

## SECOND DIVISION

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

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

### D E C I S I O N

**DEL CASTILLO, J.:**

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

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

#### ***Factual Antecedents***

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

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

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

(a) TCT No. T-6005 x x x in the name of Edmundo Lim;

- (b) TCT No. T-6182 x x x in the name of Carlos Lim;
- (c) TCT No. T-7013 x x x in the name of Carlos Lim;
- (d) TCT No. T-7012 x x x in the name of Carlos Lim;
- (e) TCT No. T-7014 x x x in the name of Edmundo Lim;
- (f) TCT No. T-7016 x x x in the name of Carlito Lim;
- (g) TCT No. T-28922 x x x in the name of Consolacion Lim;
- (h) TCT No. T-29480 x x x in the name of Shirley Leodadia Dizon;
- (i) TCT No. T-24654 x x x in the name of Trinidad D. Chua; and
- (j) TCT No. T-25018 x x x in the name of Trinidad D. Chua's deceased husband Juan Chua.<sup>[12]</sup>

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

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

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

**Diamond L Ranch Account:**

Matured [Obligation]:	
Principal	P 939,973.33
Regular Interest	561,037.14
Advances	34,589.45
Additional Interest	2,590,786.26
Penalty Charges	1,068,147.19
Total claims as of January 31, 1989	P 5,194,533.37 <sup>[18]</sup>

**Lim Account:**

Matured [Obligation]:	
Principal	P 40,000.00
Regular Interest	5,046.97

Additional Interest	92,113.56
Penalty Charges	39,915.46
Total claims as of January 31, 1989	P 177,075.99 <sup>[19]</sup>

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

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

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

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

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

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

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

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

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

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

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

Thereafter, Tamayo informed Edmundo of the bank's new guidelines for the settlement of outstanding loan accounts under Board Resolution No. 0290-92.<sup>[42]</sup> Based on these guidelines, petitioners' outstanding loan obligation was computed at P3,500,000.00 plus.<sup>[43]</sup> Tamayo then proposed that petitioners pay 10% downpayment and the remaining balance in 36 monthly installments.<sup>[44]</sup> He also informed Edmundo that the bank would immediately prepare the Restructuring Agreement upon receipt of the downpayment and that the conditions for the settlement have been "pre-cleared" with the bank's Regional Credit Committee.<sup>[45]</sup> Thus, Edmundo wrote a letter<sup>[46]</sup> on October 30, 1992 manifesting petitioners' assent to the proposal.

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

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

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

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

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

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

Please be informed further, that the Branch cannot do otherwise but to

comply with the conditions imposed by the Regional Credit Committee. More so, the time frame given had already lapsed on June 2, 1993.

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

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

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

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

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

Likewise, please be reminded that upon failure on your part to sign and perfect the documents and comply [with] other conditions within (30) days from date of receipt, your approved recommendation shall be deemed CANCELLED and your deposit of P362,271.75 shall be applied to your account.

No compliance was made by Edmundo.<sup>[58]</sup>

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

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

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

x x x x