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FIRST DIVISION

[G.R. NO. 150097, February 26, 2007]

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. ALEJANDRO AND ADELAIDA LICUANAN, RESPONDENTS.

D E C I S I O N

CORONA, J.:

In this petition for review on certiorari,[1] petitioner Development Bank of the Philippines assails the February 9, 2001 decision[2] and September 17, 2001 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 37784.

Respondent spouses Alejandro and Adelaida Licuanan were granted a piggery loan in the amount of P4,700 by petitioner, evidenced by a promissory note dated September 20, 1974 and secured by a real estate mortgage[4] over a 980-square meter parcel of land with a two-storey building. The loan's maturity date was September 23, 1979.[5]

Petitioner granted respondents an additional loan of P12,000 evidenced by a promissory note dated May 29, 1975 payable on or before the year 1980. This was secured by a real estate mortgage over four parcels of land situated in Pangasinan covered by TCT Nos. 109825, 109762, 109763 and 109764.[6]

On October 2, 1975, petitioner granted respondent spouses another loan of P22,000 evidenced by a promissory note maturing on October 3, 1985. This was secured by a real estate mortgage executed in favor of petitioner over three parcels of land covered by TCT Nos. 112608, 112607 and 112609, all of the Registry of Deeds of Pangasinan.[7]

On August 6, 1979, petitioner and respondents restructured the P12,000 loan, extending the maturity date from June 22, 1979 to June 22, 1982. On the same date, respondents executed a promissory note for P12,320.73 and another for P6,519.90.[8]

On July 6, 1981, petitioner sent a letter by registered mail to respondents informing them that, since the conditions of the mortgage had been breached, petitioner would have the mortgaged properties sold by the sheriff under Act 3135. The total amount due from the three loans had by then ballooned to P75,298.32.[9]

On July 20, 1981, petitioner filed an application for extrajudicial foreclosure.[10] The mortgaged properties were sold in a public auction on December 16, 1981. Petitioner, as the highest bidder, acquired them for a total of P16,340. The certificate of sale was registered on January 25, 1982.[11]

On February 4, 1983, petitioner consolidated its ownership over the properties. After more than a year or on October 16, 1984, petitioner wrote respondents by registered mail, informing them that the properties (now acquired assets of the bank) would be disposed of by public auction. On November 11, 1984, petitioner published an advertisement stating that on November 14, 1984, the properties would be sold by oral bidding. On this date, however, there were no bidders.[12]

On November 16, 1984, petitioner sent respondents a letter informing them that the properties could be reacquired by negotiated sale for cash or installment.[13] Three days later, however, on November 19, 1984, the properties were sold through negotiated sale to one Emelita A. Peralta. Respondents were informed of the sale by petitioner through a letter dated December 6, 1984.

On the same day, petitioner executed a deed of conditional sale in favor of Peralta. [14] On December 11, 1984, respondents offered to repurchase the properties from petitioner but they had already been sold to Peralta.[15]

Respondents then filed a complaint for recovery of real properties and damages on July 18, 1985 in the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 39 against petitioner and Peralta. [16] The RTC rendered judgment dated September 17, 1991 in favor of respondents.

The trial court found that there was no demand for payment prior to the extrajudicial foreclosure. Thus, the foreclosure proceedings were null and void. It ordered Peralta to reconvey the properties to respondents subject to Peralta's right to be paid by respondents the amount of P104,000 in consideration of such reconveyance. It also held that petitioner did not deal fairly with respondents making it liable for nominal and moral damages to the latter. The RTC further ordered petitioner to pay respondents attorney's fees and litigation expenses.

On appeal, the CA affirmed the RTC but decreased the amount of nominal damages from P75,000 to P50,000.[17]

Hence this petition.[18]

The main issues to be resolved are the following:

1) whether a demand for payment of the loans was made before the mortgage was foreclosed;
2) whether demand is necessary to make respondents guilty of default;
3) whether or not respondents are liable for the deficiency claim of petitioner and
4) whether or not petitioner is liable for damages.

The issue of whether demand was made before the foreclosure was effected is essential. If demand was made and duly received by the respondents and the latter still did not pay, then they were already in default and foreclosure was proper. However, if demand was not made, then the loans had not yet become due and demandable. This meant that respondents had not defaulted in their payments

and the foreclosure by petitioner was premature. Foreclosure is valid only when the debtor is in default in the payment of his obligation.[19]

Whether or not demand was made is a question of fact. In petitions for review on certiorari under Rule 45, only questions of law may be raised by the parties and passed upon by this Court.[20] Factual findings of the trial court, when adopted and confirmed by the CA, are binding and conclusive on this Court and will generally not be reviewed on appeal.[21] Inquiry into the veracity of the CA's factual findings and conclusions is not the function of the Supreme Court for the Court is not a trier of facts.[22] Neither is it our function to re-examine and weigh anew the respective evidence of the parties.[23] While this Court has recognized several exceptions to this rule,[24] none of these exceptions finds application here.

Both the CA and RTC found that demand was never made. No compelling reason whatsoever has been shown by petitioner for this Court to review and reverse the trial court's findings and conclusions, as affirmed by the CA.

Petitioner asserts that demand was unnecessary because the maturity dates of all loans were specified, *i.e.*, the notes expressly stated the specific dates when the amortizations were to fall due.[25]

We disagree.

Unless demand is proven, one cannot be held in default.[26] Petitioner's cause of action did not accrue on the maturity dates stated in the promissory notes. It is only when demand to pay is made and subsequently refused that respondents can be considered in default and petitioner obtains the right to file an action to collect the debt or foreclose the mortgage.[27] As we held in *China Banking Corporation v. Court of Appeals*:[28]

> Well-settled is the rule that since a cause of action requires, as essential elements, not only a legal right of the plaintiff and a correlative duty of the defendant but also "an act or omission of the defendant in violation of said legal right," the cause of action does not accrue until the party obligated refuses, expressly or impliedly, to comply with its duty.
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> Otherwise stated, a cause of action has three elements, to wit, (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.
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> It bears stressing that it is only when the last element occurs that a cause of action arises. Accordingly, a cause of action on a written contract accrues only when an actual breach or violation thereof occurs.
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> Applying the foregoing principle to the instant case, **we rule that private respondent's cause of action accrued only on July 20, 1995, when its demand for payment of the Home Notes was**

> **refused by petitioner**. It was only at that time, and not before that, when the written contract was breached and private respondent could properly file an action in court.
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> **The cause of action cannot be said to accrue on the uniform maturity date of the Home Notes as petitioner posits because at that point, the third essential element of a cause of action, namely, an act or omission on the part of petitioner violative of the right of private respondent or constituting a breach of the obligation of petitioner to private respondent, had not yet occurred.**[29] (emphasis supplied)

The acceleration clause of the promissory notes stated that "[i]n case of non-payment of this note or any portion of it **on demand**, when due, on account of this note, the entire obligation shall become due and demandable ...."[30] Hence, the maturity dates only indicate when payment can be demanded. It is the refusal to pay after demand that gives the creditor a cause of action against the debtor.

Since demand, which is necessary to make respondents guilty of default, was never made on respondents, the CA and RTC correctly ruled that the foreclosure was premature and therefore null and void.

In arguing that the foreclosure was valid, petitioner also avers that respondents are estopped from questioning the validity of the foreclosure sale since they offered to repurchase the foreclosed properties.[31] We are not persuaded. The reason why respondents offered to repurchase the properties was clearly stated in their letter to petitioner:

> I am very much interested in repurchasing back these properties because they are the only properties which my family have and because our house is located inside this property and for this matter I am willing to pay [for] these properties in cash which I already told the bank when I went there.[32]

Besides, we have already ruled that an offer to repurchase should not be construed as a waiver of the right to question the sale.[33] Instead, it must be taken as an intention to avoid further litigation and thus is in the nature of an offer to compromise.[34] By offering to redeem the properties, respondents can attain their ultimate objective: to pay off their debt and regain ownership of their lands.[35]

Moreover, it was petitioner, in its November 16, 1984 letter, which informed respondents that the properties were available for sale. Respondents merely took up petitioner's offer for them to reacquire their properties.

Petitioner assigns as error the failure of the CA to rule on its deficiency claim. It alleged that the price the mortgaged property was sold for (P104,000) was less than the amount of respondents' indebtedness (P131,642.33), thus it is entitled to claim the difference (P27,642.33) with interest. Respondents cannot be held liable for the deficiency claim. While it is true that in extrajudicial foreclosure of mortgage, the mortgagee has the right to recover the deficiency from the debtor,[36] this presupposes that the foreclosure must first be valid.[37]

The last issue is whether the award of moral and nominal damages, expenses of litigation and attorney's fees is proper. Crucial to the determination of the propriety of the award of damages are the findings of the RTC, which were affirmed by the CA, on the matter of bad faith:

> Apart from the precipitate foreclosure proceedings, the Court observes that certain acts of [petitioner] were most certainly less than fair and less than honest, which negates the rehabilitation (prior name of the bank) or development aspect or purpose of [petitioner]. These certainly caused serious anxiety and wounded feelings to [respondents]. They are: -
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> FIRST. - [Petitioner] granted a loan of P4,700.00; then a second loan of P12,000.00 re-structured to P18,840.61; and a third loan of P22,200.00, or a total of P45,740.61 during the period from September 1974 to October 2, 1975. Obviously, these loans were granted because the market value of the collaterals exceeds P100,000.00 and [petitioner's] appraisal value is more or less P80,000.00. However, six (6) years later, when the value must have appreciated in terms of pesos, the [petitioner] bidded for a [measly] P16,000.00 and [claimed] a deficiency. That it was [measly] and shocking to the conscience was conclusively proven by the fact that [Peralta] offered and did in fact buy the properties for P104,000.00 barely three (3) years later. To the mind of the Court, the actuations of the bank must have been revolting to [respondents] and to honest men, especially considering that [petitioner] is a government financial institution, capitalized with the money of the people, and created principally "to assist agricultural producers xxx in developing their farms xxx to accelerate national progress", more than to realize profit.
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> SECOND. - [Respondents] are simple-minded persons in the country side. It strikes the court as odd and certainly less than candid WHY on AUGUST 6, 1979, [petitioner] restructured the second loan which will mature on May 1980, but did not restructure the first loan which was due to mature on September 23, 1979 or barely one month hence. It appears that the result lulled [respondents] into a false sense of security and a feeling of relief that the entire loan accommodation will mature in 1985. And then like a bolt of lightning from a clear sky, [respondents] were hit with [foreclosure] proceedings, causing them to suffer sleepless nights.
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> THIRD. - A letter dated November 16, 1984 was addressed to [respondents] informing them practically that they are given the priority to recover their properties by negotiated sale. And yet before the letter was sent, or on November 14, 1984 the [petitioner] had already negotiated with [Peralta] for the latter to buy the assets for P104,000.00 in installment and as a matter of fact the Contract for Conditional Sale was executed on November 19, 1984 - even before the letter was received by [respondents]. [Heart-rending] was the plea of [respondents] which we quote: -
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> > "I am very much interested in repurchasing back these properties because they are the only properties which my