of the residential house in question, is applicable and binding in this case and the petitioner cannot be allowed to challenge the same. Thus, as correctly ruled by the CA, "[t]o our mind, the pronouncement resolving the said issue necessarily touches also the issue on the ownership of the building. x xx The finding of the Court [in Castro], now being final and executory, is no longer open for inquiry and therefore, has attained its immutability

Also, Adoracion's subsequent acquisition of the two parcels of land from her father does not necessarily entail the acquisition of the residential building. "A building by itself is a realor immovable property distinct from the land on which it is constructed and therefore can be a separate subject of contracts." Whatever Adoracion acquired from her father is still subject to the limitation pronounced by the Court in Castro, and the sale between Adoracion and Tomas is confined only to the two parcels of land and excluded the residential building owned by the respondents. It is beyond question that Tomas, and subsequently, Adoracion, could nothave acquired a right greater than what their predecessors-in-interest – CCC and later, Union Bank – had.

PHILIPPINE NATIONAL BANK, PETITIONER, VS. SPOUSES BERNARD AND CRESENCIA MARAÑON, RESPONDENTS.
G.R. No. 189316, FIRST DIVISION, July 01, 2013, REYES, *J.*

Rent is a civil fruit that belongs to the owner of the property producing it by right of accession. The rightful recipient of the disputed rent in this case should thus be the owner of the subject lot at the time the rent accrued. It is beyond question that Spouses Marañon never lost ownership over the subject lot. This is the precise consequence of the final and executory judgment in Civil Case No. 7213 rendered by the RTC on June 3, 2006 whereby the title to the subject lot was reconveyed to them and the cloud thereon consisting of Emilie's fraudulently obtained title was removed.

FACTS:

The controversy at bar involves a 152-square meter parcel of land located at Cuadra-Smith Streets, Downtown, Bacolod (subject lot) erected with a building leased by various tenants. The subject lot was among the properties mortgaged by Spouses Rodolfo and Emilie Montealegre (Spouses Montealegre) to PNB as a security for a loan. When Spouses Montealegre failed to pay the loan, PNB initiated foreclosure proceedings on the mortgaged properties, including the subject lot. In the auction sale, PNB emerged as the highest bidder. It was issued the corresponding Certificate of Sale which was subsequently registered.

Before the expiration of the redemption period, Spouses Marañon filed before the RTC a complaint for Annulment of Title, Reconveyance and Damages against Spouses Montealegre, PNB, the Register of Deeds of Bacolod City and the Ex-Officio Provincial Sheriff of Negros Occidental. The complaint, alleged that Spouses Marañon are the true registered owners of the subject lot which was illegally cancelled under the name of Emilie who used a falsified Deed of Sale bearing the forged signatures of Spouse Marañon to effect the transfer of title to the property in her name.

RTC rendered its Decision in favor of the respondents. It concluded the sale to be null and void and as such it did not transfer any right or title in law. PNB was adjudged to be a mortgagee in good faith whose lien on the subject lot must be respected. What precipitated the controversy at hand were the subsequent motions filed by Spouses Marañon for release of the rental payments deposited with the Clerk of Court and paid to PNB by Tolete. Motions regarding the withdrawal of deposited rentals were filed for by Spouses Marañon, which was subsequently granted by the RTC. The PNB differed with the RTC's ruling and moved for reconsideration averring that as declared by the RTC in its Decision dated June 2, 2006, its mortgage lien should be carried over to the new title reconveying the lot to Spouses Marañon, which was subsequently denied by the RTC.

Aggrieved, PNB sought recourse with the CA via a petition for certiorari and mandamus claiming that as the lawful owner of the subject lot per the RTC's judgment dated June 2, 2006, it is entitled to the fruits of the same such as rentals paid by tenants hence, the ruling that "the real estate mortgage lien of the PNB registered on the title of Lot No. 177-A-1 Bacolod Cadastre shall stay and be respected." PNB also contended that it is an innocent mortgagee. CA denied the petition and affirmed the RTC's judgment ratiocinating that not being parties to the mortgage transaction between PNB and Spouses Montealegre, Spouses Marañon cannot be deprived of the fruits of the subject lot as the same will amount to deprivation of property without due process of law. It held that PNB is not a mortgagee in good faith because as a financial institution imbued with public interest, it should have looked beyond the certificate of title presented by Spouses Montealegre and conducted an inspection on the circumstances surrounding the transfer to Spouses Montealegre. PNB asserts that it is entitled to the rent because it became the subject lot's new owner when the redemption period expired without the property being redeemed.

ISSUE:

Whether or not the mortgage lien of PNB was carried over to the new title issued to Spouses Marañon and thus it retained the right to foreclose the subject lot upon non-payment of the secured debt.

RULING:

The court denies the petition.

It is readily apparent from the facts at hand that the status of PNB's lien on the subject lot has already been settled by the RTC in its Decision dated June 2, 2006 where it was adjudged as a mortgagee in good faith whose lien shall subsist and be respected. The decision lapsed into finality when neither of the parties moved for its reconsideration or appealed.

Being a final judgment, the dispositions and conclusions therein have become immutable and unalterable not only as against the parties but even the courts. This is known as the doctrine of

immutability of judgments which espouses that a judgment that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.

Hence, as correctly argued by PNB, the issue on its status as a mortgagee in good faith have been adjudged with finality and it was error for the CA to still delve into and, worse, overturn, the same. The CA had no other recourse but to uphold the status of PNB as a mortgagee in good faith regardless of its defects for the sake of maintaining stability of judicial pronouncements. "The main role of the courts of justice is to assist in the enforcement of the law and in the maintenance of peace and order by putting an end to judiciable controversies with finality. Nothing better serves this role than the long established doctrine of immutability of judgments."

Rent is a civil fruit that belongs to the owner of the property producing it by right of accession. The rightful recipient of the disputed rent in this case should thus be the owner of the subject lot at the time the rent accrued. It is beyond question that Spouses Marañon never lost ownership over the subject lot. This is the precise consequence of the final and executory judgment in Civil Case No. 7213 rendered by the RTC on June 3, 2006 whereby the title to the subject lot was reconveyed to them and the cloud thereon consisting of Emilie's fraudulently obtained title was removed. Ideally, the present dispute can be simply resolved on the basis of such pronouncement. However, the application of related legal principles ought to be clarified in order to settle the intervening right of PNB as a mortgagee in good faith.

The protection afforded to PNB as a mortgagee in good faith refers to the right to have its mortgage lien carried over and annotated on the new certificate of title issued to Spouses Marañon as so adjudged by the RTC. Thereafter, to enforce such lien thru foreclosure proceedings in case of non-payment of the secured debt, as PNB did so pursue. The principle, however, is not the singular rule that governs real estate mortgages and foreclosures attended by fraudulent transfers to the mortgagor.

Rent, as an accessory follow the principal. In fact, when the principal property is mortgaged, the mortgage shall include all natural or civil fruits and improvements found thereon when the secured obligation becomes due as provided in Article 2127 of the Civil Code, viz: Art. 2127. The mortgage extends to the natural accessions, to the improvements, growing fruits, and the rents or income not yet received when the obligation becomes due, and to the amount of the indemnity granted or owing to the proprietor from the insurers of the property mortgaged, or in virtue of expropriation for public use, with the declarations, amplifications and limitations established by law, whether the estate remains in the possession of the mortgagor, or it passes into the hands of a third person.

Consequently, in case of non-payment of the secured debt, foreclosure proceedings shall cover not only the hypothecated property but all its accessions and accessories as well. However, the rule is not without qualifications. In Castro, Jr. v. CA the Court explained that Article 2127 is predicated on the presumption that the ownership of accessions and accessories also belongs to the mortgagor as the owner of the principal. After all, it is an indispensable requisite of a valid real estate mortgage that the mortgagor be the absolute owner of the encumbered property, thus:

"All improvements subsequently introduced or owned by the mortgagor on the encumbered property are deemed to form part of the mortgage. That the improvements are to be considered so

incorporated only if so owned by the mortgagor is a rule that can hardly be debated since a contract of security, whether, real or personal, needs as an indispensable element thereof the ownership by the pledgor or mortgagor of the property pledged or mortgaged."

Otherwise stated, absent an adverse claimant or any evidence to the contrary, all accessories and accessions accruing or attached to the mortgaged property are included in the mortgage contract and may thus also be foreclosed together with the principal property in case of non-payment of the debt secured. Corollary, any evidence sufficiently overthrowing the presumption that the mortgagor owns the mortgaged property precludes the application of Article 2127. Otherwise stated, the provision is irrelevant and inapplicable to mortgages and their resultant foreclosures if the mortgagor is later on found or declared to be not the true owner of the property, as in the instant case.

It is beyond question that PNB's mortgagors, Spouses Montealegre, are not the true owners of the subject lot much less of the building which produced the disputed rent. The foreclosure proceedings on August 16, 1991 caused by PNB could not have, thus, included the building found on the subject lot and the rent it yields. PNB's lien as a mortgagee in good faith pertains to the subject lot alone because the rule that improvements shall follow the principal in a mortgage under Article 2127 of the Civil Code does not apply under the premises. Accordingly, since the building was not foreclosed, it remains a property of Spouses Marañon; it is not affected by non- redemption and is excluded from any consolidation of title made by PNB over the subject lot. Thus, PNB's claim for the rent paid by Tolete has no basis.

It must be remembered that there is technically no juridical tie created by a valid mortgage contract that binds PNB to the subject lot because its mortgagor was not the true owner. But by virtue of the mortgagee in good faith principle, the law allows PNB to enforce its lien. We cannot, however, extend such principle so as to create a juridical tie between PNB and the improvements attached to the subject lot despite clear and undeniable evidence showing that no such juridical tie exists.
Lastly, it is worthy to note that the effects of the foreclosure of the subject lot is in fact still contentious considering that as a purchaser in the public sale, PNB was only substituted to and acquired the right, title, interest and claim of the mortgagor to the property as of the time of the levy. There being already a final judgment reconveying the subject lot to Spouses Marañon and declaring as null and void Emilie's purported claim of ownership, the legal consequences of the foreclosure sale, expiration of the redemption period and even the consolidation of the subject lot's title in PNB's name shall be subjected to such final judgment.

Nonetheless, since the present recourse stemmed from a mere motion claiming ownership of rent and not from a main action for annulment of the foreclosure sale or of its succeeding incidents, the Court cannot proceed to make a ruling on the bearing of the CA's Decision dated June 18, 2008 to PNB's standing as a purchaser in the public auction. Such matter will have to be threshed out in the proper forum.

All told, albeit the dispositive portions of the assailed CA decision and resolution are differently premised, they ought to be upheld as they convey the similar conclusion that Spouses Marañon are the rightful owners of the rent earned by the building on the subject lot.

PABLO P. GARCIA, PETITIONER, VS. YOLANDA VALDEZ VILLAR, RESPONDENT.
G.R. No. 158891, FIRST DIVISION, June 27, 2012, LEONARDO-DE CASTRO, *J.*

The following are the elements of pactum commissorium: (1) There should be a property mortgaged by way of security for the payment of the principal obligation; and (2) There should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non- payment of the principal obligation within the stipulated period.

FACTS:

Lourdes V. Galas (Galas) was the original owner of a piece of property (subject property), which she mortgaged to Yolanda Valdez Villar (Villar) as security for a loan.

Galas subsequently mortgaged the same subject property to Pablo P. Garcia (Garcia) to secure another loan. Both mortgages were annotated on the subject property's TCT.

Galas thereafter sold the subject property to Villar. The Deed of Sale was registered and, consequently, a new TCT was issued in the name of Villar. Both Villar's and Garcia's mortgages were carried over and annotated on Villar's new TCT.

Garcia filed a Petition for *Mandamus* with Damages against Villar before the RTC. Garcia subsequently amended his petition to a Complaint for Foreclosure of Real Estate Mortgage with Damages and alleged that when Villar purchased the subject property, she acted in bad faith as she knowingly and willfully disregarded the laws on judicial and extrajudicial foreclosure of mortgaged property.

The RTC ruled in favor of Garcia and ordered Villar to pay the former the sum of P1.8M (the amount of the loan secured by the mortgage) plus legal interest. The RTC declared that the direct sale of the subject property to Villar, the first mortgagee, could not operate to deprive Garcia of his right as a second mortgagee. The RTC further explained that upon Galas's failure to pay her obligation, Villar should have foreclosed the subject property to provide junior mortgagees like Garcia the opportunity to satisfy their claims from the residue, if any, of the foreclosure sale proceeds.
Villar appealed and contended that the second mortgage is a void and inexistent contract. The Court of Appeals reversed the RTC's decision and declared that Galas was free to mortgage the subject property even without Villar's consent as the restriction that the mortgagees consent was necessary in case of a subsequent encumbrance was absent in the Deed of Real Estate Mortgage. However, the Court of Appeals held that the sale of the subject property to Villar was valid as it found nothing in the records that would show that Galas violated the Deed of Real Estate Mortgage prior to the sale.

Garcia appealed to the Supreme Court, with the same arguments he posited before the lower courts, but added that the stipulation appointing Villar, the mortgagee, as the mortgagor's attorney-in-fact, to sell the property in case of default in the payment of the loan, is in violation of the prohibition on *pactum commissorium*, as stated under Article 2088 of the Civil Code.

ISSUE:

Whether or not the sale of the subject property to Villar was in violation of the prohibition on pactum commissorium.

RULING:

The sale of the subject property does not violate the prohibition on pactum commissorium

The following are the elements of pactum commissorium:

(1) There should be a property mortgaged by way of security for the payment of the principal obligation; and
(2) There should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.

Villar's purchase of the subject property did not violate the prohibition on pactum commissorium. The power of attorney provision above did not provide that the ownership over the subject property would automatically pass to Villar upon Galas's failure to pay the loan on time. What it granted was the mere appointment of Villar as attorney-in-fact, with authority to sell or otherwise dispose of the subject property, and to apply the proceeds to the payment of the loan. This provision is customary in mortgage contracts, and is in conformity with Article 2087 of the Civil Code, which reads:

"Art. 2087. It is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor."

Galas's decision to eventually sell the subject property to Villar was well within the scope of her rights as the owner of the subject property. The subject property was transferred to Villar by virtue of another and separate contract, which is the Deed of Sale. Garcia never alleged that the transfer of the subject property to Villar was automatic upon Galas's failure to discharge her debt, or that the sale was simulated to cover up such automatic transfer.

MAMERTA LOPEZ CLAUDIO, EDUARDO L. CLAUDIO, ASUNCION CLAUDIO-CONTEGINO, ANA CLAUDIO-ISULAT, DOLORES CLAUDIO-MABINI, AND FERMIN L. CLAUDIO, *Petitioners*, - *versus* - SPOUSES FEDERICO AND NORMA SARAZA, *Respondent*.
G.R. No. 213286, SECOND DIVISION, August 26, 2015, MENDOZA, *J*

*Based on the **doctrine of "the mortgagee in good faith,"** all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. The public interest in upholding the indefeasibility of a certificate of title, as evidence of the lawful ownership of the land or of any encumbrance thereon, protects a buyer or mortgagee who, in good faith, relied upon what appears on the face of the certificate of title.*

In this case, evidence shows that the REM, constituted on the subject property, was executed on June 22, 2004, while TCT No. 145979, in the name of Florentino, was issued by the Register of Deeds only six (6) days later or on June 28, 2004. Evidently, the property, offered as collateral

to the loan of P1 Million, was not in Florentino's name yet when he entered into a mortgage agreement with Spouses Saraza.

FACTS:

The petitioners filed before the RTC a complaint for annulment of sale, power of attorney and mortgage with prayer for damages against the respondents Spouses Federico and Norma Saraza (Spouses Saraza).

The complaint alleged that Porfirio Claudio, and his wife, Mamerta, during their marriage, acquired ten (10) parcels of land in Pasay City, including the property covered by TCT No. 142989. Florentino made it appear that his parents, Porfirio and Mamerta Claudio, sold the lot covered by TCT No. 142989 to him through a Deed of Absolute Sale.

However, it was alleged that the deed of sale was void because the signatures of the vendors were forged and there was no consideration for the sale. Likewise, the signatures of petitioners Fermin and Asuncion appearing in the same deed of sale were likewise forged. Subsequently, Florentino sought the registration of the said property in his name.

Thereafter, on June 22, 2004, Florentino executed a deed of REM over the subject lot with special power to sell the mortgaged property without judicial proceedings, in favor of Spouses Saraza to secure the payment of a loan in the amount of P1,000,000.00.

It was alleged that Spouses Saraza were mortgagees in bad faith, knowing fully well that Florentino could not have acquired the subject property from his parents since Porfirio had long been deceased while Mamerta was in the USA at the time of the alleged sale.

Further, the petitioners argued that Spouses Saraza did not ascertain the validity of Florentino's title and his authority to mortgage the subject lot. As such, the REM was void because it emanated from a falsified deed of absolute sale and void title. The registration of the REM before the Register of Deeds was procured through fraud, and that it was **only on June 28, 2004 or six (6) days after the execution of the mortgage,** that TCT No. 142989 was cancelled and, in lieu thereof, TCT No. 145979 was issued in the name of Florentino. Thus, for failure of mortgagor Florentino to redeem the subject property, it was consolidated in the name of Spouses Saraza.

The RTC dismissed the Complaint. The CA, on the other hand, ruled that Spouses Saraza had the right to rely in good faith on TCT No. 145979, which covered the lot given as security by Florentino, considering that there was no showing of any sign to excite suspicion. Thus, they were under no obligation to look beyond what appeared on the face of the certificate of title and investigate it. The CA deemed Spouses Saraza as innocent mortgagees for value and as such, the petitioners had shown no right to relief against them.

ISSUE:

Whether the respondents are mortgagees in good faith. (NO)

RULING:

The Court finds that Spouses Saraza are **not mortgagees in good faith.**

Based on the **doctrine of "the mortgagee in good faith,"** all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. The public interest in upholding the indefeasibility of a certificate of title, as evidence of the lawful ownership of the land or of any encumbrance thereon, protects a buyer or mortgagee who, in good faith, relied upon what appears on the face of the certificate of title.

Verily, a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor and, in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation. Accordingly, even if the mortgagor is not the rightful owner of, or does not have a valid title to, the mortgaged property, the mortgagee in good faith is entitled to protection. This doctrine presupposes, however, that the mortgagor, who is not the rightful owner of the property, has already succeeded in obtaining a Torrens title over the property in his name and that, **after obtaining the said title**, he succeeds in mortgaging the property to another who relies on what appears on the said title.

In this case, evidence shows that the REM, constituted on the subject property, was executed on June 22, 2004, while TCT No. 145979, in the name of Florentino, was issued by the Register of Deeds only six (6) days later or on June 28, 2004. Evidently, the property, offered as collateral to the loan of P1 Million, was not in Florentino's name yet when he entered into a mortgage agreement with Spouses Saraza.

Further, the Court finds it unusual that Florentino did not indicate the TCT number in the mortgage contract, if indeed, one had already been issued in his favor. The TCT number is essential to identify the title covering the mortgaged land. Notwithstanding the said omission, Spouses Saraza still allowed the loan and entered into a mortgage agreement with Florentino. Considering the substantial loan involved in the agreement, Spouses Saraza should have undertaken the necessary steps to ascertain any flaw in the title of Florentino or to check his capacity to transfer any interest in the mortgaged land. Instead, Spouses Saraza closed their eyes on a fact which should put a reasonable man on guard as to the ownership of the property being presented as security for a loan. A person who deliberately ignores a significant fact that would create suspicion in an otherwise reasonable person is not an innocent purchaser (mortgagee) for value.

The doctrine of mortgagee in good faith only applies when the mortgagor has already obtained a certificate of title in his or her name at the time of the mortgage. **Such was not the situation of Spouses Saraza.** They cannot claim the protection accorded by law to innocent mortgagees for value considering that there was no certificate of title yet in the name of Florentino to rely on when the mortgaged contract was executed.

Besides, the evidence proffered by the petitioners tends to show that the deed of absolute sale was a forgery because the alleged vendor, Porfirio, was **already dead** at the time of the purported sale. It is a well-entrenched rule that a forged or fraudulent deed is a nullity and conveys no title. Moreover, where the deed of sale states that the purchase price has been paid but, in fact, has never

been paid, the deed of sale is void ab initio for lack of consideration. Consequently, the purported buyer, Florentino, could not have validly mortgaged the subject property. In a real estate mortgage contract, it is essential that the mortgagor be the absolute owner of the property to be mortgaged; otherwise, the mortgage is void.

ATTY. LEO N. CAUBANG, Petitioner, - versus - JESUS G. CRISOLOGO and NANETTE B. CRISOLOGO, Respondents.
G.R. No. 174581, THIRD DIVISION, February 4, 2015, PERALTA, *J.*

Notices are given to secure bidders and prevent a sacrifice of the property. *Therefore, statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with and slight deviations therefrom will invalidate the notice and render the sale, at the very least, voidable.*

Caubang never made an effort to inquire as to whether the Oriental Daily Examiner was indeed a newspaper of general circulation, as required by law. It was shown that the Oriental Daily Examiner is not even on the list of newspapers accredited to publish legal notices, as recorded in the RTC Davao's Office of the Clerk of Court. It also has no paying subscribers and it would only publish whenever there are customers. Since there was no proper publication of the notice of sale, the Spouses Crisologo, as well as the rest of the general public, were never informed that the mortgaged property was about to be foreclosed and auctioned.

FACTS:

Respondents spouses Jesus and Nannette Crisologo obtained an Express Loan in the amount of ₱200,000.00 from PDCP Development Bank (PDCP Bank). Spouses Crisologo acquired another loan from the same bank, this time a Term Loan of ₱1,500,000.00 covered by a Loan Agreement. As security for both loans, the spouses mortgaged their property. Upon release of the Term Loan, they were given two (2) promissory notes (PNs), for the amount of ₱500,000.00 and ₱1,000,000.00.

After payment of the first few installments on the other loans, the spouses defaulted in the amortizations. Despite several demands made by the bank, the spouses still failed to pay.

Spouses received a detailed breakdown of their outstanding obligation. Finding the charges to be excessive, they wrote a letter to the bank proposing to pay their loan in full with a request that the interest and penalty charges be waived. The manager of PDCP Bank advised them to deposit their ₱1,500,000.00 obligation as manifestation of their intent to pay the loan.

As a counter-offer, the spouses agreed to deposit the amount, but on the condition that the bank should first return to them the title over the mortgaged property. The bank denied the spouses' counteroffer, and demanded payment of the loan. For failure to settle the account, the Davao branch of the bank recommended the foreclosure of the mortgage to its head office.

PDCP Bank filed a Petition for the Extrajudicial Foreclosure of the Mortgage.

Petitioner Leo Caubang, as Notary Public, prepared the Notices of Sale, announcing the foreclosure of the REM and the sale of the mortgaged property at public auction. He caused the posting of said notices in three (3) public places: the Barangay Hall of Matina, City Hall of Davao, and Bangkerohan

Public Market. **Publication was, likewise, made in the Oriental Daily Examiner, one of the local newspapers in Davao City.**

Caubang conducted the auction sale of the mortgaged property, with the bank as the only bidder. Thereafter, a Certificate of Sale in favor of the bank was issued.

Later, the Spouses Crisologo were surprised to learn that their mortgaged property had already been sold to the bank. Thus, they filed a Complaint for Nullity of Extrajudicial Foreclosure and Auction Sale and Damages against PDCP Bank and Caubang.

The RTC nullified the extrajudicial foreclosure of the REM for failure to comply with the publication requirement. It declared the Extra-Judicial Foreclosure sale of plaintiffs' property null and void. Ordering the Register of Deeds to cancel Entry on TCT, the entry relative to the Certificate of Sale executed by Atty. Caubang, and if a new title has been issued to defendant PDCP, to cancel the same, and to reinstate TCT in the name of Nannette Crisologo.

ISSUE:

Whether the publication of the notices in the Oriental Daily Examiner is valid. (NO)

RULING:

Under Section 3 of Act No. 3135:

> Section 3. Notice of sale; posting; when publication required.– 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 notices shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Caubang never made an effort to inquire as to whether the Oriental Daily Examiner was indeed a newspaper of general circulation, as required by law. It was shown that the Oriental Daily Examiner is not even on the list of newspapers accredited to publish legal notices, as recorded in the RTC Davao's Office of the Clerk of Court. It also has no paying subscribers and it would only publish whenever there are customers. Since there was no proper publication of the notice of sale, the Spouses Crisologo, as well as the rest of the general public, were never informed that the mortgaged property was about to be foreclosed and auctioned. As a result, PDCP Bank became the sole bidder. This allowed the bank to bid for a very low price (₱1,331,460.00) and go after the spouses for a bigger amount as deficiency.

The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor, but as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. **Notices are given to secure bidders and prevent a sacrifice of the property.** Therefore, statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with and slight deviations therefrom will invalidate the notice and render the sale, at the very least, voidable. Failure to advertise a mortgage foreclosure sale in compliance with the statutory requirements constitutes a

jurisdictional defect, and any substantial error in a notice of sale will render the notice insufficient and will consequently vitiate the sale.

Since it was Caubang who caused the improper publication of the notices which, in turn, compelled the Spouses Crisologo to litigate and incur expenses involving the declaration of nullity of the auction sale for the protection of their interest on the property, the CA aptly held that Caubang shall be the one liable for the spouses' claim for litigation expenses and attorney's fees.

ACME SHOE, RUBBER & PLASTIC CORPORATION and CHUA PAC, petitioners, vs. HON. COURT OF APPEALS, BANK OF THE PHILIPPINES and REGIONAL SHERIFF OF CALOOCAN CITY, respondents.

G.R. No. 103576, FIRST DIVISION, August 22, 1996, VITUG, J.

While a pledge, real estate mortgage, or antichresis may exceptionally secure after-incurred obligations so long as these future debts are accurately described, ***a chattel mortgage,*** *however,* ***can only cover obligations existing at the time the mortgage is constituted.***

Although a promise expressed in a chattel mortgage to include debts that are yet to be contracted can be a binding commitment that can be compelled upon, the security itself, however, does not come into existence or arise until after a chattel mortgage agreement covering the newly contracted debt is executed either by concluding a fresh chattel mortgage or by amending the old contract conformably with the form prescribed by the Chattel Mortgage Law. ***Refusal on the part of the borrower to execute the agreement so as to cover the after-incurred obligation can constitute an act of default on the part of the borrower*** *of the financing agreement whereon the promise is written but, of course, the* ***remedy of foreclosure can only cover the debts extant at the time of constitution and during the life of the chattel mortgage sought to be foreclosed.***

FACTS:

Petitioner Chua Pac, the president and general manager of co-petitioner Acme executed a chattel mortgage in favor of private respondent Producers Bank as a security for a loan of P3,000,000. A provision in the chattel mortgage agreement was to this effect:

> "In case the MORTGAGOR executes subsequent promissory note or notes either as a renewal of the former note, as an extension thereof, or as a new loan, or is given any other kind of accommodations such as overdrafts, letters of credit, acceptances and bills of exchange, releases of import shipments on Trust Receipts, etc., this mortgage shall also stand as security for the payment of the said promissory note or notes and/or accommodations without the necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes and/or accommodations were existing on the date thereof. This mortgage shall also stand as security for said obligations and any and all other obligations of the MORTGAGOR to the MORTGAGEE of whatever kind and nature, whether such obligations have been contracted before, during or after the constitution of this mortgage."

In due time, the loan of P3,000,000.00 was paid. Subsequently it obtained additional loan totalling P2,700,000.00 which was also duly paid. Another loan was again extended (P1,000,000.00) covered by four promissory notes for P250,000.00 each, but went unsettled prompting the bank to apply for

an extrajudicial foreclosure with the Sheriff. Ultimately, the court dismissed the complaint and ordered the foreclosure of the chattel mortgage. It held petitioner corporation bound by the stipulations, aforequoted, of the chattel mortgage. The CA affirmed the decision of the court a quo.

ISSUE:

Whether or not it is valid and effective to have a clause in a chattel mortgage that purports to extend its coverage to obligations yet to be contracted or incurred. (NO)

RULING:

While a pledge, real estate mortgage, or antichresis may exceptionally secure after-incurred obligations so long as these future debts are accurately described, **a chattel mortgage,** however**, can only cover obligations existing at the time the mortgage is constituted.**

Although a promise expressed in a chattel mortgage to include debts that are yet to be contracted can be a binding commitment that can be compelled upon, the security itself, however, does not come into existence or arise until after a chattel mortgage agreement covering the newly contracted debt is executed either by concluding a fresh chattel mortgage or by amending the old contract conformably with the form prescribed by the Chattel Mortgage Law. **Refusal on the part of the borrower to execute the agreement so as to cover the after-incurred obligation can constitute an act of default on the part of the borrower** of the financing agreement whereon the promise is written but, of course, the **remedy of foreclosure can only cover the debts extant at the time of constitution and during the life of the chattel mortgage sought to be foreclosed.**

> A chattel mortgage, as hereinbefore so intimated, must comply substantially with the form prescribed by the Chattel Mortgage Law itself. One of the requisites, under Section 5 thereof, is an affidavit of good faith. While it is not doubted that if such an affidavit is not appended to the agreement, the chattel mortgage would still be valid between the parties (not against third persons acting in good faith), the fact, however, that the statute has provided that the parties to the contract must execute an oath that —
>
> > . . . (the) mortgage is made for the purpose of securing the obligation specified in the conditions thereof, and for no other purpose, and that the same is a just and valid obligation, and one not entered into for the purpose of fraud.
>
> makes it obvious that the debt referred to in the law is a current, not an obligation that is yet merely contemplated. In the chattel mortgage here involved, the only obligation specified in the chattel mortgage contract was the P3,000,000.00 loan which petitioner corporation later fully paid. By virtue of Section 3 of the Chattel Mortgage Law, the payment of the obligation automatically rendered the chattel mortgage void or terminated. In Belgian Catholic Missionaries, Inc., vs. Magallanes Press, Inc., et al., the Court said —
>
> > . . . A mortgage that contains a stipulation in regard to future advances in the credit will take effect only from the date the same are made and not from the date of the mortgage.

The significance of the ruling to the instant problem would be that since the 1978 chattel mortgage had ceased to exist coincidentally with the full payment of the P3,000,000.00 loan, there no longer was any chattel mortgage that could cover the new loans that were concluded thereafter.

BLANCA CONSUELO ROXAS, petitioner, vs. COURT OF APPEALS and RURAL BANK OF DUMALAG, INC., respondents.
G.R. No. 100480, SECOND DIVISION, May 1, 1993, NOCON, J.

It is settled doctrine that failure to publish notice of auction sale as required by the statute constitutes a jurisdiction defects with invalidates the sale. Even slight deviations therefrom are not allowed.

Sec. 5 of RA 720, as amended by RA 5939, provides that notices of foreclosure should be posted in at least 3 of the most conspicuous public places in the municipality ***and barrio where the land mortgaged is situated.***

In the case at bar, the Certificate of Posting which was executed by the sheriff states that he posted 3 copies of the notice of public auction sale in 3 conspicuous public places in the municipality of Panay, where the subject land was situated ***and in like manner in Roxas City, where the public auction sale took place.*** *It is beyond dispute that* ***there was a failure to publish the notices of auction sale*** *as required by law.*

FACTS:

Petitioner Roxas is the owner of a parcel of land located at Tanza Norte, Panay, Capiz. She executed a SPA appointing her brother, Manuel, as her attorney-in-fact, for applying an agricultural loan with private respondent Rural Bank using said land as collateral.

Manuel applied for, was granted, and received an agricultural loan in the amount of P2,000 from private respondent. As security, he executed the corresponding real estate mortgage over the subject land.

Private respondent foreclosed the real estate mortgage for failure to pay the loan on maturity. The subject land was sold at public auction to private respondent, being the highest bidder for P3,009. For failure to exercise the right of redemption, private respondent consolidated its ownership over the subject land.

Petitioner filed a complaint for cancellation of foreclosure of mortgage and annulment of auction sale against private respondent before the RTC. Petitioner claimed that Manuel never informed her about the approval of the loan nor did she receive any demand for payment from private respondent. Moreover, the foreclosure did not comply with the requirement of giving written notices to all possible redemptioners. She consigned the amount of P4,194 as redemption price.

RTC rendered judgment in favor of petitioner. It ruled that there was no compliance with the requirements of Sec. 5 of RA 720, as amended. The notices of foreclosure were posted in the municipality where the subject land was located and in Roxas City, but not in the barrio. Moreover, there was no affidavit of the sheriff who conducted the sale, attached to the records of the case. CA

reversed the decision of the trial court. It ruled that there was substantial compliance with the requirements. Hence, the present petition.

ISSUE:

Whether or not the requirements on notice were complied with. (NO)

RULING:

It is settled doctrine that failure to publish notice of auction sale as required by the statute constitutes a jurisdiction defects with invalidates the sale. Even slight deviations therefrom are not allowed.

Sec. 5 of RA 720, as amended by RA 5939, provides that notices of foreclosure should be posted in at least 3 of the most conspicuous public places in the municipality ***and barrio where the land mortgaged is situated*.**

In the case at bar, the Certificate of Posting which was executed by the sheriff states that he posted 3 copies of the notice of public auction sale in 3 conspicuous public places in the municipality of Panay, where the subject land was situated ***and in like manner in Roxas City, where the public auction sale took place*.** It is beyond dispute that **there was a failure to publish the notices of auction sale** as required by law.

Sec. 5 provides further that proof of publication shall be accomplished by an affidavit of the sheriff or officer conducting the foreclosure sale. In this case, the sheriff executed a certificate of posting, which is not the affidavit required by law. The rationale behind this is simple: an affidavit is a sworn statement in writing. Strict compliance with the aforementioned provisions is mandated.

We cannot sustain the view of respondent court that there was substantial compliance with Sec. 5 of RA 720, as amended. We declare the foreclosure and public auction sale of the subject land void.

MANOLO P. CERNA, *Petitioner,* -versus- THE HONORABLE COURT OF APPEALS and CONRAD C. LEVISTE, *Respondents.*

G.R. No. L-48359, SECOND DIVISION, March 30, 1993, CAMPOS, JR., *J.*

A chattel mortgage may be "an accessory contract" to a contract of loan, but that fact alone does not make a third-party mortgagor solidarily bound with the principal debtor in fulfilling the principal obligation that is, to pay the loan. The signatory to the principal contract - loan - remains to be primarily bound. It is only upon the default of the latter that the creditor may have recourse on the mortgagors by foreclosing the mortgaged properties in lieu of an action for the recovery of the amount of the loan. And the liability of the third-party mortgagors extends only to the property mortgaged.

Petitioner lent his car to Delgado so that the latter may mortgage the same to secure his debt. Thus, from the contract itself, it was clear that only Delgado was the mortgagor regardless of the fact that he used properties belonging to a third person to secure his debt.

FACTS:

Delgado and Leviste entered into a loan agreement which was evidenced by a promissory note. Delgado executed a chattel mortgage over a Willy's jeep owned by him. And acting as the attorney-in-fact of herein petitioner Manolo P. Cerna, he also mortgaged a "Taunus" car owned by the latter.

The period lapsed without Delgado paying the loan. This prompted Leviste to file a collection suit. Herein petitioner filed his first Motion to Dismiss on April 4, 1973. The grounds cited in the Motion were lack of cause of action against petitioner and the death of Delgado. Anent the latter, petitioner claimed that the claim should be filed in the proceedings for the settlement of Delgado's estate as the action did not survive Delgado's death. Moreover, he also stated that since Leviste already opted to collect on the note, he could no longer foreclose the mortgage.

On February 18, 1977, petitioner filed his second Motion to Dismiss on the ground that the trial court, now presided by Judge Nelly L. Romero Valdellon, acquired no jurisdiction over deceased defendant, that the claim did not survive, and that there was no cause of action against him. On May 13, 1977, the said judge dismissed the motion.

The CA dismissed the petition for certiorari and prohibition filed by petitioner.

ISSUE:

Whether the complaint should be dismissed for lack of cause of action as against Manolo Cerna who is not a debtor under the promissory note.

RULING:

Only Delgado signed the promissory note and accordingly, he was the only one bound by the contract of loan. Nowhere did it appear in the promissory note that petitioner was a co-debtor. The law is clear that "(c)ontracts take effect only between the parties. . . ."

Petitioner had no part in the said contract. Thus, nowhere could it be seen from the agreement that petitioner was solidarily bound with Delgado for the payment of the loan.

There is also no legal provision nor jurisprudence in our jurisdiction which makes a third person, who secures the fulfilment of another's obligation by mortgaging his own property, to be solidarily bound with the principal obligor.

A chattel mortgage may be "an accessory contract" to a contract of loan, but that fact alone does not make a third-party mortgagor solidarily bound with the principal debtor in fulfilling the principal obligation that is, to pay the loan. The signatory to the principal contract - loan - remains to be primarily bound. It is only upon the default of the latter that the creditor may have recourse on the mortgagors by foreclosing the mortgaged properties in lieu of an action for the recovery of the amount of the loan. And the liability of the third-party mortgagors extends only to the property mortgaged.

Petitioner lent his car to Delgado so that the latter may mortgage the same to secure his debt. Thus, from the contract itself, it was clear that only Delgado was the mortgagor regardless of the fact that he used properties belonging to a third person to secure his debt.

Granting, however, that petitioner was obligated under the mortgage contract to answer for Delgado's indebtedness, under the circumstances, petitioner could not be held liable because the complaint was for recovery of a sum of money, and not for the foreclosure of the security. We agree with petitioner that the filing of collection suit barred the foreclosure of the mortgage. Hence, Leviste, having chosen to file the collection suit, could not now run after petitioner for the satisfaction of the debt. This is even more true in this case because of the death of the principal debtor, Delgado.

NORTHERN MOTORS, INC., *Petitioner,* -versus- THE HONORABLE JORGE R. COQUIA, Executive Judge of the Court of First Instance of Manila, HONESTO ONG, THE SHERIFF OF MANILA, DOMINADOR Q. CACPAL, The Acting Executive Sheriff of Manila, and/or his duly authorized deputy sheriff or representative, FILINVEST CREDIT CORPORATION, *intervenor.*
G.R. No. L-40018, SECOND DIVISION, August 29, 1975, AQUINO, *J.*

To levy upon the mortgagor's incorporeal right or equity of redemption, it was not necessary for the sheriff to have taken physical possession of the mortgaged taxicabs. It would have sufficed if he furnished the chattel mortgagor, Manila Yellow Taxicab Co., Inc., with a copy of the writ of execution and served upon it a notice that its right or equity of redemption in the mortgaged taxicabs was being levied upon pursuant to that writ.

If the judgment creditor, Tropical Commercial Co., Inc., or the assignee, Ong, bought the mortgagor's equity of redemption at the auction sale, then it would step into the shoes of the mortgagor, Manila Yellow Taxicab Co., Inc. and be able to redeem the vehicles from Northern Motors, Inc., the mortgagee, by paying the mortgage debt.

Inasmuch as what remains to the mortgagor is only the equity of redemption, it follows that the right of the judgment or attaching creditor, who purchased the mortgaged chattel at an execution sale, is subordinate to the lien of the mortgagee who has in his favor a valid chattel mortgage.

FACTS:

Manila Yellow Taxicab Co., Inc. in May and June, 1974 purchased on the installment plan from Northern Motors, Inc. two hundred Holden Torana cars at the price of P28,250 for each car. It made a downpayment of P1,000 on each car. It executed chattel mortgages on the cars in favor of Northern Motors, Inc. as security for the promissory notes covering the balance of the price. The notes and the chattel mortgages for 112 cars were assigned to Filinvest Credit Corporation.

Tropical Commercial Co., Inc. obtained a judgment for P167,311.27 against Manila Yellow Taxicab Co., Inc. in Civil Case No. 71584 of the Court of First Instance of Manila. Part of that judgment or the sum of P110,000 was eventually assigned to Honesto Ong for an unspecified valuable consideration.

To satisfy the judgment credit, the sheriff on December 12, 1974 levied upon twenty taxicabs of which eight were mortgaged to Northern Motors, Inc. and twelve to Filinvest Credit Corporation under the assignment already mentioned.

Northern Motors, Inc. and Filinvest Credit Corporation filed the corresponding third-party claims with the sheriff. On December 18, 1974 Tropical Commercial Co., Inc. posted indemnity bonds. On that same day, at two-thirty in the afternoon, the cars were sold at public auction although there was an alleged agreement that the cars would be sold at four o'clock. Later, the lower court cancelled the indemnity bonds without notice to the third-party claimants.

The sheriff made an additional levy on thirty-five mortgaged taxicabs to satisfy the unpaid balance of the judgment. Of those thirty-five taxicabs, seven were mortgaged to Northern Motors, Inc. while twenty-eight were mortgaged to Filinvest Credit Corporation. Again, Northern Motors, Inc. and Filinvest Credit Corporation filed third-party claims. The auction sale was scheduled on January 23, 1975.

The lower court refused to reinstate the indemnity bonds. It ruled that the chattel mortgagee was not entitled to the possession of the mortgaged taxicabs by the mere fact of the execution of the mortgage and that the mortgage lien followed the chattel whoever might be its actual possessor.

On January 23, 1975 Northern Motors, Inc. filed its *certiorari* petition in this case to annul the resolution of January 17, 1975 and to stop the second auction sale. This Court issued a restraining order against the scheduled auction sale, the writ of execution and the disposition of the proceeds of the first execution sale. Filinvest Credit Corporation was allowed to intervene in the action.

In the decision sought to be reconsidered, the petition was denied and the restraining order was dissolved. We ruled that the mortgagee's remedy is to vindicate its claim in a proper action as provided in Section 17, Rule 39 of the Rules of Court, and that its mortgage lien attached to the taxicabs wherever they might be.

Northern Motors, Inc. contends in its motion for reconsideration that as chattel mortgagee and unpaid vendor it has the better right to the possession of the mortgaged taxicabs and that its claims should be resolved in the case where the writ of execution was issued and not in a separate action which allegedly would be an ineffective remedy.

The judgment creditor and the sheriff, in their opposition to the motion for reconsideration, reiterate their contention that the chattel mortgagee's remedy is in an independent action, as held in Serra v. Rodriguez.

ISSUE:

Who has the better right to the possession of the mortgaged taxicabs and to claim the proceeds of the execution sale?

RULING:

Inasmuch as the condition of the chattel mortgages had already been broken and Northern Motors, Inc. had in fact instituted an action for replevin so that it could take possession of the mortgaged taxicabs (Civil Case No. 20536, Rizal CFI), it has a superior, preferential and paramount right to have possession of the mortgaged taxicabs and to claim the proceeds of the execution sale.

Respondent sheriff wrongfully levied upon the mortgaged taxicabs and erroneously took possession of them. He could have levied only upon the right or equity of redemption pertaining to the Manila Yellow Taxicab Co., Inc. as chattel mortgagor and judgment debtor, because that was the only leviable or attachable property right of the company in the mortgaged taxicabs. "After a chattel mortgage is executed, there remains in the mortgagor a mere right of redemption" (Tizon v. Valdez and Morales, 48 Phil. 910, 916).

To levy upon the mortgagor's incorporeal right or equity of redemption, it was not necessary for the sheriff to have taken physical possession of the mortgaged taxicabs. It would have sufficed if he furnished the chattel mortgagor, Manila Yellow Taxicab Co., Inc., with a copy of the writ of execution and served upon it a notice that its right or equity of redemption in the mortgaged taxicabs was being levied upon pursuant to that writ.

If the judgment creditor, Tropical Commercial Co., Inc., or the assignee, Ong, bought the mortgagor's equity of redemption at the auction sale, then it would step into the shoes of the mortgagor, Manila Yellow Taxicab Co., Inc. and be able to redeem the vehicles from Northern Motors, Inc., the mortgagee, by paying the mortgage debt.

Inasmuch as what remains to the mortgagor is only the equity of redemption, it follows that the right of the judgment or attaching creditor, who purchased the mortgaged chattel at an execution sale, is subordinate to the lien of the mortgagee who has in his favor a valid chattel mortgage.

Our ruling in this case is in consonance with the purpose of the Chattel Mortgage Law to promote business and trade and to give impetus to the country's economic development (Torres v. Limjap, 56 Phil. 141, 145). In the business world the chattel mortgage has greatly facilitated sales of goods and merchandise. Dealers of cars, trucks, appliances and machinery, who resort to installment sales, have relied on the chattel mortgage as an effective security. Sales of merchandise would be sluggish and insubstantial if the Chattel Mortgage Law could not protect dealers against the defaults and delinquencies of their customers and if the mortgagee's lien could be nullified by the maneuvers of an unsecured judgment creditor of the chattel mortgagor. It is not right nor just that the lien of a secured a creditor should be rendered nugatory by a wrongful execution engineered by an unsecured creditor.

NORTHERN MOTORS, INC, *Petitioner*, -versus- HON. JORGE R. COQUIA, etc., et al., *Respondent*, FILINVEST CREDIT CORPORATION, *Intervenor*.
G.R. No. L-40018, EN BANC, December 15, 1975, AQUINO, *J.*

The essence of the chattel mortgage is that the mortgaged chattels should answer for the mortgage credit and not for the judgment credit of the mortgagor's unsecured creditor. The mortgagee is not obligated to file an "independent action" for the enforcement of his credit. To require him to do so would be a nullification of his lien and would defeat the purpose of the chattel mortgage which is to give him preference over the mortgaged chattels for the satisfaction of his credit.

Honesto Ong's theory that Manila Yellow Taxicab's breach of the chattel mortgage should not affect him because he is not privy of such contract is untenable. The registration of the chattel mortgage is an effective and binding notice to him of its existence. The mortgage creates a real right or a lien which, being recorded, follows the chattel wherever it goes.

FACTS:

In a previous resolution, the Supreme Court held that the lien of Northern Motors, Inc., as chattel mortgagee, over certain taxicabs is superior to the levy made on the said cabs by Honesto Ong, the assignee of the unsecured judgment creditor of the chattel mortgagor, Manila Yellow Taxicab Co., Inc.

Honesto Ong in his motion invokes his supposed "legal and equity status" vis-a-vis the mortgaged taxicabs. He contends that his only recourse was to levy upon the taxicabs which were in the possession of the judgment debtor, Manila Yellow Taxicab Co. Inc., whereas, Northern Motors, Inc., as unpaid seller and mortgagee, "has still an independent legal remedy" against the mortgagor for the recovery of the unpaid balance of the price.

ISSUE:

Whether the levy made by mortgagor's judgment creditor against the chattel mortgagor should prevail over the chattel mortgage credit. (NO)

RULING:

That proposition is devoid of any legal sanction and is glaringly contrary to the nature of a chattel mortgage. To uphold that contention is to destroy the essence of chattel mortgage as a paramount encumbrance on the mortgaged chattel.

The essence of the chattel mortgage is that the mortgaged chattels should answer for the mortgage credit and not for the judgment credit of the mortgagor's unsecured creditor. The mortgagee is not obligated to file an "independent action" for the enforcement of his credit. To require him to do so would be a nullification of his lien and would defeat the purpose of the chattel mortgage which is to give him preference over the mortgaged chattels for the satisfaction of his credit.

Honesto Ong's theory that Manila Yellow Taxicab's breach of the chattel mortgage should not affect him because he is not privy of such contract is untenable. The registration of the chattel mortgage is an effective and binding notice to him of its existence. The mortgage creates a real right or a lien which, being recorded, follows the chattel wherever it goes.

MAKATI LEASING and FINANCE CORPORATION, *Petitioner*, -versus- WEAREVER TEXTILE MILLS, INC., and HONORABLE COURT OF APPEALS, *Respondents.*
G.R. No. L-58469, SECOND DIVISION, May 16, 1983, DE CASTRO, *J.*

If a house of strong materials, like what was involved in the above Tumalad case, may be considered as personal property for purposes of executing a chattel mortgage thereon as long as the parties to the contract so agree and no innocent third party will be prejudiced thereby, there is absolutely no reason why a machinery, which is movable in its nature and becomes immobilized only by destination or purpose, may not be likewise treated as such. This is really because one who has so agreed is estopped from denying the existence of the chattel mortgage.

It must be pointed out that the characterization of the subject machinery as chattel by the private respondent is indicative of intention and impresses upon the property the character determined by the

parties. As stated in Standard Oil Co. of New York v. Jaramillo, it is undeniable that the parties to a contract may by agreement treat as personal property that which by nature would be real property, as long as no interest of third parties would be prejudiced thereby.

FACTS:

To obtain financial accommodations from herein petitioner Makati Leasing and Finance Corporation, the private respondent Wearever Textile Mills, Inc., discounted and assigned several receivables with the former under a Receivable Purchase Agreement. To secure the collection of the receivables assigned, private respondent executed a Chattel Mortgage over certain raw materials inventory as well as a machinery described as an Artos Aero Dryer Stentering Range.

Upon private respondent's default, petitioner filed a petition for extrajudicial foreclosure of the properties mortgage to it. After the Sheriff failed to implement the foreclosure, petitioner filed a complaint for judicial foreclosure.

The lower court issued a writ of seizure. The Court of Appeals, in certiorari and prohibition proceedings subsequently filed by herein private respondent, set aside the Order of the lower court after ruling that the machinery in suit cannot be the subject of replevin, much less of a chattel mortgage, because it is a real property pursuant to Article 415 of the new Civil Code, the same being attached to the ground by means of bolts and the only way to remove it from respondent's plant would be to drill out or destroy the concrete floor, the reason why all that the sheriff could do to enfore the writ was to take the main drive motor of said machinery.

ISSUE:

Whether the machineries may be considered as personal property for purposes of executing a chattel mortgage. (YES)

RULING:

A similar, if not Identical issue was raised in *Tumalad v. Vicencio*, where this Court, speaking through Justice J.B.L. Reyes, ruled:

> Although there is no specific statement referring to the subject house as personal property, yet by ceding, selling or transferring a property by way of chattel mortgage defendants-appellants could only have meant to convey the house as chattel, or at least, intended to treat the same as such, so that they should not now be allowed to make an inconsistent stand by claiming otherwise. Moreover, the subject house stood on a rented lot to which defendants-appellants merely had a temporary right as lessee, and although this can not in itself alone determine the status of the property, it does so when combined with other factors to sustain the interpretation that the parties, particularly the mortgagors, intended to treat the house as personality.

Examining the records of the case, the SC found no logical justification to exclude the rule out, as the appellate court did, the present case from the application of the abovequoted pronouncement. If a house of strong materials, like what was involved in the above *Tumalad* case, may be considered as personal property for purposes of executing a chattel mortgage thereon as long as the parties to the

contract so agree and no innocent third party will be prejudiced thereby, there is absolutely no reason why a machinery, which is movable in its nature and becomes immobilized only by destination or purpose, may not be likewise treated as such. This is really because one who has so agreed is estopped from denying the existence of the chattel mortgage.

It must be pointed out that the characterization of the subject machinery as chattel by the private respondent is indicative of intention and impresses upon the property the character determined by the parties. As stated in *Standard Oil Co. of New York v. Jaramillo*, it is undeniable that the parties to a contract may by agreement treat as personal property that which by nature would be real property, as long as no interest of third parties would be prejudiced thereby.

ASSOCIATED INSURANCE and SURETY COMPANY, INC., *plaintiff,* -versus- ISABEL IYA, ADRIANO VALINO and LUCIA VALINO, *defendants.*
G.R. Nos. L-10837-38, EN BANC, May 30, 1958, FELIX, *J.*

In De la Riva vs. Ah Keo, the Court ruled that a mortgage creditor who purchases real properties at an extra-judicial foreclosure sale thereof by virtue of a chattel mortgage constituted in his favor, which mortgage has been declared null and void with respect to said real properties, acquires no right thereto by virtue of said sale. Also, in Leung Yee vs. Strong Machinery Co., the Court stated that the registration of the chattel mortgage of a building of strong materials produce no effect as far as the building is concerned.

In this case, the Court cannot give any consideration to the contention of the surety that it has acquired ownership over the property in question by reason of the sale conducted by the Provincial Sheriff of Rizal. Further, while it is true that said document was correspondingly registered in the Chattel Mortgage Register of Rizal, this act produced no effect whatsoever for where the interest conveyed is in the nature of a real property, the registration of the document in the registry of chattels is merely a futile act.

FACTS:

Valino & Valino were the owners and possessors of a house of strong materials in Rizal, which they purchased on installment basis. To enable her to purchase on credit rice from NARIC, Valino filed a bond (P11,000) subscribed by Associated Insurance and Surety Co Inc, and as a counter-guaranty, Valino executed an alleged chattel mortgage on the aforementioned house in favour of the surety company. At the same time, the parcel of land which the house was erected was registered in the name of Philippine Realty Corporation.

Valino, to secure payment of an indebtedness (P12,000) executed a real estate mortgage over the lot and the house in favour of Iya. Valino failed to satisfy her obligation to NARIC, so the surety company was compelled to pay the same pursuant to the undertaking of the bond. In turn, surety company demanded reimbursement from Valino, and as they failed to do so, the company foreclosed the chattel mortgage over the house. As a result, public sale was conducted and the property was awarded to the surety company.

The surety company then learned of the existence of the real estate mortgage over the lot and the improvements thereon; thus, they prayed for the exclusion of the residential house from the real estate mortgage and the declaration of its ownership in virtue of the award given during bidding.

Plaintiff likewise asked the Court to sentence the spouses Valino to pay said surety moral and exemplary damages, attorney's fees and costs. Defendant Isabel Iya filed her answer to the complaint alleging among other things, that in virtue of the real estate mortgage executed by her co-defendants, she acquired a real right over the lot and the house constructed thereon; that the auction sale allegedly conducted by the Provincial Sheriff of Rizal as a result of the foreclosure of the chattel mortgage on the house was null and void for non-compliance with the form required by law. She, therefore, prayed for the dismissal of the complaint and anullment of the sale made by the Provincial Sheriff. She also demanded the amount of P5,000.00 from plaintiff as counterclaim, the sum of P5,000.00 from her co-defendants as crosselaim, for attorney's fees and costs.

Defendants spouses in their answer admitted some of the averments of the complaint and denied the others. They, however, prayed for the dismissal of the action for lack of cause of action, it being alleged that plaintiff was already the owner of the house in question, and as said defendants admitted this fact, the claim of the former was already satisfied.

Defendant surety company, in answer to this complaint insisted on its right over the building, arguing that as the lot on which the house was constructed did not belong to the spouses at the time the chattel mortgage was executed, the house might be considered only as a personal property and that the encumbrance thereof and the subsequent foreclosure proceedings made pursuant to the provisions of the Chattel Mortgage Law were proper and legal. Defendant therefore prayed that said building be excluded from the real estate mortgage and its right over the same be declared superior to that of plaintiff, for damages, attorney's fees and costs.

Taking side with the surety company, defendant spouses admitted the due execution of the mortgage upon the land but assailed the allegation that the building was included thereon, it being contended that it was already encumbered in favor of the surety company before the real estate mortgage was executed, a fact made known to plaintiff during the preparation of said contract and to which the latter offered no objection.

ISSUE:

Whether the surety has acquired ownership over the property in question by reason of the sale conducted by the Provincial Sheriff of Rizal?

RULING:

No.

There is no question as to appellant's right over the land covered by the real estate mortgage; however, as the building constructed thereon has been the subject of 2 mortgages; controversy arise as to which of these encumbrances should receive preference over the other. The decisive factor in resolving the issue presented by this appeal is the determination of the nature of the structure litigated upon, for where it be considered a personality, the foreclosure of the chattel mortgage and the subsequent sale thereof at public auction, made in accordance with the Chattel Mortgage Law would be valid and the right acquired by the surety company therefrom would certainly deserve prior recognition; otherwise, appellant's claim for preference must be granted.

The lower Court, deciding in favor of the surety company, based its ruling on the premise that as the mortgagors were not the owners of the land on which the building is erected at the time the first encumbrance was made, said structure partook of the nature of a personal property and could properly be the subject of a chattel mortgage. We find reason to hold otherwise, for as this Court, defining the nature or character of a building, has said:

> "* * * while it is true that generally, real estate connotes the land and the building constructed thereon, it is obvious that the inclusion of the building, separate and distinct from the land, in the enumeration of what may constitute real properties (Art. 415, new Civil Code) could only mean one thing-that a building is by itself an immovable property * * *. Moreover, and in view of the absence of any specific provision to the contrary, a building is an immovable property irrespective of whether or not said structure and the land on which it is adhered to belong to the same owner." (Lopez vs. Orosa, G. R. Nog. supra, p. 98).

While it is true that said document was correspondingly registered in the Chattel Mortgage Register of Rizal, this act produced no effect whatsoever for where the interest conveyed is in the nature of a real property, the registration of the document in the registry of chattels is merely a futile act. Thus, the registration of the chattel mortgage of a building of strong materials produce no effect as far as the building is concerned (Leung Yee vs. Strong Machinery Co., 37 Phil., 644). Nor can we give any consideration to the contention of the surety that it has acquired ownership over the property in question by reason of the sale conducted by the Provincial Sheriff of Rizal, for as this Court has aptly pronounced:

> "A mortgage creditor who purchases real properties at an extra-judicial foreclosure sale thereof by virtue of a chattel mortgage constituted in his favor, which mortgage has been declared null and void with respect to said real properties, acquires no right thereto by virtue of said sale" (De la Riva vs. Ah Keo, 60 Phil., 899).

Wherefore, the portion of the decision of the lower Court in these two cases appealed from holding the rights of the surety company over the building superior to that of Isabel Iya and excluding the building from the foreclosure prayed for by the latter is reversed and appellant Isabel Iya's right to foreclose not only the land but also the building erected thereon is hereby recognized, and the proceeds of the sale thereof at public auction (if the land has not yet been sold), shall be applied to the unsatisfied judgment in favor of Isabel lya. This decision however is without prejudice to any right that the Associated Insurance & Surety Co., Inc., may have against the spouses Adriano and Lucia Valino on account of the mortgage of said building they executed in favor of said surety company. Without, pronouncement as to costs. It is so ordered.

BPI FAMILY SAVINGS BANK, INC., *Petitioner,* -versus- MA. AVRLYN T. AVENIDO & PACIFACIO A. AVENIDO, *Respondents.*

G.R. No. 175816, FIRST DIVISION, December 7, 2011, Leonardo-De Castro, *J.*

In Hulst v. PR Builders, Inc., we reiterated that:

> *[G]ross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction,*

> *upon the theory that the lesser the price, the easier it is for the owner to effect redemption. When there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption.*

In line with the foregoing jurisprudence, we refuse to consider the question of sufficiency of the winning bid price of BPI Family for the foreclosed property; and affirm the application of said winning bid in the amount of P2,142,616.00 against the total outstanding loan obligation of the spouses Avenido by March 8, 1999 in the sum of P2,598,452.80, thus, leaving a deficiency of P455,836.80. BPI Family may still collect the said deficiency without violating the principle of unjust enrichment, as opined by the Court of Appeals.

FACTS:

Bank of the Philippine Islands Family Savings Bank (BPI Family) filed a complaint for collection of deficiency mortgage obligation against Pacifico and Ma. Arlyn Avenido (Spouses Avenido). BPI Family alleged that the spouses obtained a loan in the amount of PhP2 million pesos, secured by a real estate mortgage. When the spouses failed to pay their loan obligation despite demand, BPI Family instituted extrajudicial foreclosure proceedings over the mortgaged property of the spouses, in accordance with Act No. 3135. At the public auction, BPI Family was declared the highest bidder for the property. The bid price was PhP2,142,616 was applied as partial payment of the mortgage obligation, leaving PhP794,765.43 unpaid.

BPI Family prayed that the Regional Trial Court (RTC) order the Spouses Avenido to pay the deficiency of their mortgage obligation, plus legal interest. In their Answer, the spouses averred that they have already paid a substantial amount to BPI Family but, due to the latter's imposition of unreasonable charges and penalties on their principal obligation, their payments seemed insignificant. They argued that their indebtedness only amounted to less than PhP2 million, and the amount was fully covered when the foreclosure was sold at public auction. As such, the spouses prayed for the dismissal of the case against them.

In their decision, the RTC reduced the total loan of the obligation of the spouses, and denied the claim for deficiency of BPI Family. Aggrieved by the RTC judgment, BPI Family filed an appeal before the Court of Appeals. The Court of Appeals (CA) concurred with the RTC's decision. In its Resolution dated November 16, 2006, the Court of Appeals denied the Motion for Reconsideration of BPI Family since the arguments set forth therein were but a rehash, repetition and/or reinstatement of the arguments/matters already passed upon and extensively discussed by the appellate court in its earlier decision. Hence, the present Petition for Review of BPI Family

ISSUE:

Whether BPI Family is still entitled to collect the deficiency mortgage obligation from Spouses Avenido?

RULING:

YES.

While Act No. 3135, as amended, does not discuss the mortgagee's right to recover the deficiency, neither does it contain any provision expressly or impliedly prohibiting recovery. If the legislature had intended to deny the creditor the right to sue for any deficiency resulting from the foreclosure of a security given to guarantee an obligation, the law would expressly so provide. Absent such a provision in Act No. 3135, as amended, the creditor is not precluded from taking action to recover any unpaid balance on the principal obligation simply because he chose to extrajudicially foreclose the real estate mortgage.

In *Hulst v. PR Builders, Inc.,* we reiterated that:

> [G]ross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption. When there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption.

In line with the foregoing jurisprudence, we refuse to consider the question of sufficiency of the winning bid price of BPI Family for the foreclosed property; and affirm the application of said winning bid in the amount of P2,142,616.00 against the total outstanding loan obligation of the spouses Avenido by March 8, 1999 in the sum of P2,598,452.80, thus, leaving a deficiency of P455,836.80. BPI Family may still collect the said deficiency without violating the principle of unjust enrichment, as opined by the Court of Appeals.

"There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. Article 22 of the Civil Code provides that every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage." There is no unjust enrichment to speak of in this case. There is strong legal basis for the claim of BPI Family against the spouses Avenido for the deficiency of their loan obligation.

BPI Family made an extrajudicial demand upon the spouses Avenido for the deficiency mortgage obligation in a letter dated July 8, 2000 and received by the spouses Avenido on July 17, 2000. Consequently, we impose the legal interest of 12% per annum on the deficiency mortgage obligation amounting to P455,836.80 from July 17, 2000 until the finality of this Decision. Thereafter, if the amount adjudged remains unpaid, it will be subject to interest at the rate of 12% per annum computed from the time the judgment became final and executory until fully satisfied.

BANK OF THE PHILIPPINE ISLANDS, AS SUCCESSOR-IN-INTEREST OF FAR EAST BANK & TRUST COMPANY, *petitioner,* -versus- CYNTHIA L. REYES, *respondent.*
G.R. No. 182769, FIRST DIVISION, February 1, 2012, LEONARDO-DE CASTRO, *J.*

In the recent case of BPI Family Savings Bank, Inc. v. Avenido, the Court reiterated the well-entrenched rule that a creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency.

FACTS:

This is an action for sum of money filed by plaintiff BPI, as successor-in-interest of Far East Bank & Trust Company against defendant Reyes.

Defendant Reyes borrowed, renewed and received from Far East Bank the principal of Twenty Million Nine Hundred Thousand Pesos [*sic*] (P20,950,000.00). In support of such allegation, four promissory notes were presented during the course of the trial of the case. As security for the obligation, defendant Reyes executed Real Estate Mortgage Agreements involving twenty[-]two (22) parcels of land. When the debt became due and demandable, the defendant failed to settle her obligation and the plaintiff was constrained to foreclose the properties. As alleged, after due publication, the mortgaged properties were sold at public auction on December 20, 2001 by the Office of the Clerk of Court & *Ex-Officio* Sheriff of the Regional Trial Court of Malolos, Bulacan.

At the public auction, the mortgaged properties were awarded to BPI in consideration of its highest bid price amounting to Nine Million Thirty [-]Two Thousand Nine Hundred Sixty Pesos (P9,032,960.00). On said date, the obligation already reached Thirty Million Forty (*sic*) Hundred Twenty Thousand Forty[-]One & 67/100 Pesos (P30,420,041.67), inclusive of interest but excluding attorney's fees, publication and other charges. After applying the proceeds of the public auction to the outstanding obligation, there remains to be a deficiency and defendant Reyes is still indebted, as of January 20, 2003, to the plaintiff in the amount of P24,545,094.67.

After due trial, the trial court rendered a decision in favor of BPI. On appeal, the CA reversed the ruling of the trial court. Hence, this petition.

ISSUE:

Whether or not petitioner is entitled to recover the unpaid balance or deficiency from respondent. (Yes)

RULING:

In the recent case of BPI Family Savings Bank, Inc. v. Avenido, the Court reiterated the well-entrenched rule that a creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency.

Furthermore, we have also ruled in *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*12 that, in deference to the rule that a mortgage is simply a security and cannot be considered payment of an

outstanding obligation, the creditor is not barred from recovering the deficiency even if it bought the mortgaged property at the extrajudicial foreclosure sale at a lower price than its market value notwithstanding the fact that said value is more than or equal to the total amount of the debtor's obligation.

In this case, even if respondent's property, which were appraised by petitioner's predecessor-in-interest at P47,536,000.00, was sold and later bought by petitioner in an extrajudicial foreclosure sale for only P9,032,960.00 in order to satisfy respondent's outstanding obligation to petitioner which, at the time of the sale, amounted to P30,420,041.67 inclusive of interest but excluding attorney's fees, publication and other charges, the petitioner BPI is entitled for the recovery of the deficiency from the respondent.

SPOUSES FRANCISCO and MERCED RABAT, *Petitioners,* -versus- PHILIPPINE NATIONAL BANK, *Respondent.*

G.R. No. 158755, FIRST DIVISION, June 18, 2012, Bersamin, *J.*

Inadequacy of the bid price at a forced sale, unlike that in an ordinary sale, is immaterial and does not nullify the sale; in fact, in a forced sale, a low price is considered more beneficial to the mortgage debtor because it makes redemption of the property easier.

The inadequacy of the bid price in an extrajudicial foreclosure sale of mortgaged properties will not per se invalidate the sale. Additionally, the foreclosing mortgagee is not precluded from recovering the deficiency should the proceeds of the sale be insufficient to cover the entire debt.

FACTS:

In 1980, the spouses Francisco and Merced Rabat (spouses Rabat) was granted a medium-term loan by the Philippine National Bank (PNB) in the amount of P4M to mature three years from the date of implementation. Subsequently, the spouses Rabat signed a Credit Agreement and executed a Real Estate Mortgage over 12 parcels of land which stipulated that the loan would be subject to interest at the rate of 17% per annum, plus the appropriate service charge and penalty charge of 3% per annum on any amount remaining unpaid or not renewed when due. A few months later, the spouses Rabat executed another document denominated as "Amendment to the Credit Agreement" purposely to increase the interest rate from 17% to 21% per annum, inclusive of service charge and a penalty charge of 3% per annum to be imposed on any amount remaining unpaid or not renewed when due. They also executed another Real Estate Mortgage over 9 parcels of land as additional security for their medium-term loan of P4 M. The several availments of the loan accommodation on various dates by the spouses Rabat reached the aggregate amount of P3,517,380, as evidenced by several promissory notes.

The spouses RABATs failed to pay their outstanding balance on due date. Thus, the PNB filed a petition for the extrajudicial foreclosure of the real estate mortgage executed by the spouses Rabat. After due notice and publication, the mortgaged parcels of land were sold at a public auction held on February 1987 and April 1987. The PNB was the lone and highest bidder with a bid of P3,874,800.

As the proceeds of the public auction were not enough to satisfy the entire obligation of the spouses Rabat, the PNB sent demand letters. Upon failure of the spouses Rabat to comply with the demand

to settle their remaining outstanding obligation which then stood at P14,745,398.25, including interest, penalties and other charges, PNB eventually filed a complaint for a sum of money before a Regional Trial Court.

ISSUES:

1. Whether the inadequacy of PNB's bid price renders the forced sale of the properties invalid. (No)
2. Whether PNB is entitled to recover any deficiency from the spouses Rabat. (Yes)

RULING:

1. The inadequacy of PNB's bid price does not render the forced sale of the properties invalid.

The mode of forced sale utilized by petitioner was an extrajudicial foreclosure of real estate mortgage which is governed by Act No. 3135, as amended. Law reveals nothing to the effect that there should be a minimum bid price or that the winning bid should be equal to the appraised value of the foreclosed property or to the amount owed by the mortgage debtor. What is clearly provided is that a mortgage debtor is given the opportunity to redeem the foreclosed property "within the term of one year from and after the date of sale."

Unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier.

In the case at bar, other than the mere inadequacy of the bid price at the foreclosure sale, respondent did not allege any irregularity in the foreclosure proceedings nor did she prove that a better price could be had for her property under the circumstances. PNB's bid price of P 3,874,800.00 was not outrageously low as to be shocking to the conscience. It was almost equal to both the P 4M applied for by RABATS, to the total sum of P 3,517,380.00 of their actual availment from PNB.

2. PNB is entitled to recover any deficiency from the spouses Rabat.

It is settled that if the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of the mortgage, the mortgagee is entitled to claim the deficiency from the debtor. For when the legislature intends to deny the right of a creditor to sue for any deficiency resulting from foreclosure of security given to guarantee an obligation it expressly provides as in the case of pledges and in chattel mortgages of a thing sold on installment basis. Act No. 3135, which governs the extrajudicial foreclosure of mortgages, while silent as to the mortgagee's right to recover, does not, on the other hand, prohibit recovery of deficiency. Accordingly, it has been held that a deficiency claim arising from the extrajudicial foreclosure is allowed.

There should be no question that PNB was legally entitled to recover the penalty charge of 3% per annum and attorney's fees equivalent to 10% of the total amount due. The documents relating to the loan and the real estate mortgage showed that the spouses Rabat had expressly conformed to such additional liabilities; hence, they could not now insist otherwise. To be sure, the law authorizes the contracting parties to make any stipulations in their covenants provided the stipulations are not contrary to law, morals, good customs, public order or public policy. Equally

axiomatic are that a contract is the law between the contracting parties, and that they have the autonomy to include therein such stipulations, clauses, terms and conditions as they may want to include. Inasmuch as the spouses Rabat did not challenge the legitimacy and efficacy of the additional liabilities being charged by PNB, they could not now bar PNB from recovering the deficiency representing the additional pecuniary liabilities that the proceeds of the forced sales did not cover.

JUANITA ERMITAÑO, represented by her Attorney-in-Fact, ISABELO ERMITAÑO, vs.
LAILANIE M. PAGLAS
G.R. No. 174436**,**THIRD DIVISION, January 23, 2013, PERALTA, *J.*

FACTS:

On November 5, 1999, herein respondent and petitioner, through her representative, lsabelo R. Ermitaño, executed a Contract of Lease wherein petitioner leased in favor of respondent a 336 square meter residential lot and a house standing thereon located at No. 20 Columbia St., Phase l, Doña Vicenta Village, Davao City. The contract period is one (1) year, which commenced on November 4, 1999, with a monthly rental rate of ₱13,500.00. Pursuant to the contract, respondent paid petitioner ₱2,000.00 as security deposit to answer for unpaid rentals and damage that may be cause to the leased unit.

Subsequent to the execution of the lease contract, respondent received information that sometime in March 1999, petitioner mortgaged the subject property in favor of a certain Charlie Yap (Yap) and that the same was already foreclosed with Yap as the purchaser of the disputed lot in an extra-judicial foreclosure sale which was registered on February 22, 2000. Yap's brother later offered to sell the subject property to respondent. Respondent entertained the said offer and negotiations ensued. On June 1, 2000, respondent bought the subject property from Yap for ₱950,000.00. A Deed of Sale of Real Property was executed by the parties as evidence of the contract. However, it was made clear in the said Deed that the property was still subject to petitioner's right of redemption.

Prior to respondent's purchase of the subject property, petitioner filed a suit for the declaration of nullity of the mortgage in favor of Yap as well as the sheriff's provisional certificate of sale which was issued after the disputed house and lot were sold on foreclosure. Meanwhile, on May 25, 2000, petitioner sent a letter demanding respondent to pay the rentals which are due and to vacate the leased premises. A second demand letter was sent on March 25, 2001. Respondent ignored both letters.

On August 13, 2001, petitioner filed with the Municipal Trial Court in Cities (MTCC), Davao City, a case of unlawful detainer against respondent.

The RTC held that herein respondent possesses the right to redeem the subject property and that, pending expiration of the redemption period, she is entitled to receive the rents, earnings and income derived from the property. CA affirmed.

ISSUE:

Whether or not Petitioner remains the owner of the property?

RULING:

The conclusive presumption found in Section 2 (b), Rule 131 of the Rules of Court, known as estoppel against tenants, provides as follows:

Sec. 2. Conclusive presumptions. – The following are instances of conclusive presumptions:
x x x x

(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them. (Emphasis supplied).

It is clear from the abovequoted provision that what a tenant is estopped from denying is the title of his landlord at the time of the commencement of the landlord-tenant relation.[13] If the title asserted is one that is alleged to have been acquired subsequent to the commencement of that relation, the presumption will not apply.[14] Hence, the tenant may show that the landlord's title has expired or been conveyed to another or himself; and he is not estopped to deny a claim for rent, if he has been ousted or evicted by title paramount.[15] In the present case, what respondent is claiming is her supposed title to the subject property which she acquired subsequent to the commencement of the landlord-tenant relation between her and petitioner. Hence, the presumption under Section 2 (b), Rule 131 of the Rules of Court does not apply.

The foregoing notwithstanding, even if respondent is not estopped from denying petitioner's claim for rent, her basis for such denial, which is her subsequent acquisition of ownership of the disputed property, is nonetheless, an insufficient excuse from refusing to pay the rentals due to petitioner.

There is no dispute that at the time that respondent purchased Yap's rights over the subject property, petitioner's right of redemption as a mortgagor has not yet expired. It is settled that during the period of redemption, it cannot be said that the mortgagor is no longer the owner of the foreclosed property, since the rule up to now is that the right of a purchaser at a foreclosure sale is merely inchoate until after the period of redemption has expired without the right being exercised.[16] The title to land sold under mortgage foreclosure remains in the mortgagor or his grantee until the expiration of the redemption period and conveyance by the master's deed.[17] Indeed, the rule has always been that it is only upon the expiration of the redemption period, without the judgment debtor having made use of his right of redemption, that the ownership of the land sold becomes consolidated in the purchaser.[18]

Stated differently, under Act. No. 3135, the purchaser in a foreclosure sale has, during the redemption period, only an inchoate right and not the absolute right to the property with all the accompanying incidents.[19] He only becomes an absolute owner of the property if it is not redeemed during the redemption period.

Thus, it is clear from the abovequoted provision of law that, as a consequence of the inchoate character of the purchaser's right during the redemption period, Act. No. 3135, as amended, allows the purchaser at the foreclosure sale to take possession of the property only upon the filing of a bond, in an amount equivalent to the use of the property for a period of twelve (12) months, to indemnify the mortgagor in case it be shown that the sale was made in violation of the mortgage or without complying with the requirements of the law. In Cua Lai Chu v. Laqui,[22] this Court reiterated the rule earlier pronounced in Navarra v. Court of Appeals[23] that the purchaser at an extrajudicial

foreclosure sale has a right to the possession of the property even during the one-year redemption period provided the purchaser files an indemnity bond. That bond, nonetheless, is not required after the purchaser has consolidated his title to the property following the mortgagor's failure to exercise his right of redemption for in such a case, the former has become the absolute owner thereof.[24]

It, thus, clearly follows from the foregoing that, during the period of redemption, the mortgagor, being still the owner of the foreclosed property, remains entitled to the physical possession thereof subject to the purchaser's right to petition the court to give him possession and to file a bond pursuant to the provisions of Section 7 of Act No. 3135, as amended. The mere purchase and certificate of sale alone do not confer any right to the possession or beneficial use of the premises.[25]
In the instant case, there is neither evidence nor allegation that respondent, as purchaser of the disputed property, filed a petition and bond in accordance with the provisions of Section 7 of Act No. 3135. In addition, respondent defaulted in the payment of her rents. Thus, absent respondent's filing of such petition and bond prior to the expiration of the period of redemption, coupled with her failure to pay her rent, she did not have the right to possess the subject property.

MAKILITO B. MAHINAY, Petitioner vs. **DURA TIRE & RUBBER INDUSTRIES, INC.**, Respondent
G.R. No. 194152, SECOND DIVISION, June 5, 2017, LEONEN, *J.*

FACTS:

A parcel of land under the name of A&A Swiss International Commercial, Inc was mortgaged to Dura Tire and Rubber Industries, Inc as security for credit purchases to be made by Move Overland Venture and Exploring, Inc. Under the mortgage agreement, Dura Tire was given the express authority to extrajudicially foreclose the property should Move Overland fail to pay its credit purchases.

On June 5, 1992, A&A Swiss sold the property to Mahinay for the sum of ₱540,000.00.9 In the Deed of Absolute Sale, Mahinay acknowledged that the property had been previously mortgaged by A&A Swiss to Dura Tire, holding himself liable for any claims that Dura Tire may have against Move Overland.

On August 21, 1994, Mahinay wrote Dura Tire, requesting a statement of account of Move Overland's credit purchases. Mahinay sought to pay Move Overland's obligation to release the property from the mortgage. Dura Tire, however, ignored Mahinay's request.

For Move Overland's failure to pay its credit purchases, Dura Tire applied for extrajudicial foreclosure of the property on January 6, 1995. Mahinay protested the impending sale and filed a third-party claim before the Office of the Provincial Sheriff of Cebu.
Despite the protest, Sheriff proceeded with the sale and issued a Certificate of Sale in favor of Dura Tire, the highest bidder at the sale.

Subsequently, Mahinay's appeal was dismissed by the Court of Appeals and held that Mahinay had no right to question the foreclosure of the property. Mahinay, as "substitute mortgagor," was fully aware that the property he purchased from A&A Swiss was previously mortgaged to Dura Tire to answer for Move Overland's obligation. Considering that Move Overland failed to pay for its credit purchases, Dura Tire had every right to foreclose the property.

Relying on the Court of Appeals' finding that he was a "substitute mortgagor," Mahinay filed a Complaint for judicial declaration of right to redeem on August 24, 2007. Mahinay contends that the one (1)-year period of redemption should be counted from the time the June 16, 2006 Decision of the Court of Appeals became final and executory on August 8, 2007. Mahinay theorizes that his right of redemption only arose when he was judicially declared "entitled to redeem the property" in this decision.

Dura Tire counters that nothing prevented Mahinay from exercising his right of redemption within one (1) year from the registration of the Certificate of Sale.57 Dura Tire argues that Mahinay's filing of an action for annulment of foreclosure sale did not toll the running of the redemption period because the law does not allow its extension. Since the one year period of redemption already lapsed, Dura Tire maintains that Mahinay can no longer redeem the property at the bid price paid by the purchaser.

ISSUE:

Whether or not the one year period of redemption was tolled when Mahinay filed his Complaint for annulment of foreclosure sale.

RULING:

The Supreme Court ruled in the Negative.The period to redeem a property sold in an extrajudicial foreclosure sale is not extendible. A pending action to annul the foreclosure sale does not toll the running of the one year period of redemption under Act No. 3135.

Contrary to Mahinay's claim, his right to redeem the mortgaged property did not arise from the Court of Appeals' "judicial declaration" that he was a "substitute mortgagor" of A&A Swiss. By force of law, specifically, Section 6 of Act No. 3135, Mahinay's right to redeem arose when the mortgaged property was extrajudicially foreclosed and sold at public auction.

The "date of the sale" referred to in Section 6 is the date the certificate of sale is registered with the Register of Deeds. This is because the sale of registered land does not '"take effect as a conveyance, or bind the land' until it is registered."

The right of redemption being statutory, the mortgagor may compel the purchaser to sell back the property within the one (1)-year period under Act No. 3135. If the purchaser refuses to sell back the property, the mortgagor may tender payment to the Sheriff who conducted the foreclosure sale. Here, Mahinay should have tendered payment to Sheriff Laurel instead of insisting on directly paying Move Overland's unpaid credit purchases to Dura Tire.

As early as 1956, this Court held in Mateo v. Court of Appeals63 that "the right of redemption … must … be exercised in the mode prescribed by the statute."64 The one (1)-year period of redemption is fixed, hence, non-extendible, to "avoid prolonged economic uncertainty over the ownership of the thing sold."

Since the period of redemption is fixed, it cannot be tolled or interrupted by the filing of cases to annul the foreclosure sale or to enforce the right of redemption. "To rule otherwise … would

constitute a dangerous precedent. A likely offshoot of such a ruling is the institution of frivolous suits for annulment of mortgage intended merely to give the mortgagor more time to redeem the mortgaged property."

With Mahinay failing to redeem the property within the one (1)-year period of redemption, his right to redeem had already lapsed. As discussed, the pendency of an action to annul the foreclosure sale or to enforce the right to redeem does not toll the running of the period of redemption. The trial court correctly dismissed the Complaint for judicial declaration of right to redeem.

All told, the trial court correctly dismissed Mahinay's Complaint for judicial declaration of right to redeem. To grant the Complaint would have extended the period of redemption for Mahinay, in contravention of the fixed one (1)-year period provided in Act No. 3135.

REPUBLIC OF THE PHILIPPINES, represented by the Bureau of Customs and the Bureau of Internal Revenue, petitioner, vs. HONORABLE E.L. PERALTA, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH XVII, QUALITY TABACCO CORPORATION, FRANCISCO, FEDERACION OBRERO DE LA INDUSTRIA TABAQUERA Y OTROS TRABAJADORES DE FILIPINAS (FOITAF) USTC EMPLOYEES ASSOCIATION WORKERS UNION-PTGWO, respondents.

G.R. No. L-56568, May 20, 1987, FIRST DIVISION, FELICIANO, J.

Article 110 of the Labor Code does not purport to create a lien in favor of workers or employees for unpaid wages either upon all of the properties or upon any particular property owned by their employer. Claims for unpaid wages do not therefore fall at all within the category of specially preferred claims established under Articles 2241 and 2242 of the Civil Code, except to the extent that such claims for unpaid wages are already covered by Article 2241, number 6. "claims for laborers' wages, on the goods manufactured or the work done;" or by Article 2242, number 3: "claims of laborers and other workers engaged in the construction, reconstruction or repair of buildings, canals and other works, upon said buildings, canals or other works." To the extent that claims for unpaid wages fall outside the scope of Article 2241, number 6 and 2242, number 3, they would come within the ambit of the category of ordinary preferred credits under Article 2244.

Applying Article 2241, number 6 to the instant case, the claims of the Unions for separation pay of their members constitute liens attaching to the processed leaf tobacco, cigars and cigarettes and other products produced or manufactured by the Insolvent, but not to other assets owned by the Insolvent. And even in respect of such tobacco and tobacco products produced by the Insolvent, the claims of the Unions may be given effect only after the Bureau of Internal Revenue's claim for unpaid tobacco inspection fees shall have been satisfied out of the products so manufactured by the Insolvent.

FACTS:

In the voluntary insolvency proceedings commenced in May 1977 by private respondent Quality Tobacco Corporation, the several creditors filed claims of separation pay by the USTC employees, and inspection fees and customs duties, taxes payable by the BIR.

The trial court held that the above-enumerated claims of USTC and FOITAF for separation pay of their respective members embodied in final awards of the National Labor Relations Commission were to be preferred over the claims of the Bureau of Customs and the Bureau of Internal Revenue.

The Solicitor General, in seeking the reversal of the questioned Orders, argues that Article 110 of the Labor Code is not applicable as it speaks of "wages," a term which he asserts does not include the separation pay claimed by the Unions. "Separation pay," the Solicitor General contends, is given to a laborer for a separation from employment computed on the basis of the number of years the laborer was employed by the employer; it is a form of penalty or damage against the employer in favor of the employee for the latter's dismissal or separation from service.

ISSUE:

Whether or not the claims of the employees should be preferred over the claims of the BIR and the BOC

RULING:

Article 110 of the Labor Code does not purport to create a lien in favor of workers or employees for unpaid wages either upon all of the properties or upon any particular property owned by their employer. Claims for unpaid wages do not therefore fall at all within the category of specially preferred claims established under Articles 2241 and 2242 of the Civil Code, except to the extent that such claims for unpaid wages are already covered by Article 2241, number 6. "claims for laborers' wages, on the goods manufactured or the work done;" or by Article 2242, number 3: "claims of laborers and other workers engaged in the construction, reconstruction or repair of buildings, canals and other works, upon said buildings, canals or other works." To the extent that claims for unpaid wages fall outside the scope of Article 2241, number 6 and 2242, number 3, they would come within the ambit of the category of ordinary preferred credits under Article 2244.

Applying Article 2241, number 6 to the instant case, the claims of the Unions for separation pay of their members constitute liens attaching to the processed leaf tobacco, cigars and cigarettes and other products produced or manufactured by the Insolvent, but not to other assets owned by the Insolvent. And even in respect of such tobacco and tobacco products produced by the Insolvent, the claims of the Unions may be given effect only after the Bureau of Internal Revenue's claim for unpaid tobacco inspection fees shall have been satisfied out of the products so manufactured by the Insolvent.

Article 2242, number 3, also creates a lien or encumbrance upon a building or other real property of the Insolvent in favor of workmen who constructed or repaired such building or other real property. Article 2242, number 3, does not however appear relevant in the instant case, since the members of the Unions to whom separation pay is due rendered services to the Insolvent not, in the construction or repair of buildings or other real property, but rather, in the regular course of the manufacturing operations of the Insolvent. The Unions' claims do not therefore constitute a lien or encumbrance upon any immovable property owned by the Insolvent, but rather, as already indicated, upon the Insolvent's existing inventory.

DEVELOPMENT BANK OF THE PHILIPPINES, petitioner, vs. NATIONAL LABOR RELATIONS COMMISSION and LEONOR A ANG, respondents.
G.R. No. 108031 March 1, 1995, FIRST DIVISION, BELLOSILLO, J.

The rationale therefore has been expressed: that a preference of credit bestows upon the preferred creditor an advantage of having his credit satisfied first ahead of other claims which may be established against the debtor. Logically, it becomes material only when the properties and assets of the debtors are insufficient to pay his debts in full; for if the debtor is amply able to pay his various creditors in full, how can the necessity exist to determine which of his creditors shall be paid first or whether they shall be paid out of the proceeds of the sale (of) the debtor's specific property. Indubitably, the preferential right of credit attains significance only after the properties of the debtor have been inventoried and liquidated, and the claims held by his various creditors have been established.

In the present case, there is as yet no declaration of bankruptcy nor judicial liquidation of TPWII. Hence, it would be premature to enforce the worker's preference.

FACTS:

In 1977 private respondent Leonor A. Ang started employment as Executive Secretary with Tropical Philippines Wood Industries, Inc., a corporation engaged in the manufacture and sale of veneer, plywood and sawdust panel boards. In 1982 she was promoted to the position of Personnel Officer.

In 1983 petitioner Development Bank of the Philippines, as mortgagee of TPWII, foreclosed its plant facilities and equipment. Nevertheless, TPWII continued its business operations interrupted only by brief shutdowns for the purpose of servicing its plant facilities and equipment. In January 1986 petitioner took possession of the foreclosed properties. From then on, the company ceased its operations. As a consequence, private respondent was on 15 April 1986 verbally terminated from the service.

She filed with the Labor Arbiter a complaint for separation pay, 13th month pay, vacation and sick leave pay, salaries and allowances against TPWII, its General Manager, and petitioner.

The Labor Arbiter found TPWII primarily liable to private respondent but only for her separation pay and vacation and sick leave pay because her claims for unpaid wages and 13th month pay were later paid after the complaint was filed. The General Manager was absolved of any liability. But with respect to petitioner, it was held subsidiarily liable in the event the company failed to satisfy the judgment. The Labor Arbiter rationalized that the right of an employee to be paid benefits due him from the properties of his employer is superior to the right of the latter's mortgage, citing this Court's resolution in PNB v. Delta Motor Workers Union.

The National Labor Relations Commission affirmed the ruling of the Labor Arbiter.

ISSUE:

Whether or not the declaration of bankruptcy or judicial liquidation required before the worker's preference may be invoked under Art. 110 of the Labor Code

RULING:

We hold that public respondent gravely abused its discretion in affirming the decision of the Labor Arbiter. Art. 110 should not be treated apart from other laws but applied in conjunction with the pertinent provisions of the Civil Code and the Insolvency Law to the extent that piece-meal distribution of the assets of the debtor is avoided. Art. 110, then prevailing, provides:

Art. 110. Worker preference in case of bankruptcy. — In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

Complementing Art. 110, Sec. 10, Rule VIII, Book III, of the Revised Rules and Regulations Implementing the Labor Code provides:

Sec. 10. Payment of wages in case of bankruptcy. — Unpaid wages earned by the employees before the declaration of bankruptcy or judicial liquidation of the employer's business shall be given first preference and shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

We interpreted this provision in Development Bank of the Philippines v. Santos to mean that a declaration of bankruptcy or a judicial liquidation must be present before the worker's preference may be enforced.

The rationale is that to hold Art. 110 to be applicable also to extrajudicial proceedings would be putting the worker in a better position than the State which could only assert its own prior preference in case of a judicial proceeding. Art. 110, which was amended by R.A. 6715 effective 21 March 1989, now reads:

Art. 110. Worker preference in case of bankruptcy. — In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their unpaid wages and other monetary claims, any provision of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before the claims of the Government and other creditors may be paid.

Obviously, the amendment expanded the concept of "worker preference" to cover not only unpaid wages but also other monetary claims to which even claims of the Government must be deemed subordinate. The Rules and Regulations Implementing R.A. 6715 also amended the corresponding implementing rule, and now reads:

Sec. 10. Payment of wages and other monetary claims in case of bankruptcy. — In case of bankruptcy or liquidation of the employer's business, the unpaid wages and other monetary claims of the employees shall be given first preference and shall be paid in full before the claims of government and other creditors may be paid.

Although the terms "declaration" (of bankruptcy) or "judicial" (liquidation) have been notably eliminated, still in DBP vs. NLRC, this Court did not alter its original position that the right to

preference given to workers under Art. 110 cannot exist in any effective way prior to the time of its presentation in distribution proceedings. In effect, we reiterated our previous interpretation in Development Bank of the Philippines vs. Santos where we said that the worker's preference will find application when, in proceedings such as insolvency, such unpaid wages shall be paid in full before the "claims of the Government and other creditors" may be paid. But, for an orderly settlement of a debtor's assets, all creditors must be convened, their claims ascertained and inventoried, and thereafter the preferences determined. In the course of judicial proceedings which have for their object the subjection of the property of the debtor to the payment of his debts or other lawful obligations.

In Development Bank of the Philippines v. Santos, we ruled that in the event of insolvency, a principal objective should be to effect an equitable distribution of the insolvents property among his creditors. To accomplish this there must first be some proceeding where notice to all of the insolvent's creditors may be given and where the claims of preferred creditors may be bindingly adjudicated.

The rationale therefore has been expressed: that a preference of credit bestows upon the preferred creditor an advantage of having his credit satisfied first ahead of other claims which may be established against the debtor. Logically, it becomes material only when the properties and assets of the debtors are insufficient to pay his debts in full; for if the debtor is amply able to pay his various creditors in full, how can the necessity exist to determine which of his creditors shall be paid first or whether they shall be paid out of the proceeds of the sale (of) the debtor's specific property. Indubitably, the preferential right of credit attains significance only after the properties of the debtor have been inventoried and liquidated, and the claims held by his various creditors have been established.

In the present case, there is as yet no declaration of bankruptcy nor judicial liquidation of TPWII. Hence, it would be premature to enforce the worker's preference.

The additional ratiocination of public respondent that "under Article 110 of the Labor Code complainant enjoys a preference of credit over the properties of TPWII being held in possession by DBP," is a dismal misconception of the nature of preference of credit, a subject matter which we have already discussed in clear and simple terms and even distinguished from a lien in DPB vs. NLRC.

A preference applies only to claims which do not attach to specific properties. A lien creates a charge on a particular property. The right of first preference as regards unpaid wages recognized by Article 110 does not constitute a lien on the property of the insolvent debtor in favor of workers. It is but a preference of credit in their favor, a preference in application. It is a method adopted to determine and specify the order in which credits should be paid in the final distribution of the proceeds of the insolvent's assets. It is a right to a first preference in the discharge of the funds of the judgment debtor. Article 110 of the Labor Code does not purport to create a lien in favor of workers or employees for unpaid wages either upon all of the properties or upon any particular property owned by their employer. Claims for unpaid wages do not therefore fall at all within the category of specially preferred claims established under Articles 2241 and 2242 of the Civil Code, except to the extent that such claims for unpaid wages are already covered by Article 2241, number 6: "claims for laborers: wages, on the goods manufactured or the work done;" or by Article 2242, number 3, "claims of laborers and other workers engaged in the construction reconstruction or

repair of buildings, canals and other works, upon said buildings, canals and other works. The extent that claims for unpaid wages fall outside the scope of Article 2241, number 6, and 22421 number 3, they would come within the ambit of the category of ordinary preferred credits under Article 2244. The DBP anchors its claim on a mortgage credit. A mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted (Article 2176, Civil Code). It creates a real right which is enforceable against the whole world. It is a lien on an identified immovable property, which a preference is not. A recorded mortgage credit is a special preferred credit under Article 2242 (5) of the Civil Code on classification of credits. The preference given by Article 1l0, when not falling within Article 2241 (6) and Article 2242 (3), of the Civil Code and not attached to any specific property, is all ordinary preferred credit although its impact is to move it from second priority to first priority in the order of preference established by Article 2244 of the Civil Code.

RECENT JURISPRUDENCE

LOURDES VALDERAMA, *Petitioner,* -versus- SONIA ARGUELLES AND LORNA ARGUELLES, *Respondents*.

G.R. No. 223660, FIRST DIVISION, April 2, 2018, TIJAM, J.

A notice of lis pendens is a mere incident of an action which does not create any right nor lien. It may be cancelled without a court hearing. In contrast, an adverse claim constitutes a lien on a property. As such, the cancellation of an adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. Given the different attributes and characteristics of an adverse claim vis-a-vis a notice of lis pendens, this Court is led to no other conclusion but that the said two remedies may be availed of at the same time.

FACTS:

Respondents alleged that on November 18, 2004, Conchita Amongo Francia, who was the registered owner of a parcel of land consisting of one thousand (1000) square meters located in Sampaloc, Manila (subject property), freely and voluntarily executed an absolute deed of sale of the subject property in favor of respondents. The subject property was subsequently registered in the names of respondents.

On November 14, 2007, Conchita filed an affidavit of adverse claim. On January 24, 2008, Conchita died. As registered owners of the subject property, respondents prayed for the **cancellation of the adverse claim** in the petition subject of this controversy.

On February 10, 2010, petitioner and Tarcila Lopez, as full-blooded sisters of Conchita, filed an opposition to the petition. They claimed that upon Conchita's death, the latter's claims and rights against the subject property were transmitted to her heirs by operation of law. They also argued that the sale of the subject property to the respondents was simulated.

Meanwhile, while the petition to cancel adverse claim was pending before the RTC, respondents filed a complaint for recovery of ownership and physical possession of a piece of realty and its improvements with damages and with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction against petitioner and Tarcila, among others.

In light of the respondent's filing of the complaint, petitioner and Tarcila **filed a notice of *lis pendens*** with respect to the TCT No. 266311

Respondents filed a manifestation and motion praying for the outright cancellation of the adverse claim annotated on the TCT No. 266311 on the ground that petitioner's subsequent filing of notice of *lis pendens* rendered the issue moot and academic.

The RTC issued a Resolution ordering the cancellation of the adverse claim. In arriving at the said ruling, the RTC reasoned, that it cannot disregard the pronouncement of the court in ***Villaflor vs. Juerzan*****,** G.R. No. 35205 which states that a Notice of *Lis Pendens* between the parties concerning Notice of Adverse Claim calls for the cancellation thereof.

The CA rendered a decision dismissing petitioner's appeal for lack of merit. The CA held that the issue on cancellation of adverse claim is a question of law since its resolution would not involve an examination of the evidence but only an application of the law on a particular set of facts. Having raised a sole question of law, the petition was dismissed by the CA pursuant to Section 2, Rule 50 of the Rules of Court.

ISSUE:

Whether the subsequent annotation of a notice of *lis pendens* on a certificate of title renders the case for cancellation of adverse claim on the same title moot and academic. (NO)

RULING:

At the crux of the present controversy is this Court's ruling in the case of *Villaflor*. Admittedly, the present case involves the same issue resolved by this Court in *Villaflor*. However, the *Villaflor* ruling **stemmed from a different factual milieu**. As pointed out by the petitioner, in the case at bar, the respondents are the ones who filed the case subject of the notice of *lis pendens*. Further, the ruling in *Villaflor* specifically highlighted the fact that the related civil case was already terminated and attained finality. Here, the civil case filed by the respondents is still pending before the RTC.

An adverse claim and a notice of lis pendens under P.D. 1529 are not of the same nature and do not serve the same purpose.

As distinguished from an adverse claim, the notice of *lis pendens* is ordinarily recorded without the intervention of the court where the action is pending. Moreover, a notice of *lis pendens* neither affects the merits of a case nor creates a right or a lien. The notice is but an extrajudicial incident in an action. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action. Corollarily, unlike the rule in adverse claims, the cancellation of a notice *lis pendens* is also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. Its continuance or removal is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof.

The law and jurisprudence provide clear distinctions between an annotation of an adverse claim, on one hand, and an annotation of a notice of *lis pendens* on the other. In sum, the main differences between the two are as follows: (1) an adverse claim protects the right of a claimant during the pendency of a **controversy** while a notice of *lis pendens* protects the right of the claimant during the pendency of the **action or litigation**; and (2) an adverse claim may only be cancelled upon filing of a petition before the court which **shall conduct a hearing on its validity** while a notice of *lis pendens* may be cancelled **without a court hearing**.

The ruling of this Court in the case of Ty Sin Tei v. Dy Piao is applicable in this case. The aforecited rationale of this Court in *Ty Sin Tei* is more in accordance with the basic tenets of fair play and justice. As previously discussed, a notice of *lis pendens* is a mere incident of an action which does not create any right nor lien. It may be cancelled without a court hearing. In contrast, an adverse claim constitutes a lien on a property. As such, the cancellation of an adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. Given the different attributes and characteristics of an adverse claim *vis-a-vis* a notice of *lis pendens*, this Court is led to no other conclusion but that the said two remedies may be availed of at the same time.

CATALINA F. ISLA, ELIZABETH ISLA, AND GILBERT F. ISLA, *Petitioners*, -versus- GENEVIRA P. ESTORGA, *Respondent*.
G.R. No. 233974, SECOND DIVISION, July 02, 2018, PERLAS-BERNABE, *J*.

Anent monetary interest, the parties are free to stipulate their preferred rate. However, courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant. In such, the legal rate of interest prevailing at the time the agreement was entered into is applied by the Court.

In this case, the stipulated interest of 10% per month was found to be unconscionable, and thus, the courts a quo struck down the same and pegged a new monetary interest of 12% per annum, which was the prevailing legal rate of interest for loans and forbearances of money at the time the loan was contracted on December 6, 2004.

FACTS:

On December 6, 2004, petitioners obtained a loan in the amount of P100,000.00 from respondent, payable anytime from six months to one year and subject to interest at the rate of 10% per month, payable on or before the end of each month. As security, a real estate mortgage was constituted over a land located in Pasay City registered under the name of Edilberto Isla, who is married to Catalina.

When petitioners failed to pay the said loan, respondent sought assistance from the barangay, and consequently, a Kasulatan ng Pautang dated December 8, 2005 was executed. Petitioners, however, failed to comply with its terms, prompting respondent to send a demand letter dated November 16, 2006. Once more, petitioners failed to comply with the demand, causing respondent to file a Petition for Judicial Foreclosure against them before the RTC.

Petitioners maintained that the subject mortgage was not a real estate mortgage but a mere loan, and that the stipulated interest of 10 per month was exorbitant and grossly unconscionable. They

also insisted that since petitioners were not the absolute owners of the subject property - as the same was allegedly owned by Edilberto – they could not have validly constituted the subject mortgage thereon.

The RTC granted the Petition for Judicial Foreclosure and directed petitioners to pay respondent the amounts of P100,000.00 with twelve percent 12% interest per annum from December 2007 until fully paid and P20,000.00 as attorney's fees. In the event that petitioners fail to pay the said amounts within a period of 6 months from receipt of a copy of the RTC Decision, it held that the subject property will be foreclosed and sold at public auction to satisfy the mortgage debt, and the surplus, if any, will be delivered to petitioners with reasonable interest under the law.
Aggrieved, respondent appealed to the CA.

The CA affirmed with modification the RTC Decision, and accordingly, ordered petitioners to pay respondent P100,000.00 representing the principal of the loan obligation; an amount equivalent to 12% of P100,000.00 computed per year from November 16, 2006 (as distinguished from the RTC decision which fixed the start date at December 2007) until full payment, representing interest on the loan; an amount equivalent to 6% of the sums due computed from the finality of the CA Decision until full payment, representing legal interest; and P20,000.00 as attorney's fees. It likewise held that the stipulated interest of ten percent 10% per month on the real estate mortgage is exorbitant.
In their petition, petitioners contest the interest imposed on the principal amount of the loan at the rate of twelve percent 12% per annum from the date of extrajudicial demand until full payment. In this regard, they argue that pursuant to ECE Realty and Development, Inc. v. Hernandez the applicable interest rate should only be six percent 6%.

ISSUE:

Whether or not the CA erred in awarding 12% interest on the principal obligation until full payment

RULING:

No.

There are two types of interest, namely, monetary interest and compensatory interest. Monetary interest is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for delay or failure to pay the principal loan on which the interest is demanded (compensatory interest).

Anent monetary interest, the parties are free to stipulate their preferred rate. However, **courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant**, such as stipulated interest rates of three percent (3%) per month or higher. In such instances, it is well to clarify that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists. **It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case the legal rate of interest prevailing at the time the agreement was entered into is applied by the Court**. This is because,

according to jurisprudence, the legal rate of interest is the presumptive reasonable compensation for borrowed money.

In this case, petitioners and respondent entered into a loan obligation and clearly stipulated for the payment of monetary interest. However, the **stipulated interest of 10% per month was found to be unconscionable, and thus, the courts a quo struck down the same and pegged a new monetary interest of 12% per annum, which was the prevailing legal rate of interest for loans and forbearances of money at the time the loan was contracted** on December 6, 2004. Applying this, the loan obtained by respondents from petitioners is deemed subjected to conventional interest at the rate of 12% per annum, the legal rate of interest at the time the parties executed their agreement. Moreover, should conventional interest still be due as of July 1, 2013, the rate of 12% per annum shall persist as the rate of conventional interest. Stated otherwise, the legal rate of interest, when applied as conventional interest, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.

The Court rules that the CA correctly imposed a monetary interest rate of 12% per annum on the principal loan obligation of petitioners to respondent, reckoned from the date of extrajudicial demand until finality of this ruling. **Petitioner's reliance on ECE Realty is misplaced because unlike in this case, the amount due therein does not partake of a loan obligation or forbearance of money.**

SECURITY BANK CORPORATION, *Petitioner*, -versus- SPOUSES RODRIGO and ERLINDA MERCADO, *Respondents*.
G.R. No. 192934, FIRST DIVISION, June 27, 2018, JARDELEZA, J.

Failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect which invalidates the sale. This jurisdictional requirement may not be waived by the parties; to allow them to do so would convert the required public sale into a private sale. Thus, the statutory provisions governing publication of notice of mortgage foreclosure sale must be strictly complied with and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

In this case, the errors in the notice consist of: (1) TCT No. T-33150- "Lot 952-C-1" which should be "Lot 952-C-1-B;" (2) TCT No. T-89822 "Lot 1931, Cadm- 164-D" which should be "Lot 1931 Cadm 464-D;''64 and (3) the omission of the location. While the errors seem inconsequential, they in fact constitute data important to prospective bidders when they decide whether to acquire any of the lots announced to be auctioned. First, the published notice misidentified the identity of the properties. Since the lot numbers are misstated, the notice effectively identified lots other than the ones sought to be sold. Second, the published notice omitted the exact locations of the properties. As a result, prospective buyers are left completely unaware of the type of neighborhood and conforming areas they may consider buying into. With the properties misidentified and their locations omitted, the properties' sizes and ultimately, the determination of their probable market prices, are consequently compromised. The errors are of such nature that they will significantly affect the public's decision on whether to participate in the public auction. We find that the errors can deter or mislead bidders, depreciate the value of the properties or prevent the process from fetching a fair price.

FACTS:

On September 13, 1996, Security Bank granted spouses Mercado a revolving credit line in the amount of P1,000,000.00. To secure the credit line, the spouses Mercado executed a Real Estate Mortgage in favor of Security Bank over their properties covered by Transfer Certificate of Title (TCT) No. T-103519 (located in Lipa City, Batangas), and TCT No. T-89822 (located in San Jose, Batangas). The spouses Mercado executed another Real Estate Mortgage in favor of Security Bank this time over their properties located in Batangas City, Batangas covered by TCT Nos. T-33150, T-34288, and T-34289 to secure an additional amount of P7,000,000.00 under the same revolving credit agreement.

Subsequently, the spouses Mercado defaulted in their payment under the revolving credit line agreement. Security Bank requested the spouses Mercado to update their account, and sent a final demand letter on March 31, 1999.12 Thereafter, it filed a petition for extrajudicial foreclosure pursuant to Act No. 3135,13 as amended, with respect to the parcel of land situated in Lipa City. Security Bank likewise filed a similar petition with the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC of Batangas City with respect to the parcels of land located in San Jose, Batangas and Batangas City.

The respective notices of the foreclosure sales of the properties were published in newspapers of general circulation once a week for three consecutive weeks as required by Act No. 3135, as amended. However, the publication of the notices of the foreclosure of the properties in Batangas City and San Jose, Batangas contained errors with respect to their technical description. Security Bank caused the publication of an erratum in a newspaper to correct these errors. The corrections consist of the following: (1) TCT No. 33150 – "Lot 952-C-1" to "Lot 952-C-1-B;" and (2) TCT No. 89822 – "Lot 1931 Cadm- 164-D" to "Lot 1931 Cadm 464-D." The erratum was published only once, and did not correct the lack of indication of location in both cases.

The foreclosure sale of the parcel of land in Lipa City, Batangas was held wherein Security Bank was adjudged as the winning bidder. A similar foreclosure sale was conducted over the parcels of land in Batangas City and San Jose, Batangas where Security Bank was likewise adjudged as the winning bidder. The spouses Mercado offered to redeem the foreclosed properties for P10,000,000.00. However, Security Bank allegedly refused the offer and made a counter-offer in the amount of P15,000,000.00.

The spouses Mercado filed a complaint for annulment of foreclosure sale, damages, injunction, specific performance, and accounting with application for temporary restraining order and/or preliminary injunction with the RTC of Batangas City. In the complaint, the spouses Mercado averred that: (1) the parcel of land in San Jose, Batangas should not have been foreclosed together with the properties in Batangas City because they are covered by separate real estate mortgages; (2) the requirements of posting and publication of the notice under Act No. 3135, as amended, were not complied with; (3) Security Bank acted arbitrarily in disallowing the redemption of the foreclosed properties for P10,000,000.00; (4) the total price for all of the parcels of land only amounted to P4723,620.00; and (5) the interests and the penalties imposed by Security Bank on their obligations were iniquitous and unconscionable.

Meanwhile, Security Bank, after having consolidated its titles to the foreclosed parcels of land, filed an ex-parte petition for issuance of a writ of possession over the parcels of land located in Batangas City and San Jose, Batangas.

RTC declared that: (1) the foreclosure sales of the five parcels of land void; (2) the interest rates contained in the revolving credit line agreement void for being potestative or solely based on the will of Security Bank; and (3) thesum of P8,000,000.00 as the true and correct obligation of the spouses Mercado to Security Bank. RTC modified its Decision in an Amendatory Order where it declared that: (1) only the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are void as it has no jurisdiction over the properties in Lipa City, Batangas; (2) the obligation of the spouses Mercado is P7,500,000.00, after deducting P500,000.00 from the principal loan of P1,000,000.00; and (3) as "cost of money," the obligation shall bear the interest at the rate of 6% from the time of date of the Amendatory Order until fully paid. The CA, on appeal, affirmed with modifications the RTC Amended Decision.

ISSUES:

(1) Whether the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are valid. (NO)

(2) Whether the provisions on interest rate in the revolving credit line agreement and its addendum are void for being violative of the principle of mutuality of contracts. (YES)

(3) Whether interest and penalty are due and demandable from date of auction sale until finality of the judgment declaring the foreclosure void under the doctrine of operative facts. (NO)

RULING:

(1) The foreclosure sales of the properties in Batangas City and San Jose, Batangas are void for non-compliance with the publication requirement of the notice of sale.

Act No. 3135, as amended, provides for the statutory requirements for a valid extrajudicial foreclosure sale. Among the requisites is a valid notice of sale. Section 3, as amended, requires that when the value of the property reaches a threshold, the notice of sale must be published once a week for at least three consecutive weeks in a newspaper of general circulation:

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.

Failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect which invalidates the sale. This jurisdictional requirement may not be waived by the parties; to allow them to do so would convert the required public sale into a private sale. Thus, the statutory provisions governing publication of notice of mortgage foreclosure sale must be strictly complied with and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

Nevertheless, the validity of a notice of sale is not affected by immaterial errors. Only a substantial error or omission in a notice of sale will render the notice insufficient and vitiate the sale. An error is substantial if it will deter or mislead bidders, depreciate the value of the property or prevent it from bringing a fair price.

In this case, the errors in the notice consist of: (1) TCT No. T-33150- "Lot 952-C-1" which should be "Lot 952-C-1-B;" (2) TCT No. T-89822 "Lot 1931, Cadm- 164-D" which should be "Lot 1931 Cadm 464-D;''64 and (3) the omission of the location. While the errors seem inconsequential, they in fact constitute data important to prospective bidders when they decide whether to acquire any of the lots announced to be auctioned. First, the published notice misidentified the identity of the properties. Since the lot numbers are misstated, the notice effectively identified lots other than the ones sought to be sold. Second, the published notice omitted the exact locations of the properties. As a result, prospective buyers are left completely unaware of the type of neighborhood and conforming areas they may consider buying into. With the properties misidentified and their locations omitted, the properties' sizes and ultimately, the determination of their probable market prices, are consequently compromised. The errors are of such nature that they will significantly affect the public's decision on whether to participate in the public auction. We find that the errors can deter or mislead bidders, depreciate the value of the properties or prevent the process from fetching a fair price.

The publication of a single erratum, however, does not cure the defect. As correctly pointed out by the RTC, "[t]he act of making only one corrective publication in the publication requirement, instead of three (3) corrections is a fatal omission committed by the mortgagee bank." To reiterate, the published notices that contain fatal errors are nullities. Thus, the erratum is considered as a new notice that is subject to the publication requirement for once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city where the property is located. Here, however, it was published only once.

(2) The interest rate provisions in the parties' agreement violate the principle of mutuality of contracts.

The principle of mutuality of contracts is found in Article 1308 of the New Civil Code, which states that contracts must bind both contracting parties, and its validity or compliance cannot be left to the will of one of them. The binding effect of any agreement between parties to a contract is premised on two settled principles: (I) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. As such, any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Likewise, any stipulation regarding the validity or compliance of the contract that is potestative or is left solely to the will of one of the parties is invalid. This holds true not only as to the original terms of the contract but also to its modifications. Consequently, any change in a contract must be made with the consent of the contracting parties, and must be mutually agreed upon. Otherwise, it has no binding effect.

Stipulations as to the payment of interest are subject to the principle of mutuality of contracts. As a principal condition and an important component in contracts of loan, interest rates are only allowed if agreed upon by express stipulation of the parties, and only when reduced into writing.

Here, the spouses Mercado supposedly: (1) agreed to pay an annual interest based on a "floating rate of interest;" (2) to be determined solely by Security Bank; (3) on the basis of Security Bank's own prevailing lending rate; (4) which shall not exceed the total monthly prevailing rate as computed by Security Bank; and (5) without need of additional confirmation to the interests stipulated as computed by Security Bank.

Notably, stipulations on floating rate of interest differ from escalation clauses. Escalation clauses are stipulations which allow for the increase (as well as the mandatory decrease) of the original fixed interest rate. Meanwhile, floating rates of interest refer to the variable interest rate stated on a market-based reference rate agreed upon by the parties. The former refers to the method by which fixed rates may be increased, while the latter pertains to the interest rate itself that is not fixed. Nevertheless, both are contractual provisions that entail adjustment of interest rates subject to the principle of mutuality of contracts. Thus, while the cited cases involve escalation clauses, the principles they lay down on mutuality equally apply to floating interest rate clauses.

The Banko Sentral ng Pilipinas (BSP) Manual of Regulations for Banks (MORB) allows banks and borrowers to agree on a floating rate of interest, provided that it must be based on market-based reference rates:

§ X305.3 Floating rates of interest. The rate of interest on a floating rate loan during each interest period shall be stated on the basis of Manila Reference Rates (MRRs), T-Bill Rates or other market based reference rates plus a margin as may be agreed upon by the parties.

The MRRs for various interest periods shall be determined and announced by the Bangko Sentral every week and shall be based on the weighted average of the interest rates paid during the immediately preceding week by the ten (10) KBs with the highest combined levels of outstanding deposit substitutes and time deposits, on promissory notes issued and time deposits received by such banks, of P100,000 and over per transaction account, with maturities corresponding to the interest periods tor which such MRRs are being determined. Such rates and the composition of the sample KBs shall be reviewed and determined at the beginning of every calendar semester on the basis of the banks' combined levels of outstanding deposit substitutes and time deposits as of 31 May or 30 November, as the case may be.

The rate of interest on floating rate loans existing and outstanding as of 23 December 1995 shall continue to be determined on the basis of the MRRs obtained in accordance with the provisions of the rules existing as of 01 January 1989: Provided, however, That the parties to such existing floating rate loan agreements are not precluded from amending or modifying their loan agreements by adopting a floating rate of interest determined on the basis of the TBR or other market based reference rates.

Where the loan agreement provides for a floating interest rate, the interest period, which shall be such period of time for which the rate of interest is fixed, shall be such period as may be agreed upon by the parties.

For the purpose of computing the MRRs, banks shall accomplish the report forms, RS Form 2D and Form 2E (BSP 5-17-34A).

This BSP requirement is consistent with the principle that the determination of interest rates cannot be left solely to the will of one party. It further emphasizes that the reference rate must be stated in writing, and must be agreed upon by the parties.

The authority to change the interest rate was given to Security Bank alone as the lender, without need of the written assent of the spouses Mercado. This unbridled discretion given to Security Bank is evidenced by the clause "I hereby give my continuing consent without need of additional confirmation to the interests stipulated as computed by [Security Bank]." The lopsidedness of the imposition of interest rates is further highlighted by the lack of a breakdown of the interest rates imposed by Security Bank in its statement of account accompanying its demand letter.

The interest rate to be imposed is determined solely by Security Bank for lack of a stated, valid reference rate. The reference rate of "Security Bank's prevailing lending rate" is not pegged on a market-based reference rate as required by the BSP. The stipulated interest rate based on "Security Bank's prevailing lending rate" is not synonymous with "prevailing market rate." For one, Security Bank is still the one who determines its own prevailing lending rate. More, the argument that Security Bank is guided by other facts (or external factors such as Singapore Rate, London Rate, Inter-Bank Rate) in determining its prevailing monthly rate fails because these reference rates are not contained in writing as required by law and the BSP.

Nevertheless, while we find that no stipulated interest rate may be imposed on the obligation, legal interest may still be imposed on the outstanding loan. Eastern Shipping Lines, Inc. v. Court of Appeals and Nacar v. Gallery Frames provide that in the absence of a stipulated interest. a loan obligation shall earn legal interest from the time of default, i.e., from judicial or extrajudicial demand.

(3) For purposes of computing when legal interest shall run, it is enough that the debtor be in default on the principal obligation. To be considered in default under the revolving credit line agreement, the borrower need not be in default for the whole amount, but for any amount due. The spouses Mercado never challenged Security Bank's claim that they defaulted as to the payment of the principal obligation of P8,000,000.00. Thus, we find they have defaulted to this amount at the time Security Bank made an extrajudicial demand on March 31, 1999.

We also find no merit in their argument that penalty charges should not be imposed. While we see no legal basis to strike down the penalty stipulation, however, we reduce the penalty of 2% per month or 24% per annum for being iniquitous and unconscionable as allowed under Article 1229 of the Civil Code.

In MCMP Construction Corp. v. Monark Equipment Corp.,103 we declared the rate of 36% per annum unconscionable and reduced it to 6% per annum. We thus similarly reduce the penalty here from 24% per annum to 6% per annum from the time of default, i.e., extrajudicial demand.

We also modify the amount of the outstanding obligation of the spouses Mercado to Security Bank. To recall, the foreclosure sale over the parcel of land in Lipa City is not affected by the annulment proceedings. We thus find that the proceeds of the foreclosure sale over the parcel of land in Lipa City in the amount of P483,120.00 should be applied to the principal obligation of P8,000,000.00 plus interest and penalty from extrajudicial demand (March 31, 1999) until date of foreclosure sale (October 19, 1999). The resulting deficiency shall earn legal interest at the rate of 12% from the

filing of Security Bank's answer with counterclaim105 on January 5, 2001 until June 30, 2013, and shall earn legal interest at the present rate of 6% from July 1, 2013 until finality of judgment.

SPOUSES GODFREY and MA. TERESA TEVES, *Petitioners,* -versus- INTEGRATED CREDIT & CORPORATE SERVICES, CO. (now CAROL AQUI), *Respondent*.
G.R. No. 216714, FIRST DIVISION, April 4, 2018, DEL CASTILLO, J.

On the contention that the RTC — sitting as a land registration court — does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action, this is no longer tenable. The distinction between the trial court acting as a land registration court with limited jurisdiction, on the one hand, and a trial court acting as an ordinary court exercising general jurisdiction, on the other, has already been removed with the effectivity of Presidential Decree No. 1529, or the Property Registration Decree.

FACTS:

Sometime in 1996, Standard Chartered Bank extended various loans to petitioners Godfrey and Ma. Teresa Teves. As security, petitioners mortgaged their property covered by Transfer Certificate of Title No. 107520 (the subject property).

Petitioners defaulted in their loan payments. Standard extrajudicially foreclosed on the mortgage, and the property was sold to Integrated Credit and Corporate Services Co. (ICCS). A new certificate of title was issued in favor of ICCS after petitioners failed to redeem the subject property upon the expiration of the redemption period on May 23, 2007.

ICCS filed a petition for the issuance of a wit of possession. During the proceedings, or in May, 2010, ICCS was substituted by respondent Carol Aqui who appears to have acquired the property from ICCS, and a new certificate of title was issued in Aqui's favor.

On July 14, 2010, the RTC issued two Orders.
The first, issued the writ of possession. The second, ordered the defendants to deliver to petitioner and/or deposit with the Court the monthly rentals of the subject property covering the period from May 24, 2007 up to the time they surrender the possession thereof to the petitioner.
Petitioners filed a Partial Motion for Reconsideration of the Second Order, but RTC denied the same.

Petitioners filed a Petition for *Certiorari* before the CA. The latter dismissed the Petition filed under Rule 65 being an improper remedy. It ratiocinated that the orders subject of the petition partakes the nature of a judgment or final order which is appealable under Rule 41 of the Rules of Court.

Petitioners, praying that this Court set aside the second order of the RTC, argue that Aqui should file an independent action — and not simply seek the same in her petition for issuance of a writ of possession, since (a) the RTC, sitting as a land registration court, does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action; and (b) Act No. 3135, as amended by Act No. 4118, contains no provision authorizing the award of back rentals to the purchaser at auction.

ISSUE:

Whether back rentals can be awarded in an ex parte application for writ of possession under Act 3135. (YES)

RULING:

When the redemption period expired on May 23, 2007, ICCS became the owner of the subject property and was, from then on, entitled to the fruits thereof. Petitioners ceased to be the owners of the subject property, and had no right to the same as well as to its fruits. Under Section 32, Rule 39 of the Rules, on Execution, Satisfaction and Effect of Judgments, all rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor, but only until the expiration of his period of redemption. Thus, if petitioners leased out the property to third parties after their period for redemption expired, as was in fact the case here, the rentals collected properly belonged to ICCS or Aqui, as the case may be. Petitioners had no right to collect them.

On the contention that the RTC — sitting as a land registration court — does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action, this is no longer tenable. The distinction between the trial court acting as a land registration court with limited jurisdiction, on the one hand, and a trial court acting as an ordinary court exercising general jurisdiction, on the other, has already been removed with the effectivity of Presidential Decree No. 1529, or the Property Registration Decree. "The change has simplified registration proceedings by conferring upon the designated trial courts the authority to act not only on applications for 'original registration' but also 'over all petitions filed after original registration of title, with power to hear and determine all questions arising from such applications or petition.'" Moreover, under Section 6, Rule 135 of the Rules, on Powers and Duties of Courts and Judicial Officers, it is provided that —

> Sec. 6. *Means to carry jurisdiction into effect.* — When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

Given the above-cited rule and the pronouncement in *China Banking Corporation v. Spouses Lozada*, it can be understood why the RTC issued the two separate Orders of July 14, 2010 The First Order was issued relative to the main remedy sought by ICCS — that is, for the court to issue a writ of possession. The Second Order was issued pursuant to the court's authority under Section 6 of Rule 135 of the Rules, to the end that a patent inequity may be immediately remedied and justice served in accordance with the objective of the Rules to secure a just, speedy and inexpensive disposition of every action and proceeding. In the eyes of the law, petitioners clearly had no right to collect rent from the lessee of the subject property; they were no longer the owners thereof, yet they continued to collect and appropriate for themselves the rentals on the property to which ICCS was entitled. This is a clear case of unjust enrichment that the courts may not simply ignore.

VICTORIA N. RACELIS, IN HER CAPACITY AS ADMINISTRATOR, *Petitioner,* -versus- SPOUSES GERMIL JAVIER and REBECCA JAVIER, *Respondents.*
G.R. No. 189609, THIRD DIVISION, January 29, 2018, LEONEN, *J.*

In Goldstein v. Roces:

Nobody has in any manner disputed, objected to, or placed any difficulties in the way of plaintiff's peaceful enjoyment, or his quiet and peaceable possession of the floor he occupies. The lessors, therefore, have not failed to maintain him in the peaceful enjoyment of the floor leased to him and he continues to enjoy this status without the slightest change, without the least opposition on the part of any one. That there was a disturbance of the peace or order in which he maintained his things in the leased story does not mean that he lost the peaceful enjoyment of the thing rented. The peace would likewise have been disturbed or lost had some tenant of the Hotel de Francia, living above the floor leased by plaintiff, continually poured water on the latter's bar and sprinkled his bar-tender and his customers and tarnished his furniture; or had some gay patrons of the hotel gone down into his saloon and broken his crockery or glassware, or stunned him with deafening noises. Numerous examples could be given to show how the lessee might fail peacefully to enjoy the floor leased by him, in all of which cases he would, of course, have a right of action for the recovery of damages from those who disturbed his peace, but he would have no action against the lessor to compel the latter to maintain him in his peaceful enjoyment of the thing rented. The lessor can do nothing, nor is it incumbent upon him to do anything, in the examples or cases mentioned, to restore his lessees peace.

True it is that, pursuant to paragraph 3, of article 1554, the lessor must maintain the lessee in the peaceful enjoyment of the lease during all of the time covered by the contract, and that, in consequence thereof, he is obliged to remove such obstacles as impede said enjoyment; but, as in warranty in a case of eviction (to which doctrine the one we are now examining is very similar, since it is necessary, as we have explained, that the cause of eviction be in a certain manner imputable to the vendor, which must be understood as saying that it must be prior to the sale), the obstacles to enjoyment which the lessor must remove are those that in some manner or other cast doubt upon the right by virtue of which the lessor himself executed the lease and, strictly speaking, it is this right that the lessor should guarantee to the lessee.

Lessees are entitled to suspend the payment of rent under Article 1658 of the Civil Code if their legal possession is disturbed. Acts of physical disturbance that do not affect legal possession is beyond the scope of this rule. Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract. Assuming that parties were entitled to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the civil Code "to pay the price of the lease according to the terms stipulated."

FACTS:

Before his death, the late Pedro Nacu, Sr. (Nacu) appointed his daughter, Racelis, to administer his properties, among which was a residential house and lot located in Marikina City. Nacu requested his heirs to sell this property first. Acting on this request, Racelis immediately advertised it for sale.

In August 2001, the Spouses Javier offered to purchase the Marikina property. However, they could not afford to pay the price of P3,500,000.00. The parties agreed on a month-to-month lease and

rent of P11,000.00 per month. The Spouses Javier used the property as their residence and as the site of their tutorial school, the Niño Good Shepherd Tutorial Center.

Sometime in July 2002, Racelis inquired whether the Spouses Javier were still interested to purchase the property. The Spouses Javier reassured her of their commitment and even promised to pay P100,000.00 to buy them more time within which to pay the purchase price. On July 26, 2002, the Spouses Javier tendered the sum of P65,000.00 representing "initial payment or goodwill money." On several occasions, they tendered small sums of money to complete the promised P100,000.00, but by the end of 2003, they only delivered a total of P78,000.00.

Meanwhile, they continued to lease the property. They consistently paid rent but started to fall behind by February 2004. Realizing that the Spouses Javier had no genuine intention of purchasing the property, Racelis wrote to inform them that her family had decided to terminate the lease agreement and to offer the property to other interested buyers. **In the same letter, Racelis demanded that they vacate the property by May 30, 2004.**

The Spouses Javier refused to vacate due to the ongoing operation of their tutorial business. They insisted that the sum of P78,000.00 was advanced rent and proposed that this amount be applied to their outstanding liability until they vacate the premises. Disagreeing on the application of the P78,000.00, Racelis and the Spouses Javier brought the matter to the barangay for conciliation. Unfortunately, the parties failed to reach a settlement. During the proceedings, Racelis demanded the Spouses Javier to vacate the premises by the end of April 30, 2004. However, the Spouses Javier refused to give up possession of the property and even refused to pay rent for the succeeding months.

On May 12, 2004, Racelis caused the disconnection of the electrical service over the property forcing the Spouses Javier to purchase a generator. This matter became the subject of a complaint for damages filed by the Spouses Javier against Racelis. Racelis was absolved from liability.

Meanwhile, Racelis filed a complaint for ejectment against the Spouses Javier before the Metropolitan Trial Court in Marikina City. The case was docketed as Civil Case No. 04-7710. Racelis alleged that she agreed to lease the property to the Spouses Javier based on the understanding that they would eventually purchase it. Spouses Javier averred that they never agreed to purchase the property from Racelis because they found a more affordable property at Greenheights Subdivision in Marikina City. They claimed that the amount of P78,000.00 was actually advanced rent. During trial, the Spouses Javier vacated the property and moved to their new residence at Greenheights Subdivision

On August 19, 2005, the Metropolitan Trial Court rendered a Decision dismissing the complaint. It ruled that the Spouses Javier were entitled to suspend the payment of rent under Article 1658 of the Civil Code due to Racelis' act of disconnecting electric service over the property.

The Metropolitan Trial Court declared that the Spouses Javier's obligation had been extinguished. Their advanced rent and deposit were sufficient to cover their unpaid rent. The Metropolitan Trial Court, however, did not characterize the P78,000.00 as advanced rent but as earnest money.

On appeal, the Regional Trial Court rendered a Decision reversing the Metropolitan Trial Court August 19, 2005 Decision. The Regional Trial Court held that the Spouses Javier were not justified

in suspending rental payments. However, their liability could not be offset by the P78,000.00. The Regional Trial Court explained that the parties entered into two (2) separate and distinct contracts—a lease contract and a contract of sale. Based on the evidence presented, the P78,000.00 was not intended as advanced rent, but as part of the purchase price of the property. The Spouses Javier moved for reconsideration. The Regional Trial Court reduced the Spouses Javier's unpaid rentals by their advanced rental deposit. They were ordered to pay P54,000.00 instead. The Spouses Javier appeal.

On January 13, 2009, the Court of Appeals rendered a Decision declaring the Spouses Javier justified in withholding rental payments due to the disconnection of electrical service over the property. Nevertheless, the Court of Appeals stated that they were not exonerated from their obligation to pay accrued rent. On the other hand, Racelis was bound to return the sum of P78,000.00 in view of her waiver. Racelis moved for reconsideration but her motion was denied in the Court of Appeals. On November 25, 2009, Racelis filed a Petition for Review

ISSUE:

Whether respondents Spouses Germil and Rebecca Javier can invoke their right to suspend the payment of rent under Article 1658 of the Civil Code. (NO)

RULING:

A **contract of lease** is a "consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor."

Article 1658 of the Civil Code allows a lessee to postpone the payment of rent if the lessor fails to either (1) "make the necessary repairs" on the property or (2) "maintain the lessee in peaceful and adequate enjoyment of the property leased." This provision implements the obligation imposed on lessors under Article 1654(3) of the Civil Code.

The failure to maintain the lessee in the peaceful and adequate enjoyment of the property leased does not contemplate all acts of disturbance. **Lessees may suspend the payment of rent under Article 1658 of the Civil Code only if their legal possession is disrupted.**

In this case, the disconnection of electrical service over the leased premises on May 14, 2004 was not just an act of physical disturbance but one that is meant to remove respondents from the leased premises and disturb their legal possession as lessees. Ordinarily, this would have entitled respondents to invoke the right accorded by Article 1658 of the Civil Code.

However, this rule will not apply in the present case because the lease had already expired when petitioner requested for the temporary disconnection of electrical service. Petitioner demanded respondents to vacate the premises by May 30, 2004. Instead of surrendering the premises to petitioner, respondents unlawfully withheld possession of the property. Respondents continued to stay in the premises until they moved to their new residence on September 26, 2004. At that point, petitioner was no longer obligated to maintain respondents in the "peaceful and adequate enjoyment of the lease for the entire duration of the contract." Therefore, respondents cannot use the disconnection of electrical service as justification to suspend the payment of rent.

Assuming that respondents were entitled **to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the civil Code "to pay the price of the lease according to the terms stipulated."**

Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract. Moreover, respondents' obligation to pay rent was not extinguished when they transferred to their new residence. Respondents are liable for a reasonable amount of rent for the use and continued occupation of the property upon the expiration of the lease. To hold otherwise would unjustly enrich respondents at petitioner's expense.

BENJAMIN EVANGELISTA *v.* SCREENEX, INC., represented by ALEXANDER G. YU
G.R. No. 211564, November 20, 2017, First Division, SERENO, C.J.:

The acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given.

FACTS:

Screenex, Inc. represented by Alexander Yu issued two checks to Evangelista in September 1991 pursuant to a loan obtained by the latter. The first was a UCPB check for ₱1,000,000 and the second, a Chinabank check for ₱500, 000. There were also vouchers of Screenex that were signed by the accused evidencing that he received the 2 checks in acceptance of the loan granted to him. In turn, Petitioner issued two open-dated UCPB checks both pay to the order of Screenex, Inc. The checks issued by Evangelista were held in safekeeping by Philip Gotuaco, Sr, the father-in-law of the Respondent. These were kept by him until his death in 2004.

In 2005, Petitioner was charged with a violation of BP 22 for the issuance of the two UCPB checks for issuing to Respondent checks for value despite knowing that there were insufficient funds at the time of its issuance, and when subsequently presented within 90 days from the date thereof, was dishonored by the drawee bank for the reason "ACCOUNT CLOSED." Despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said checks or to make arrangement for full payment thereof within 5 banking days after receiving notice.

The METC acquitted Petitioner for failure to prove the third element of BP 22 at the time of the issuance of the check to the payee, the latter did not have sufficient funds in, or credit with, the drawee bank for payment of the check in full upon its presentment. Here, there was a failure to prove Evangelista's receipt of the demand letter. Thus, there was a failure to establish *prima faci*e evidence of knowledge of the insufficiency of funds on the part of Evangelista. However, petitioner was made liable to pay the corresponding civil obligation since the checks were in the creditor's possession, which is sufficient evidence of an unpaid debt.

The RTC affirmed the MeTC decision *in toto* as regards civil liability. In ruling against the Respondent, the Court said that the alleged payment of Evangelista is an affirmative defense thathe failed to discharge and that prescription has not settled yet as the 10-year period must be counted from the time the right of action accrues as per Art. 1144 of the New Civil Code. Here, the reckoning point of prescription has not yet been established since there was no evidence as to the date of

maturity of the loan obligation. The RTC also stressed that the right of action in this case is not upon a written contract. Hence, Art. 1144 does not apply.

Evangelista filed a petition for review before the CA insisting that the lower court erred in finding him liable to pay the sum with interest at 12% per annum from the date of filing until full payment. He further alleged that witness Yu was not competent to testify on the loan transaction; that the insertion of the date on the checks without the knowledge of the accused was an alteration that avoided the checks; and that the obligation had been extinguished by prescription.

The CA denied the petition. It held that (a) the reckoning time for the prescriptive period began when the instrument was issued and the corresponding check returned by the bank to its depositor; (b) the issue of prescription was raised for the first time on appeal with the RTC; (c) the writing of the date on the check cannot be considered as an alteration, as the checks were undated, so there was nothing to change to begin with; (d) the loan obligation was never denied by petitioner, who claimed that it was settled in 1992, but failed to show any proof of payment.

ISSUE:

Whether or not Evangelista should be made liable to pay the civil liability.

RULING:

NO. The Court ruled in favor of Petitioner on 3 grounds: *First*, a check is discharged by any other act which will discharge a simple contract for the payment of money. *Second*, prescription allows the court to dismiss the case motu propio. And *third*, the delivery of the check produces the effect of payment when through the fault of the creditor they have been impaired. On the first and second grounds, the civil action deemed instituted with the criminal action in B.P. 22 cases is treated as an "independent civil liability based on contract.

By definition, a check is a bill of exchange drawn on a bank payable on demand. It is a negotiable instrument — written and signed by a drawer containing an unconditional order to pay on demand a sum certain in money. It is an undertaking that the drawer will pay the amount indicated thereon. **Section 119 of the NIL, however, states that a negotiable instrument like a check may be discharged by any other act which will discharge a simple contract for the payment of money**.

A check therefore is subject to prescription of actions upon a written contract, that is, the action must be brought from the time the right of action accrues. Barring any extrajudicial or judicial demand that may toll the 10-year prescription period and any evidence which may indicate any other time when the obligation to pay is due, **the cause of action based on a check is reckoned from the date indicated on the check.**

If the check is undated, however, as in the present petition, the cause of action is reckoned from the date of the issuance of the check.This is pursuant to Section 17 of the NIL which provides that an undated check is presumed dated as of the time of its issuance. The Court also stressed that although the date on a check may be filled, this must be done strictly in accordance with the authority given and within a reasonable time. Here, Yu, even assuming that was authorized**, failed to insert the dates within a reasonable time**. The insertion was made

after more than 10 years from the issuance of the checks. Thus, the cause of action on the checks has become stale, hence, time-barred. No written extrajudicial or judicial demand was shown to have been made within 10 years which could have tolled the period. Prescription has set in which allows the Court to dismiss the case motu propio. The dismissal may be made albeit this ground has been raised belatedly for the first time on appeal.

As regards the third ground, Art. 1249 of the Civil Code and Sec. 186 of the NIL requires the presentment of checks within a reasonable time after their issuance. In *Papa v. Valencia*, it was held that **the acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given**. It has, likewise, been held that if no presentment is made at all, the drawer cannot be held liable irrespective of loss or injury unless presentment is otherwise excused. This is in harmony with Article 1249 of the Civil Code under which payment by way of check or other negotiable instrument is conditioned on its being cashed, except when through the fault of the creditor, the instrument is impaired. The payee of a check would be a creditor under this provision and if its no-payment is caused by his negligence, payment will be deemed effected and the obligation for which the check was given as conditional payment will be discharged.

In the present case, Respondent's subsequent failure to encash the checks within a period of 10 years or more, not only resulted in the checks becoming stale but also had the effect of payment. Petitioner is considered discharged from his obligation to pay and can no longer be pronounced civilly liable for the amounts indicated thereon.