EIGTH DIVISION

[CA-G.R. CV NO. 83300, September 20, 2006]

CPN CARGO FORWARDING, ET AL., PLAINTIFFS-APPELLANTS, VS. PHILIPPINE POSTAL SAVINGS BANK ET. AL., DEFENDANTS-APPELLEES.

CARANDANG, R., J.:

This is an appeal from the Decision[1] of the Regional Trial Court, Branch 15, of Tabaco City, Albay, dated February 24, 2004 dismissing the Complaint for Nullification of Foreclosure Proceedings and Mortgage Documents, and Damages.

The Antecedent Facts

On January 23, 1998, plaintiffs-appellants **CPN CARGO FORWARDING, CPN MOTOR SALES & RISEN CHRIST CATHOLIC SCHOOL** availed of a credit facility worth P13,000,000.00 (*Thirteen Million Pesos*) from defendant-appellee **PHILIPPINE POSTAL SAVINGS BANK (PSSB)** for the purpose of securing additional working capital and to pay plaintiffs-appellee's then existing loan with the Philippine National Bank[2]. The loan consisting of a 10-year term loan of P5,000,000.00 (*Five Million Pesos*) and a revolving credit line of P8,000,000.00 (*Eight Million Pesos*) with one-year renewable loan term was covered by a Term Loan Agreement[3] and a Loan/Line Agreement[4]. The amount of P8,000,000.00 was released to plaintiffs-appellants via promissory notes of P2,000,000.00 (*Two Million Pesos*), P1,000,000.00 (*One Million Pesos*) and P5,000,000.00 (*Five Million Pesos*). Plaintiffs-appellants' total loan obligation was secured by a Real Estate Mortgage[5] over a property located in Tabaco, Albay covered by TCT No. 76168[6] in the name of plaintiff-appellant Fr. Nestor P. Chavez. Plaintiffs-appellants were later beset with economic difficulties, thus, from August 1998 onwards, or after only seven monthly payments, two of which were even in checks that were subsequently dishonored, they ceased to pay the amortization on their loan. On August 10, 1999, defendant-appellee sent plaintiffs-appellants a demand letter[7] advising them of the impending foreclosure proceedings on the property and allowing for a period of 15 days within which plaintiffs-appellants may settle the account to prevent foreclosure. On November 25, 1999, defendant bank extra-judicially foreclosed the mortgaged property and was declared the highest bidder at the public auction sale conducted by the Clerk of Court and Ex-Officio Sheriff with a bid price of P20,571,000.00 (*Twenty Million Five Hundred Seventy One Thousand Pesos*). The Certificate of Sale[8] was duly registered with the Office of the Register of Deeds of Legaspi City on December 21, 1999. In a Letter[9] dated October 17, 2000, plaintiffs-appellants offered to redeem the property for P20,000,000.00 (*Twenty Million Pesos*) within the redemption period of one year. Upon expiration of the redemption period and without plaintiffs-appellants having redeemed the subject property, defendant-appellee consolidated its title to the foreclosed property and TCT No. 76168 was thereafter cancelled and TCT No. T-125596[10] issued in favor of the defendant-

appellee.

On February 26, 2001, plaintiffs-appellants filed a Complaint for Nullification of Foreclosure Proceedings and Mortgage Documents and Damages assailing the validity of the foreclosure proceedings for being premature and for failure to comply with the publication requirements of Act 3135. On February 24, 2004, the trial court rendered the assailed Decision, the dispositive portion of which reads:

> "WHEREFORE, for want of merit, this case is hereby ordered DISMISSED.
>
> Cost against plaintiffs.
>
> SO ORDERED."

Then, on April 22, 2002, the trial court granted defendant-appellee's ex-parte petition for the issuance of a writ of possession and issued the corresponding writ prayed for. Plaintiffs-appellants' motion for reconsideration having been denied, defendant-appellee was placed in possession of the subject property.

Hence, the instant appeal on the general argument that –

> **The Regional Trial Court Branch 18 of Tabaco City gravely erred in dismissing the case for want of merit.**

Plaintiffs-appellants deny having agreed to the terms of the loan contract on the ground that the loan documents were prepared unilaterally and exclusively by defendant-appellee and, more importantly, that they were made to sign the same in blank without any opportunity to examine the material contents thereof. More particularly, they complained that the appropriate interest rate on their loan should only be pegged at 25% as verbally agreed upon by the parties and not 32% as what was eventually imposed by defendant-appellee in the written contract. Plaintiffs-appellants assail further the correctness of the amount of the loan which they claim could only be attributed to the fact that defendant-appellee led them to believe that nothing irregular could result from their act of signing six (6) promissory notes in blank. Plaintiffs-appellants assail the foreclosure sale as null and void for being premature, pointing out the considerable payments they have already made in the amount of P8,984,911.78, which they claim is substantial performance on their part that should reduce the penalty and enable them to settle their account without resort to foreclosure proceedings. Finally, plaintiffs-appellants assert that the foreclosure sale is null and void for failure to comply with the requirement of Act No. 3135 on the posting and publication of notices of foreclosure sales.

The appeal should be dismissed.

Plaintiffs-appellants cannot avoid the effects of their loan contracts with defendant bank on the argument that these agreements are in the nature of contracts of adhesion or that they violate the principle of mutuality of contracts. By signing the various loan documents, plaintiffs-appellants are presumed to have been aware of the consequences of their actions. Considering that they are engaged in several ongoing business concerns, plaintiffs-appellants are supposed to have taken due care in their dealings with defendant-appellee, signing the loan agreements with full knowledge of their contents and of the corresponding obligations. Moreover, granting that plaintiffs-appellants affixed their signatures on the loan documents in

blank they admittedly received their copy of the signed documents three days thereafter. However, instead of raising their objections to the provisions of the loan agreements as written and demanding that they be modified to reflect the true intention of the parties, plaintiffs-appellants made use of, and benefited from, the proceeds of the loan. Plaintiffs-appellants are, thus, presumed to have given their tacit approval and conformity to the terms and conditions of the loan as expressed in the written contract, the stipulations of which have the force of law between the parties and should be complied with by them in good faith.[11]

Moreover, there is no basis to charge the defendant-appellee and its officers of bloating plaintiffs-appellants' original loan from P13,000,000.00 (*Thirteen Million Pesos*) to P16,000,000.00 (*Sixteen Million Pesos*), which allegedly made it difficult for them to pay their indebtedness and avoid foreclosure on the mortgaged property. Plaintiffs-appellants availed of two types of loan from defendant-appellee: one, a straight ten-year term loan of P5,000,000.00 (*Five Million Pesos*) covered by Promissory Note No. 002/98[12] and, two, a revolving credit line in the amount of P8,000,000.00 (*Eight Million Pesos*). In the second type of credit facility, the bank lends the borrower up to a specified maximum amount throughout the life of the loan agreement and is bound by its terms to have funds available whenever the borrower requires it. The borrower, on the other hand, makes an *availment* or a *drawdown* on the credit line in the form of a note or a "promise to pay" a certain principal amount. The balance of all unpaid principals, otherwise known as outstanding *drawdowns* or *availments*, at any given time, should not exceed the ceiling or limit under the loan agreement. However, after due payment of any *availment* or *drawdown*, the borrower can still make succeeding *availments* or *drawdowns* within the maximum amount so long as the line has not yet expired.[13] An examination of the evidence showing the number of times plaintiffs-appellants availed of their revolving credit line and the payments made thereon refutes their claim of substantial performance. While plaintiffs-appellants have indeed made payments amounting to P8,984,911.78 as evidenced by receipts issued by defendant bank, most of these payments pertain to the earlier *availment* of the P8,000,000.00 in separate amounts of P5,000,000.00, P2,000,000.00 and P1,000,000.00, covered by Promissory Note (PN) Nos. 001/98[14], 003/98[15] and 004/98[16], and their corresponding Disclosure Statements, respectively, and not the re-*availment* in the same separate amounts covered by Promissory Note Nos. 005/98[17], 006/98[18] and 007/98[19] on which defendant-appellee's claim of credit is anchored. As mentioned earlier, aside from the term loan of P5,000,000.00 payable in monthly amortization of P139,252.60 for a period of ten years, plaintiffs-appellants availed of the P8,000,000.00 revolving credit line. Their first *availment* consisted of the following: P5,000,000.00 covered by PN No. 001/98 and released on January 23, 1998 but paid in full upon its maturity on April 23, 1998[20]; P2,000,000.00 covered by PN No. 003/98 and released on January 29, 1998 but paid in full upon maturity on April 29, 1998[21]; and P1,000,000.00 under PN No. 004/98, which was released in February 9, 1998 and paid in full on May 12, 1998[22]. It appears, however, that plaintiffs-appellants made a re-*availment* on their credit line. On April 24, 1998, the day after paying in full the first P5,000,000.00, plaintiffs-appellants re-*availed* of the same amount of P5,000,000.00 under PN No. 005/98, which was released on the same day and set to mature on October 21, 1998. On April 30, 1998, the day after making full payment on the first P2,000,000.00 under PN No. 003/98, plaintiffs-appellants re-*availed* of the same