

## FIRST DIVISION

[ G.R. No. 175816, December 07, 2011 ]

**BPI FAMILY SAVINGS BANK, INC., PETITIONER, VS. MA. ARLYN T. AVENIDO & PACIFICO A. AVENIDO, RESPONDENTS.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision <sup>[1]</sup> dated March 31, 2006 of the Court of Appeals in CA-G.R. CV No. 79008, which affirmed the Decision <sup>[2]</sup> dated November 13, 2002 of the Regional Trial Court (RTC), Branch 58 of Cebu City, in Civil Case No. CEB-25629. The RTC dismissed the Complaint for Collection of Deficiency of Mortgage Obligation with Damages filed by petitioner BPI Family Savings Bank (BPI Family) against respondent spouses Pacifico A. Avenido and Ma. Arlyn T. Avenido (spouses Avenido), following the extrajudicial foreclosure of the property given by the latter as security for their loan. The instant Petition likewise challenges the Resolution <sup>[3]</sup> dated November 16, 2006 of the Court of Appeals in the same case denying the Motion for Reconsideration of BPI Family.

The controversy arose from the following facts.

On September 20, 2000, BPI Family filed with the RTC a Complaint for Collection of Deficiency of Mortgage Obligation with Damages against the spouses Avenido, docketed as Civil Case No. CEB-25629.

BPI Family alleged in its Complaint that pursuant to a Mortgage Loan Agreement <sup>[4]</sup> dated April 25, 1996, the spouses Avenido obtained from the bank a loan in the amount of P2,000,000.00, secured by a real estate mortgage on a parcel of land situated in Bais City, which is covered by Transfer Certificate of Title (TCT) No. T-1216 (mortgaged/foreclosed property). The spouses Avenido failed to pay their loan obligation despite demand, prompting BPI Family to institute before the Sheriff of Bais City extrajudicial foreclosure proceedings over the mortgaged property, in accordance with Act No. 3135, otherwise known as an Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages. At the public auction sale held on March 8, 1999, BPI Family was the highest bidder for the foreclosed property. The bid price of P2,142,616.00 of BPI Family was applied as partial payment of the mortgage obligation of the spouses Avenido, which had amounted to P2,917,381.43 on the date of the public auction sale, thus, still leaving an unpaid amount of P794,765.43. The Certificate of Sale dated March 8, 1999 was registered on TCT No. T-1216 on May 25, 1999. <sup>[5]</sup>

BPI Family prayed that the RTC order the spouses Avenido to pay the deficiency of their mortgage obligation amounting to P794,765.43, plus legal interest thereon

from the date of the filing of the Complaint until full payment; 15% as contractual attorney's fees; P50,000.00 as litigation expenses; and costs of the suit. [6]

The spouses Avenido filed their Answer with Special/Affirmative Defenses and Counterclaims on September 18, 2001. The spouses Avenido averred therein that they had already paid a substantial amount to BPI Family, which could not be less than P1,000,000.00, but due to the imposition by BPI Family of unreasonable charges and penalties on their principal obligation, their payments seemed insignificant. Per the Notice of Extrajudicial Sale dated February 4, 1999, the spouses Avenido's indebtedness to BPI Family only amounted to less than P2,000,000.00, and such amount was already fully covered when the foreclosed property was sold at the public auction for P2,142,616.00. The spouses Avenido sought the dismissal of the Complaint for lack of merit, plus the award of P500,000.00 as moral damages and P300,000.00 as exemplary damages given the prejudice and unnecessary expenses they suffered because of the unjustified suit of BPI Family. [7]

Failing to reach an amicable settlement during the pre-trial conference, trial ensued.

BPI Family submitted the following computation in support of its claim for deficiency mortgage obligation from the spouses Avenido:

AUCTION SALE: MARCH 8, 1999

Principal Balance		P 1,918,722.47
Interest		266,754.66
Fire Insurance	1997-1998	6,725.00
	1998-1999	6,725.00
Unpaid MRI		10,720.00
Late Charges		37,425.46
Less: Unapplied		<u>(0.18)</u>
Sub-total		<u>2,247,072.41</u>

Foreclosure  
Expenses

Filing Fee	P 5,719.60	
Sheriff's Fee	1,500.00	
Cost of Publication	5,000.00	
Interest on Litigation Expenses	232.17	<u>12,451.77</u>
		<u>2,259,524.18</u>

Contractual  
Penalties

Attorney's fees	338,928.63
Liquidated Damages	<u>338,928.63</u>

Total	<u>2,937,381.43</u>
Total Appraised Value as of 03/05/99	2,678,270.00
80% of TAV	2,142,616.00
Summary:	
Total Exposure as of 03/08/99	
Bid Price	2,937,381.43
(lower amt. between total exposure or 80% of TAV)	<u>2,142,616.00</u>
Deficiency	<u>794,765.43</u>
Portion of Principal covered by bid price to be retained in IL	0.00 [8]

BPI Family presented as witness Alfred Rason (Rason), the Assistant Manager for Operation, who was in charge of keeping track and collecting unpaid obligations of the bank. Rason testified that in the Petition for Extrajudicial Foreclosure, BPI Family reported that the loan obligation of the spouses Avenido amounted to P1,918,722.47, inclusive of interest, penalty charges, insurance, foreclosure expenses, and others, as of November 16, 1998. However, as of the public auction sale of the foreclosed property on March 8, 1999, the total loan obligation of the spouses Avenido already reached P2,937,381.43. The foreclosed property was awarded to BPI Family as the highest bidder at the public auction sale for P2,142,616.00. The bid price was arrived at by BPI Family following bank policy, *i.e.*, total exposure of claim or 80% of the total appraised value of the foreclosed property, whichever is lower. In a letter dated July 8, 2000, sent to the spouses Avenido through registered mail, counsel for BPI family demanded payment of the deficiency balance of P794,766.43 on the loan obligation of said spouses. [9]

When respondent Ma. Arlyn T. Avenido (Arlyn) took the witness stand, she admitted that she and her husband, co-respondent Pacifico A. Avenido (Pacifico), obtained from BPI Family a Motor Vehicle Loan in 1995 and a Home Mortgage Loan in 1996. The Home Mortgage Loan was for P2,000,000.00, payable in 15 years through debit memos (or automatic debit arrangement), instead of post-dated checks. The spouses Avenido failed to make some payments in 1998. The spouses Avenido subsequently deposited with their account at BPI Family branch in Bais City, Negros Occidental, the amount of P250,000.00, which would have been sufficient to cover their arrears; as well as made arrangements with Dumaguete City Rural Bank to buy out their loan from BPI Family. Yet, in February 1999, the spouses Avenido learned of the foreclosure proceedings over their mortgaged property only from court personnel. BPI Family never communicated with the spouses Avenido about the foreclosure proceedings except when the former sent the latter a demand letter in July 2000 for the P700,000.00 deficiency. Counsel for the spouses Avenido

answered BPI Family through a letter dated August 2, 2000, stating that the demand of the bank for deficiency was not only surprising, but lacked basis in fact and in law, for the mortgaged property was already foreclosed and sold at the public auction for P2,142,616.00, which was more than the P1,918,722.47 loan obligation of the spouses Avenido. Next thing the spouses Avenido knew, BPI Family had filed Civil Case No. CEB-25629 against them. In addition, the spouses Avenido had already fully paid their Motor Vehicle Loan in 1999, but BPI Family refused to release the Hi-Lux from the mortgage constituted thereon. BPI Family attached the Hi-Lux to cover the deficiency of the spouses Avenido on their home loan obligation. Due to the aforementioned acts of BPI Family, Arlyn suffered sleepless nights and humiliation. Hence, she prayed for the award of moral and exemplary damages and attorney's fees and the release of the Hi-Lux. [10]

The RTC rendered its Decision on November 13, 2002.

According to the RTC, the principal issue to be resolved was "whether or not [BPI Family] is entitled to deficiency judgment," which includes "a determination of the existence of the right to recover deficiency, and how much, if any." [11]

At the outset, the RTC recognized that in an extrajudicial foreclosure, the mortgagee has a right to recover deficiency where the proceeds of the sale are insufficient to cover the debt:

Although Act 3135 is silent on the mortgagee's right to recover the deficiency where the proceeds of the sale is insufficient to cover the debt, it is now well-settled that said mortgagee has the right to recover the deficiency. (PB Com v. De Vera, 6 SCRA 1026; DBP v. Vda. de Noel, 43 SCRA 82; DBP v. Zaragosa, 84 SCRA 668.). The reasons advanced are 1) Although Act 3135 discusses nothing as to the mortgagee's right to recover such deficiency, neither is there any provision thereunder which expressly or impliedly prohibits such recovery; and 2) now Rule 68 on judicial foreclosure expressly grants to the mortgagee the right to recover deficiency and the underlying principle is the same for extra-judicial foreclosure that the mortgage is but a security and not a satisfaction of indebtedness.

In the case of DBP v. Tomeldon, 101 SCRA 171, the Supreme Court ruled that the action to recover the deficiency prescribes after ten (10) years from the time the right to action accrues x x x.

Thus, in the case at bar the mortgagee's right and the period the said right is enforced are not contested. What is essentially in controversy is whether there is a deficiency and how much. [12]

The RTC then determined the total amount of the loan obligation of the spouses Avenido as follows:

In the Mortgage Loan Agreement (Exhibits A and I) the due execution and genuineness of which are admitted by both parties, the [spouses

Avenido] obligated themselves as Borrower-Mortgagor to pay [BPI Family] the aggregate principal amount of TWO HUNDRED TWO MILLION PESOS (P202,000,000.00) and interest on the unpaid balance from the date thereof until paid in full on the repayment dates. It further provides that in case the mortgagee fails to pay any of the sums secured, the mortgagor has the right to declare the entire obligation due and payable and to foreclose the mortgage. Moreover, Exhibit "A-2" shows that the proceeds of sale of the mortgaged property shall be applied as follows: "a) to the payment of the expenses and cost of foreclosure and sale, including the attorney's fees as herein provided; b) to the satisfaction of all interest and charges accruing upon the obligation herein and hereby secured; c) to the satisfaction of the principal amount of the obligation herein and hereby secured; d) to the satisfaction of all other obligation then owed to the bank or any of its subsidiaries. The balance, if any, to be due to the mortgagor." Finally, the attorney's fees stipulated is 15% of the total amount claimed by the bank (Exhibit A-3). The Court, however, finds no stipulation as regards liquidated damages.

x x x x

This Court is not convinced that [spouses Avenido's] total indebtedness should only be ONE MILLION NINE HUNDRED EIGHTEEN THOUSAND SEVEN HUNDRED TWENTY[-]TWO [PESOS] AND FORTY[-]SEVEN [CENTAVOS] (P1,918,722.47) because the Notice of Extra-Judicial Sale (Exhibit "3") itself states "x x x to satisfy the mortgaged indebtedness which as of November 16, 1998 amount to ONE MILLION NINE HUNDRED EIGHTEEN THOUSAND SEVEN HUNDRED TWENTY[-]TWO AND FORTY[-]SEVEN CENTAVOS (P1,918,722.47) plus interest and penalty charges thereon from June 30, 1998 to date of the foreclosure sale, attorney's fees and necessary expenses for foreclosure x x x."

Foreclosure is not a single process and it is not therefore correct to conclude that what is material is the petition for extra-judicial sale nor the date of the filing of the application.

Thus, the Court gives credence to [BPI Family's] Exhibit "C" but not including the claim for liquidated damages in the sum of THREE HUNDRED THIRTY[-]EIGHT THOUSAND NINE HUNDRED TWENTY PESOS AND SIXTY[-]THREE CENTAVOS (P330,920.63) because it has no basis whatsoever. Thus the total amount due is TWO MILLION FIVE HUNDRED NINETY[-]EIGHT THOUSAND FOUR HUNDRED FIFTY[-]TWO PESOS AND EIGHTY CENTAVOS (P2,598,452.80). x x x. <sup>[13]</sup>

More than just reducing the total loan obligation of the spouses Avenido to P2,598,452.80, the RTC, in the end, denied the claim for deficiency of BPI Family based on the following ratiocination:

[T]he Court finds very significant the admission by [BPI Family's] witness that the appraised value of the foreclosed property is actually TWO MILLION SIX HUNDRED SEVENTY[-]EIGHT THOUSAND TWO HUNDRED