Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SPOUSES JAIME SEBASTIAN AND EVANGELINE SEBASTIAN, Petitioners,	**G.R. No. 160107**
	Present:
- versus -	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
BPI FAMILY BANK, INC., CARMELITA ITAPO AND BENJAMIN HAO, Respondents.	Promulgated: OCT 22 2014

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DECISION

BERSAMIN, *J.*:

The protection of Republic Act No. 6552 (*Realty Installment Buyer Protection Act*) does not cover a loan extended by the employer to enable its employee to finance the purchase of a house and lot. The law protects only a buyer acquiring the property by installment, not a borrower whose rights are governed by the terms of the loan from the employer.

The Case

Under appeal is the decision promulgated on November 21, 2002,[1] whereby the Court of Appeals (CA) affirmed the dismissal of the action for injunction filed by the petitioners against the respondents to prevent the foreclosure of the mortgage constituted on the house and lot acquired out of the proceeds of the loan from respondent BPI Family Bank (BPI Family), their employer.

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[1] *Rollo*, pp. 10-19; penned by Associate Justice Ruben T. Reyes (later Presiding Justice, and a Member of the Court, but already retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Edgardo F. Sundiam (deceased), concurring.

Antecedents

The petitioners are spouses who used to work for BPI Family. At the time material to this case, Jaime was the Branch Manager of BPI Family's San Francisco del Monte Branch in Quezon City and Evangeline was a bank teller at the Blumentritt Branch in Manila. On October 30, 1987, they availed themselves of a housing loan from BPI Family as one of the benefits extended to its employees. Their loan amounted to ₱273,000.00, and was covered by a Loan Agreement,[2] whereby they agreed that the loan would be payable in 108 equal monthly amortizations of ₱3,277.57 starting on January 10, 1988 until December 10, 1996;[3] and that the monthly amortizations would be deducted from his monthly salary.[4] To secure the payment of the loan, they executed a real estate mortgage in favor of BPI Family[5] over the property situated in Bo. Ibayo, Marilao, Bulacan and covered by TCT No. T-30.827 (M) of the Register of Deeds of Bulacan.[6]

Apart from the loan agreement and the real estate mortgage, Jaime signed an undated letter-memorandum addressed to BPI Family,[7] stating as follows:

> In connection with the loan extended to me by BPI Family Bank, I hereby authorize you to automatically deduct an amount from my salary or any money due to me to be applied to my loan, more particularly described as follows:
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> x x x x
>
> This authority is irrevocable and shall continue to exist until my loan is fully paid. I hereby declare that I have signed this authority fully aware of the circumstances leading to the loan extended to me by BPI Family Bank and with full knowledge of the rights, obligations, and liabilities of a borrower under the law.
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> **I am an employee of BPI Family Bank and I acknowledge that BPI Family Bank has granted to me the above-mentioned loan in consideration of this relationship. In the event I leave, resign or am discharged from the service of BPI Family Bank or my employment with BPI Family Bank is otherwise terminated, I also authorize you to apply any amount due me from BPI Family Bank to the payment of the outstanding principal amount of the aforesaid loan and the interest accrued thereon which shall thereupon become entirely due and demandable on the effective date of such discharge, resignation or termination without need of notice of demand, and to do such other acts as may be necessary under the circumstances.** (Bold emphasis added)
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> x x x x.

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2 Records, pp. 14-19.
3 Id. at 20.
4 Id.
5 Id. at 60-61.
6 Id. at 11-13.
7 Id. at 20.

The petitioners' monthly loan amortizations were regularly deducted from Jaime's monthly salary since January 10, 1988. On December 14, 1989, however, Jaime received a notice of termination from BPI Family's Vice President, Severino P. Coronacion,[8] informing him that he had been terminated from employment due to loss of trust and confidence resulting from his wilful non-observance of standard operating procedures and banking laws. Evangeline also received a notice of termination dated February 23, 1990,[9] telling her of the cessation of her employment on the ground of abandonment. Both notices contained a demand for the full payment of their outstanding loans from BPI Family, *viz*:

> Demand is also made upon you to pay in full whatever outstanding obligations by way of Housing Loans, Salary Loans, etc. that you may have with the bank. **You are well aware that said obligations become due and demandable upon your separation from the service of the bank.**[10] (Emphasis supplied.)

Immediately, the petitioners filed a complaint for illegal dismissal against BPI Family in the National Labor Relations Commission (NLRC).[11]

About a year after their termination from employment, the petitioners received a demand letter dated January 28, 1991 from BPI Family's counsel requiring them to pay their total outstanding obligation amounting to ₱221,534.50.[12] The demand letter stated that their entire outstanding balance had become due and demandable upon their separation from BPI Family. They replied through their counsel on February 12, 1991.[13]

In the meantime, BPI Family instituted a petition for the foreclosure of the real estate mortgage.[14] The petitioners received on March 6, 1991 the notice of extrajudicial foreclosure of mortgage dated February 21, 1991.

To prevent the foreclosure of their property, the petitioners filed against the respondents their complaint for injunction and damages with application for preliminary injunction and restraining order[15] in the Regional Trial Court (RTC) in Malolos, Bulacan.[16] They therein alleged that their obligation was not yet due and demandable considering that the legality of their dismissal was still pending resolution by the labor court; hence, there was yet no basis for the foreclosure of the mortgaged property; and that the

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8 Id. at 21.
9 Id. at 22.
10 Id. at 21-22.
11 Id. at 23-24.
12 Id. at 76.
13 Id. at 71.
14 Records, p. 180, TSN of April 10, 1991, p. 5.
15 Id. at 3-10.
16 Raffled to Branch 10 and docketed as Civil Case No. 155-M-91.

property sought to be foreclosed was a family dwelling in which they and their four children resided.

In its answer with counterclaim,[17] BPI Family asserted that the loan extended to the petitioners was a special privilege granted to its employees; that the privilege was coterminous with the tenure of the employees with the company; and that the foreclosure of the mortgaged property was justified by the petitioners' failure to pay their past due loan balance.

Judgment of the RTC

On June 27, 1995, the RTC rendered judgment,[18] disposing thusly:

> IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment DISMISSING the instant case as well as defendant bank's counterclaim without any pronouncement as to costs.
>
> SO ORDERED.[19]

Decision of the CA

The petitioners appealed upon the following assignment of errors, namely:

> I. THE TRIAL COURT ERRED IN FINDING THAT APPELLEE BANK'S FORECLOSURE OF THE REAL ESTATE MORTGAGE CONSTITUTED ON APPELLANT'S FAMILY HOME WAS IN ORDER.
>
> A. Appellants cannot be considered as terminated from their employment with appellee bank during the pendency of their complaint for illegal dismissal with the NLRC.
>
> B. Appellee bank wrongfully refused to accept the payments of appellants' monthly amortizations.
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> II. THE TRIAL COUT ERRED IN DENYING APPELLANT'S PRAYER FOR INJUNCTION.
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> A. The foreclosure of appellants' mortgage was premature.
>
> B. Appellants are entitled to damages.[20]

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17 Records, pp. 85-89.
18 CA *rollo*, pp. 38-45.
19 Id. at 45.
20 Id. at 30.

On November 21, 2002, the CA promulgated its assailed decision affirming the judgment of the RTC *in toto*.[21]

The petitioners then filed their motion for reconsideration,[22] in which they contended *for the first time* that their rights under Republic Act No. 6552 (*Realty Installment Buyer Protection Act)* had been disregarded, considering that Section 3 of the law entitled them to a grace period within which to settle their unpaid installments without interest; and that the loan agreement was in the nature of a contract of adhesion that must be construed strictly against the one who prepared it, that is, BPI Family itself.

On September 18, 2003, the CA denied the petitioners' motion for reconsideration.[23]

Issues

In this appeal, the petitioners submit for our consideration and resolution the following issues, to wit:

> WHETHER OR NOT RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DECLARING THE FORECLOSURE OF THE REAL ESTATE MORTGAGE ON PETITIONERS' FAMILY HOME IN ORDER.
>
> WHETHER OR NOT RESPONDENT COURT OF APPEALS GRAVELY ERRED IN DENYING PETITIONERS' MOTION FOR RECONSIDERATION DESPITE JUSTIFIABLE REASONS THEREFOR.[24]

Ruling

The petition for review has no merit.

When the petitioners appealed the RTC decision to the CA, their appellants' brief limited the issues to the following:

> (a) Whether or not appellee bank wrongfully refused to accept payments by appellants of their monthly amortizations.
>
> (b) Whether or not the foreclosure of appellants' real estate mortgage was premature. [25]

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21 *Rollo*, p. 19.
22 CA *rollo*, pp. 81-90.
23 *Rollo*, p. 31.
24 Id. at 38-39.
25 CA *rollo*, pp. 29-30.

The CA confined its resolution to these issues. Accordingly, the petitioners could not raise the applicability of Republic Act No. 6552, or the strict construction of the loan agreement for being a contract of adhesion as issues for the first time either in their motion for reconsideration or in their petition filed in this Court. To allow them to do so would violate the adverse parties' right to fairness and due process. As the Court held in *S.C. Megaworld Construction and Development Corporation v. Parada*:[26]

> It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, **administrative agency or quasi-judicial body**, need not be considered by the viewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*.

The procedural misstep of the petitioners notwithstanding, the Court finds no substantial basis to reverse the judgments of the lower courts.

Republic Act No. 6552 was enacted to protect buyers of real estate on installment payments against onerous and oppressive conditions.[27] The protections accorded to the buyers were embodied in Sections 3, 4 and 5 of the law, to wit:

> Section 3. In all transactions or contracts, involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-Eight hundred forty-four as amended by Republic Act Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:
>
> (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at that rate of one month grace period for every one year of installment payments made; provided, That this right shall be exercised by the Buyer only once in every five years of the life of the contract and its extensions, if any.
>
> (b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made; Provided, That the actual cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

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[26] G.R. No. 183804, September 11, 2013, 705 SCRA 584, 594.
[27] Section 2, Republic Act No. 6552.

> Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.
>
> SECTION 4. In case where less than two years of installments were paid, the seller shall give the buyers a grace period of not less than sixty days from the date the installment become due.
>
> If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.
>
> SECTION 5. Under Section 3 and 4, the buyer shall have the right to sell his rights or assign the same to another person or to reinstate the contract by updating the account during the grace period and before actual cancellation of the contract. The deed of sale or assignment shall be done by notarial act.

Having paid monthly amortizations for two years and four months, the petitioners now insist that they were entitled to the grace period within which to settle the unpaid amortizations without interest provided under Section 3, *supra*.[28] Otherwise, the foreclosure of the mortgaged property should be deemed premature inasmuch as their obligation was not yet due and demandable.[29]

The petitioners' insistence would have been correct if the monthly amortizations being paid to BPI Family arose from a sale or financing of real estate. In their case, however, the monthly amortizations represented the installment payments of a housing loan that BPI Family had extended to them as an employee's benefit. The monthly amortizations they were liable for was derived from a loan transaction, not a sale transaction, thereby giving rise to a lender-borrower relationship between BPI Family and the petitioners. It bears emphasizing that Republic Act No. 6552 aimed to protect **buyers of real estate on installment payments**, not borrowers or mortgagors who obtained a housing loan to pay the costs of their purchase of real estate and used the real estate as security for their loan. The "financing of real estate in installment payments" referred to in Section 3, *supra*, should be construed only as a mode of payment vis-à-vis the seller of the real estate, and excluded the concept of bank financing that was a type of loan. Accordingly, Sections 3, 4 and 5, *supra*, must be read as to grant certain rights only to defaulting buyers of real estate on installment, which rights are properly demandable only against the seller of real estate.

Thus, in *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*,[30] the Court held:

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28 *Rollo*, p. 41.
29 Id. at 42
30 No. L-25885, November 16, 1978, 86 SCRA 305, 329-330.

> Congress in enacting in September 1972 Republic Act 6552 (the Maceda law), has by law which is its proper and exclusive province (and not that of this Court which is not supposed to legislate judicially) has taken care of Justice Barredo's concern over "the unhappy and helpless plight of thousands upon thousands of subdivision buyers" of *residential* lots.
>
> The Act even in *residential* properties recognizes and reaffirms the vendor's right to cancel the contract to sell upon breach and non-payment of the stipulated installments but requires a grace period after at least two years of regular installment payments (of one month for every one year of installment payments made, but to be exercise by the buyer only once in every five years of the life of the contract) with a refund of certain percentages of payments made on account of the cancelled contract (starting with fifty percent with gradually increasing percentages after five years of installments). In case of *industrial and commercial properties*, as in the case at bar, the Act *recognizes* and *reaffirms* the Vendor's right *unqualifiedly* to cancel the sale upon the buyer's default.

The petitioners purchased the real estate from PHILVILLE Realty,[31] not from BPI Family. Without the buyer-seller relationship between them and BPI Family, the provisions of Republic Act No. 6552 were inapplicable and could not be invoked by them against BPI Family.

Apart from relying on the grace period provided in Republic Act No. 6552 to assert the prematurity of the foreclosure of the mortgage,[32] the petitioners argue that the foreclosure of the mortgage was null and void because BPI Family's acceptance of their late payments estopped it from invoking sanctions against them.[33] They further argue that the printed conditions appearing at the back of BPI Family's official receipt,[34] which the CA cited to affirm the validity of the foreclosure, partook of a contract of adhesion that must be strictly construed against BPI Family as the party who prepared the same.[35]

The petitioners' arguments do not persuade. To reiterate, their reliance on Republic Act No. 6552 was misplaced because its provisions could not extend to a situation bereft of any seller-buyer relationship. Hence, they could not escape the consequences of the maturity of their obligation by invoking the grace period provided in Section 3, *supra*.

The CA correctly found that there was basis to declare the petitioners' entire outstanding loan obligation mature as to warrant the foreclosure of

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31 Records, p. 108, TSN of March 19, 1991 .

32 *Rollo*, pp. 41-43.

33 Id. at 44-45.

34 "Acceptance of payment, after any delay or default or breach of contract by Borrower shall not make, alter or discharge contracts, prejudice any of the Bank's rights, remedies or pending legal actions or waive forfeitures or remedies stipulated in the contracts/agreements/notes due to Borrower's default. x x x", records, p. 221.

35 *Rollo*, pp. 43-44.

their mortgage. It is settled that foreclosure is valid only when the debtor is in default in the payment of his obligation.[36] Here, the records show that the petitioners were defaulting borrowers, a fact that the CA thoroughly explained in the following manner:

> Appellants insist that there was no valid ground for appellee bank to institute the foreclosure proceedings because they still have a pending case for illegal dismissal before the NLRC. They argue that the reason for the bank's foreclosure is their dismissal from employment. As they are still questioning the illegality of their dismissal, the bank has no legal basis in foreclosing the property.
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> The arguments fail to persuade Us.
>
> First, appellants cannot rely on the mere possibility that if the decision of the NLRC will be in their favor, part of the reliefs prayed for would be reinstatement without loss of seniority and other privilege. Such argument is highly speculative. On the contrary, in a thirteen-page decision, the Labor Arbiter exhaustively discussed the validity of appellant Jaime Sebastian's termination. x x x
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> x x x x
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> Moreover, appellants appealed the Labor Arbiter's decision as early as January 10, 1994. To date, however, nothing has been heard from appellants if they obtained a favorable judgment from the NLRC.
>
> Second, even if it turns out the appellants were not validly terminated from their employment, there is valid reason to foreclose the mortgaged property.
>
> Appellants themselves admit that they were in arrears when they made the late payments in March, 1991. While this admission was not in the course of the testimony of appellant Jaime Sebastian, this was done during the hearing of the case when the trial judge propounded the question to him. Hence, this constitute (sic) judicial admission. An admission, verbal or written, made by a party in the course of the trial or other proceedings in the same case does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission is made. Judicial admissions are those made voluntarily by a party, which appear on record in the proceedings of the court. Formal acts done by a party or his attorney in court on the trial of a cause for the purpose of dispensing with proof by the opposing party of some fact claimed by the latter to be true.
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> x x x x
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> Fourth, the terms and conditions of the loan agreement, promissory notes and the real estate mortgage contract, do not partake of a contract of adhesion. It must be noted that appellants are personnel of the bank.

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[36] *Development Bank of the Philippines v. Licuanan*, G.R. No. 150097, February 26, 2007, 516 SCRA 644, 650.

> Jaime Sebastian was then a branch manager while his wife Evangeline was a bank teller. It is safe to conclude that they are familiar with the documents they signed, including the conditions stated therein. It is also presumed that they take ordinary care of their concerns and that they voluntarily and knowingly signed the contract.
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> Appellant Jaime Sebastian, in his letter addressed to appellee bank, even acknowledged that "in the event of resignation or otherwise terminated from his employment, the principal as well as the interest due shall become entirely due and demandable" (Exh. "E"). The freedom to enter into contracts is protected by law and the courts are not quick to interfere with such freedom unless the contract is contrary to law, morals, good customs, public policy or public order.
>
> Courts are not authorized to extricate parties from the necessary consequences of their acts, and the fact that the contractual stipulations may turn out to be financially disadvantageous will not relieve parties thereto of their obligations,
>
> Fifth, We cannot also buy appellants' argument that appellee refused to accept the subsequent payments made by them. It is settled that an issue which was not raised during the trial in the court below could not be raised for the first time on appeal, as to do so, would be offensive to the basic rules of fair play, justice and due process. Here, appellant Jaime Sebastian twice testified before the Court, first, during the hearing on the preliminary injunction and on the trial proper. Nothing was mentioned about the refusal on the part of the bank to accept their subsequent payments.
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> Assuming, *arguendo*, that appellee bank indeed refused to accept the subsequent payment from appellants, they could have consigned the same before the Court. They failed to do so. There was no effort on their part to continue paying their obligations.
>
> Thus, having signed a deed of mortgage in favor of appellee bank, appellants should have foreseen that when their principal obligation was not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with a view to applying the proceeds to the payment of the principal obligation.[37]

Equally notable was that Jaime's undated letter-memorandum to BPI Family expressly stated the following:

> x x x In the event I leave, resign or am discharged from the service of BPI Family Bank or my employment with BPI Family Bank is otherwise terminated, I also authorize you to apply any amount due me from BPI Family Bank to the payment of the outstanding principal amount of the aforesaid loan and the interest accrued thereon which shall thereupon become **entirely due and demandable on the effective date of such** discharge, resignation or **termination** without need of notice of demand,

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[37] *Rollo*, pp. 14-18.

> and to do such other acts as may be necessary under the circumstances.[38] (Bold emphasis supplied.)

The petitioners thereby explicitly acknowledged that BPI Family Bank had granted the housing loan in consideration of their employer-employee relationship. They were thus presumed to understand the conditions for the grant of their housing loan. Considering that the maturity of their loan obligation did not depend on the legality of their termination from employment, their assertion that the resolution of their labor complaint for illegal dismissal was prejudicial to the ripening of BPI Family's cause of action was properly rejected. Indeed, a finding of illegal dismissal in their favor would not automatically and exclusively result in their reinstatement. As fittingly ruled in *Bani Rural Bank, Inc. v. De Guzman*:[39]

> "By jurisprudence derived from this provision, separation pay may [also] be awarded to an illegally dismissed employee in lieu of reinstatement." Section 4(b), Rule I of the Rules Implementing Book VI of the Labor Code provides the following instances when the award of separation pay, in lieu of reinstatement to an illegally dismissed employee, is proper: (a) when reinstatement is no longer possible, in cases where the dismissed employee s position is no longer available; (b) **the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; and** (c) **when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved**. In these instances, separation pay is the alternative remedy to reinstatement in addition to the award of backwages. **The payment of separation pay and reinstatement are exclusive remedies**. The payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed.

Nonetheless, it is noteworthy that the Labor Arbiter ultimately ruled that Jaime's dismissal was valid and legal. Such ruling affirmed the legality of the termination of James from BPI Family's employment. Under the circumstances, the entire unpaid balance of the housing loan extended to him by BPI Family became due and demandable upon such termination in accordance with Jaime's express and written commitment to BPI Family. Even if we were to disregard this condition, their admission of default in their monthly amortizations constituted an event of default within the context of Section 7 of the loan agreement that produced the same effect of rendering any outstanding loan balance due and demandable. Section 7 the loan agreement reads as follows:

> SECTION 7. EVENTS OF DEFAULT
>
> If any of the following Events of Default shall have occurred and be continuing:

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[38] Records, p. 80.

[39] G.R. No. 170904, November 13, 2013, 709 SCRA 330, 348-349.

> a) The Borrower shall fail to pay when due the Loan(s) any installment thereof, or any other amount payable under this Agreement the Note(s) or under the Collateral; or
>
> x x x x
>
> then, and in any such event, the Bank may by written notice to the Borrower cancel the Commitment and/or declare all amounts owing to the Bank under this Agreement and the Note(s), whether of principal, interest or otherwise, to be forthwith due and payable, whereupon all such amounts shall become immediately due and payable without demand or other notice of any kind, all of which are expressly waived by the Borrower. The Borrower shall pay on demand by the Bank, in respect of any amount or principal paid in advance of stated maturity pursuant to this Section 7, a prepayment penalty equal to the rate mentioned in Section 2.07 (c).[40]

With demand, albeit unnecessary, having been made on the petitioners, they were undoubtedly in default in their obligations.

The foreclosure of a mortgage is but the necessary consequence of the non-payment of an obligation secured by the mortgage. Where the parties have stipulated in their agreement, mortgage contract and promissory note that the mortgagee is authorized to foreclose the mortgage upon the mortgagor's default, the mortgagee has a clear right to the foreclosure in case of the mortgagor's default. Thereby, the issuance of a writ of preliminary injunction upon the application of the mortgagor to prevent the foreclosure will be improper.[41] As such, the lower courts did not err in dismissing the injunction complaint of the petitioners.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on November 21, 2002; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[40] Records, pp. 15-16.

[41] *Delos Santos v. Metropolitan Bank and Trust Company,* G.R. No. 153852, October 24, 2012, 684 SCRA 410, 423.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice