



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**SPOUSES ROLANDO and
CYNTHIA RODRIGUEZ,**
Petitioners,

G.R. No. 214520

Present:

- versus -

GESMUNDO, *C.J.*, Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA and
GAERLAN, *JJ.*

**EXPORT AND INDUSTRY BANK,
INC. (formerly, Urban Bank, Inc.),
the CLERK OF COURT AND EX-
OFFICIO SHERIFF, REGIONAL
TRIAL COURT, CITY OF
MAKATI and the REGISTER OF
DEEDS, CITY OF MAKATI,**
Respondents.

Promulgated:

JUN 14 2021

X -----X

DECISION

CAGUIOA, J.:

This is a Petition for Review on *Certiorari*¹ (Petition) filed under Rule 45 of the 1997 Rules of Court (1997 Rules) against the Decision² dated January 20, 2014 (assailed Decision) and Resolution³ dated September 17, 2014 (assailed Resolution) rendered by the Court of Appeals⁴ (CA) in CA-G.R. CV No. 98745.

The assailed Decision and Resolution affirmed the Resolution⁵ dated February 9, 2012 issued by the Regional Trial Court of Makati City, Branch 145 (RTC) in Civil Case No. 03-1467 which upheld the extra-judicial foreclosure of the property covered by Transfer Certificate of Title (TCT) No. 149646 registered in the name of petitioners Rolando Rodriguez (Rolando) and Cynthia Rodriguez (Cynthia).

¹ *Rollo*, pp. 14-47, excluding Annexes.

² *Id.* at 49-66. Penned by Associate Justice Isaias P. Dicedican, with the concurrence of Associate Justices Michael P. Elbinias and Victoria Isabel A. Paredes.

³ *Id.* at 68-69.

⁴ Twelfth Division and Former Twelfth Division, respectively.

⁵ *Rollo*, pp. 83-92. Penned by Presiding Judge Carlito B. Calpatura.

The Facts

In 1997, Urban Bank, Inc. (Urban Bank) granted Rolando and Cynthia (collectively, Spouses Rodriguez) credit accommodations dubbed as "Readycheck Mortgage Lines"⁶ (RCMLs) with the following particulars:

Grantee	Date	Security	Amount
Cynthia Rodriguez via Account No. 7255-00017-0	August 18, 1997	Real Estate Mortgage over agricultural land in Negros Occidental, covered by TCT No. 140004 (Negros property)	₱3,591,000.00
Rolando Rodriguez via Account No. 7255-00016-4	September 15, 1997	Mortgage Contract over residential property in San Lorenzo Village, Makati City covered by TCT No. 149646 (Makati property)	₱2,344,000.00
Total			₱5,935,000.00⁷

On April 12, 1999, Urban Bank granted Rolando an increased RCML amounting to ₱6,000,000.00 (1999 RCML).⁸ The terms and conditions of the 1999 RCML were summarized in a Letter-Agreement⁹ of even date, as follows:

We are pleased to inform you of the approval of your [RCML] in the amount of PESOS: SIX MILLION (PHP6,000,000.00), subject to the following terms and conditions:

1. Via x x x [(1999 RCML)];
2. **Opening of a special checking account with the Bank shall be required. Maximum amount per availment shall be [Php500,000.00] per check. Availments shall be released through your [s]pecial checking account and shall be used to fund checks drawn against said account and other charges which may be debited against said account pursuant to the [1999 RCML];**
3. Interest shall be determined by the Bank every month and shall be indicated in your monthly statement of account;
4. Payments of availments or charges on the line shall be deposited to the special checking account, at any of the Bank's offices. Any excess payment shall be treated as a deposit in the special checking account which shall not earn interest;
5. Service fee of ½ of 1.0% p.a. of the amount of the line shall be payable upon signing of the [1999 RCML] and charged to the

⁶ Also appears as "Ready Check Mortgage Line" in some parts of the *rollo*.

⁷ *Rollo*, pp. 20-21.

⁸ See *id.* at 50, 108.

⁹ *Id.* at 108-111.



line. Documentary stamp taxes in the amount of [P9,000.00] shall be for your account and charged to the line;

6. Registered first real estate mortgage on a house and lot located at No. 24, Melantic¹⁰ St., San Lorenzo Village, Makati City covered by TCT No. 149646 registered under the name of Rolando C. Rodriguez married to Cynthia C. Rodriguez.

x x x x

9. Joint and Several Signature of Spouse: Ms. Cynthia C. Rodriguez;

x x x x

12. Line shall expire on June 30, 2000; and

13. Purpose: Working Capital

(This facility shall cancel the [individual] RCML of Ms. Cynthia C. Rodriguez for [P3,591,000.00] with Account No. 7255-00017-0 and [the individual] RCML of Mr. Rolando C. Rodriguez with Account No. 7255-00016-4. The [Negros property] securing the existing [individual] RCML of Ms. Cynthia C. Rodriguez shall also be released.)¹¹ (Emphasis and underscoring supplied; emphasis in the original omitted)

In accordance with clause 6 above, Spouses Rodriguez executed an Additional Mortgage Agreement¹² covering the Makati property.¹³ As shown by the residential address indicated therein, the Makati property stood as Spouses Rodriguez's family home.

Notably, the Additional Mortgage Agreement only covered the amount of P3,656,000.00, or the difference between P6,000,000.00 (the amount of the 1999 RCML) and P2,344,000.00 (the amount of Rolando's individual RCML).¹⁴

The corresponding Loan Agreement and the Additional Mortgage Agreement were signed by Spouses Rodriguez and notarized by Export and Industry Bank, Inc.'s (EIB) notary public.¹⁵

Spouses Rodriguez later drew the following checks against their special checking account under the 1999 RCML:

Check No. 048101	Php500,000.00
Check No. 048102	Php500,000.00
Check No. 048103	Php500,000.00
Check No. 048104	Php500,000.00

¹⁰ "Melanie" in some parts of the *rollo*.

¹¹ *Rollo*, pp. 108-110.

¹² *Id.* at 114-117.

¹³ *Id.* at 61.

¹⁴ *Id.* at 21.

¹⁵ *Id.*

Check No. 048105	Php382,558.11
Total	Php2,382,558.11¹⁶

On April 26, 2000, the Bangko Sentral ng Pilipinas (BSP) ordered the closure of Urban Bank. On January 31, 2002, the Certificate of Filing of Articles of Incorporation and Plan of Merger (between Urban Bank and EIB) was issued by the Securities and Exchange Commission (SEC). Pursuant to the merger, all assets and liabilities of Urban Bank were transferred to EIB.¹⁷

On May 15, 2002, Spouses Rodriguez received a fax from EIB regarding the statement of account pertaining to Rolando's individual RCML (May 2002 SOA).¹⁸ The statement reflected a principal outstanding balance of ₱2,344,000.00:

STATEMENT OF ACCOUNT
ROLANDO RODRIGUEZ
AS OF APRIL 30, 2002

[Account No.]:	7255-00016-4	Interest Rate:	18.00% p.a.
Credit Line:	Php2,344,000.00	Penalty:	2.00% p.m.
Value Date:	09.01.97		
Due Date:	09.01.98		

Current Principal Balance	0.00
Past Due Principal Balance	2,344,000.00
Unpaid Interests and Due	2,943,872.37
Past Due Penalty	4,392,436.54
OTHER CHARGES	0.00
AMOUNT PAYABLE TO FULLY SETTLE THE LOAN	9,680,308.91 ¹⁹

In response, Rolando sent EIB a letter dated May 31, 2002 asking for additional time to settle his and his wife's accounts since their accountant would have to reconcile the data. **Rolando also pointed out that the individual RCMLs previously issued in his and Cynthia's names were already cancelled under the 1999 RCML.**²⁰

In its letter dated June 11, 2002, EIB agreed to give Spouses Rodriguez an additional period of sixty (60) days to settle their outstanding obligation in full.²¹ However, Spouses Rodriguez failed to do so.

Subsequently, EIB sent Spouses Rodriguez another letter dated August 1, 2002, this time demanding payment of the alleged outstanding balances under both Cynthia and Rolando's individual RCMLs.²²

¹⁶ Id. at 22.

¹⁷ Id. at 22-23.

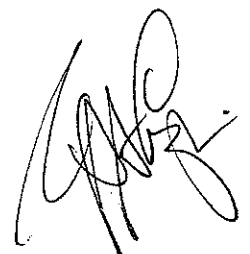
¹⁸ Id. at 23.

¹⁹ Id. at 118.

²⁰ See id. at 23.

²¹ Id.

²² Id. at 24.



Later still, EIB sent two (2) other letters both dated August 12, 2002 reiterating its demand for payment of the outstanding balances under Cynthia and Rolando's individual RCMLs, in the amounts of ₱3,358,024.65 and ₱2,344,000.00, respectively, "exclusive of interest, penalties, and attorney's fees."²³

On January 24, 2003, EIB filed a Petition for Extra-Judicial Foreclosure²⁴ (Extra-Judicial Foreclosure Petition) before the Office of the Clerk of Court of the RTC. There, EIB alleged that Spouses Rodriguez defaulted on the payment of their obligations under the **1999 RCML** despite repeated demands. EIB further stated that as of November 30, 2002, Spouses Rodriguez's outstanding balance already amounted to ₱6,449,309.89, "exclusive of accrued interest and penalty and attorney's fees and other charges and incidental expenses."²⁵ EIB thus prayed that the Makati property be sold at a public auction subject to the requirements of Act No. 3135.²⁶

On February 3, 2003, the Clerk of Court and Ex-Officio Sheriff of the RTC issued a Notice of Sheriff's Sale²⁷ of the Makati property. Said notice was published in *Pilipino Newslines* for three (3) consecutive weeks.²⁸ A copy of said notice was sent to Spouses Rodriguez at the Makati property's address that is, 24 Melantic²⁹ St., San Lorenzo Village, Makati City, the residential address which Spouses Rodriguez indicated in the Additional Mortgage Agreement.

On March 14, 2003, the Makati property was sold to EIB as highest bidder for the amount of ₱12,000,000.00.³⁰

Prompted by the foregoing incidents, Spouses Rodriguez filed a complaint before the RTC (Nullification Complaint) seeking to declare the extra-judicial foreclosure null and void. This Nullification Complaint is the subject of the present Petition.

While the Nullification Complaint was pending with the RTC, Spouses Rodriguez's redemption period lapsed. EIB thus executed an Affidavit of Consolidation of Title which became the basis for the issuance of a new TCT No. 220455 in EIB's name on July 6, 2004.³¹ Later still, EIB took possession of the Makati property on the basis of a Writ of Possession issued in its favor. After taking possession, EIB demolished the house constructed on the Makati property.³²

²³ Id.

²⁴ Id. at 127-129.

²⁵ Id. at 128.

²⁶ Id.

²⁷ Id. at 130.


²⁸ Id. at 25.

²⁹ See note 10.

³⁰ *Rollo*, p. 51.

³¹ Id. at 26.

³² Id.



RTC proceedings

In the Nullification Complaint, Spouses Rodriguez alleged, among others, that EIB unilaterally imposed increased interest rates and penalties on their loan availments. Considering that the loan documents were pro-forma contracts of adhesion, any doubt or ambiguity in their provisions should be construed against Urban Bank and its successor EIB.³³ As well, Spouses Rodriguez averred that EIB failed to show that the requirements of posting and publication of the notice of sale of the Makati property were complied with. Spouses Rodriguez also claimed that their partial payments were not properly deducted from their outstanding balance.³⁴

Hence, Spouses Rodriguez prayed that the extra-judicial foreclosure be declared null and void. Further, they prayed that EIB be ordered to re-compute the interest rate imposed on the outstanding principal of their loan availments.³⁵

In its Answer with Compulsory Counterclaim, EIB argued that Spouses Rodriguez do not have a cause of action against it.³⁶

Foremost, EIB averred that Spouses Rodriguez were fully cognizant of the terms and conditions of the 1999 RCML. As basis, EIB submitted a copy of Spouses Rodriguez's letter dated May 31, 2002 wherein they: (i) acknowledged receipt of the May 2002 SOA; (ii) requested time to sell the Makati property; and (iii) requested for assistance in finding another bank that would re-finance their outstanding obligation for a period of ten (10) to fifteen (15) years.³⁷

EIB further alleged that the extra-judicial foreclosure had been done in accordance with law. EIB narrated that it sent Spouses Rodriguez at least five (5) letters within the period of January 2002 to August 2002 demanding payment of their outstanding obligation. Since Spouses Rodriguez did not heed these written demands, EIB was constrained to file the Extra-Judicial Foreclosure Petition.³⁸ EIB anchored its right to extra-judicially foreclose the Makati property on clause 12 of the Additional Mortgage Agreement which reads, in part:

x x x Upon default of the MORTGAGOR/BORROWER as provided under the [Loan Agreement], the CREDITOR may immediately foreclose the mortgaged property either judicially under the Rules of Court or extra[-]judicially under Act No. 3135, as amended, and any applicable law, as the case may be. The MORTGAGOR/BORROWER shall, upon demand by the CREDITOR, turn over possession of the mortgaged property to the CREDITOR.

³³ Id. at 51-52.

³⁴ See id. at 52.

³⁵ Id.

³⁶ Id. at 53.

³⁷ Id. at 53-54.

³⁸ Id. at 54.



For the purpose of extra[-]judicial foreclosure, the MORTGAGOR/BORROWER hereby appoints the CREDITOR as its attorney-in-fact, with full power of substitution, to sell the mortgaged property or any portion thereof, in accordance with Act No. 3135, as amended, or under any applicable law as the case may be, to itself or other persons and under such terms or conditions the CREDITOR may deem fit and to sign all documents and perform any act requisite or necessary to accomplish said purpose.³⁹

To prove compliance with the provisions of Act No. 3135, EIB also attached copies of the: (i) Notice of Sheriff's Sale dated February 3, 2003; (ii) Affidavit of Publication dated March 10, 2003; and (iii) Certificate of Sale dated May 15, 2003 issued by the RTC, and annotated on the dorsal side of TCT No. 149646.⁴⁰

Finally, by way of counterclaim, EIB asserted that Spouses Rodriguez's outstanding obligation as of March 14, 2003 already ballooned to ₱34,542,468.43 consisting of their principal obligation, accrued interest, and accumulated penalty charges. Hence, the ₱12,000,000.00 bid price was only applied as partial payment of Spouses Rodriguez's outstanding balance. EIB also claimed moral and exemplary damages, and attorney's fees, due to the malicious filing of Spouses Rodriguez's Nullification Complaint.⁴¹

On August 19, 2010, the RTC issued a Decision⁴² declaring the extra-judicial foreclosure and the sale of the Makati property null and void. The dispositive portion of said Decision states:

WHEREFORE, in view of the foregoing considerations, this court resolves the [Nullification] Complaint in favor of [Spouses Rodriguez] against [EIB], hence[,] this court hereby declares the [extra-judicial] foreclosure conducted on March 14, 2003 by the defendant Ex-Officio Sheriff, against the [Makati] property of [Spouses Rodriguez] as a NULLITY.

Therefore, the writ of possession issued in connection with said [extra-judicial] foreclosure is hereby lifted and set aside, hence[,] possession over the [Makati] property is ordered restored to [Spouses Rodriguez]. Thus, the new title of [EIB], TCT No. 220455, is correspondingly cancelled. Defendant Register of Deeds for Makati City is hereby ordered to restore the title of ownership of the [Makati] property in the name of [Spouses Rodriguez], with those mortgage liens and encumbrances by [EIB].

Cost de [officio].

SO ORDERED.⁴³

The RTC held that the RCML is similar to a credit card arrangement whereby the bank extends credit accommodations to its card holders for the

³⁹ Id. at 116.

⁴⁰ Id. at 54.

⁴¹ Id. at 54-55.

⁴² Id. at 70-82. Penned by then Acting Presiding Judge Cesar O. Untalan.

⁴³ Id. at 82.



purchase of goods and services subject to later reimbursement upon proper billing. The only difference between the RCML and a credit card is that under the RCML arrangement, the credit line is secured by a mortgage.⁴⁴ Hence, the RTC held that Spouses Rodriguez's outstanding principal obligation at the time of the extra-judicial foreclosure was not ₱6,449,309.89 as demanded and alleged by EIB in the Extra-Judicial Foreclosure Petition, but only of ₱2,382,558.11, or the total value of the checks drawn against their special checking account under the 1999 RCML.⁴⁵ Consequently, the RTC declared the extra-judicial foreclosure null and void.

EIB and Spouses Rodriguez filed their respective motions for reconsideration.

For its part, EIB asserted that the RTC's findings were contrary to law and not supported by the evidence on record. On the other hand, Spouses Rodriguez claimed that the RTC erred insofar as it denied due course to their claims for actual and moral damages.⁴⁶

On February 9, 2012, the RTC issued a Resolution⁴⁷ reversing its earlier Decision, thus:

WHEREFORE, premises considered, the Motion for Reconsideration [filed by EIB] on the decision rendered in this case dated August 19, 2010, is granted and the said decision is reconsidered. Consequently, judgment is rendered DISMISSING [Spouses Rodriguez's] complaint for lack of a valid cause of action and insufficiency of evidence. The findings declaring as null and void the [e]xtra-judicial [f]oreclosure of the [Makati] property covered by TCT No. 149646, conducted on March 14, 2003, by the Ex-O[f]ficio Sheriff of Makati, AS WELL AS the subsequent issuance of title consequent thereto are recalled and set aside, and the said foreclosure as well as the subsequent issuance of TCT No. 220455 in favor of [EIB] are hereby affirmed as valid.

Necessarily, [Spouses Rodriguez's Motion] For Partial Reconsideration is DENIED for lack of merit.

Costs against [Spouses Rodriguez].

SO ORDERED.⁴⁸

This time, the RTC concluded that all of Spouses Rodriguez's outstanding loans with EIB were carried over to the 1999 RCML. According to the RTC, these include: (i) two (2) personal loans evinced by promissory notes dated August 31, 1993 (1993 promissory note) and November 27, 1995 (1995 promissory note), for ₱2,100,000.00 and ₱1,250,000.00, respectively, both signed by Spouses Rodriguez; and (ii) the individual RCMLs issued by Urban Bank to Spouses Rodriguez in 1997.

⁴⁴ Id. at 80.

⁴⁵ See id. at 80-81.

⁴⁶ Id. at 55-56.

⁴⁷ Id. at 83-92.

⁴⁸ Id. at 92.

The RTC discussed the basis of its new findings, as follows:

On the first argument that— “*Contrary to the conclusion of the court, the RCML of [Spouses Rodriguez] is not akin to the use of a credit card,*” the court after a re-evaluation of the evidence on records (sic), finds this argument impressed with merit. As correctly pointed out by [EIB] x x x and confirmed by [Spouses Rodriguez’s] x x x letter x x x bearing [the] date of January 22, 1999, proposing for such consolidation of their existing loan with the then Urban [B]ank as predecessor of herein [EIB], the [1999] RCML x x x which was granted to [Spouses Rodriguez] was the result of the consolidation of two (2) promissory notes and previous RCMLs into one RCML account in the name of x x x Rolando only and which RCML was secured by [the Makati property] which is the subject of the present complaint assailing the foreclosure of the same. This fact was also admitted by [Spouses Rodriguez] when they testified as cited in the questioned decision x x x. It is also confirmed by [Spouses Rodriguez’s exhibits] showing a total balance of Php2,311,006.99, for the two [promissory] notes. Under the legal presumption that a person takes ordinary care of his concern (sic), it can be presumed that [Spouses Rodriguez] would not have signed the notes if they did not receive the sum of money therein indicated.⁴⁹

While the RTC held that the 1999 RCML was the result of the consolidation of Spouses Rodriguez’s previous loans, it did not make a definitive ruling on the correct amount of Spouses Rodriguez’s principal obligation as this was purportedly beyond the scope of the issues identified for its resolution. The RTC appears to have overlooked that such factual determination was necessary to determine one of the main issues so identified, that is, whether Spouses Rodriguez were in fact in default. Nevertheless, the RTC held that Spouses Rodriguez’s principal obligation at the time of the extra-judicial foreclosure was at least ₱2,344,000.00, an amount that is notably *less* than the principal balance of ₱6,449,309.89 which EIB alleged as due in the Extra-Judicial Foreclosure Petition. The relevant portions of the RTC Resolution read:

On the third assigned error— “*It is error for the court to conclude that ‘indeed this sum of [Php2,344,00.00] as the principal amount due and payable under the approved credit line of x x x Rolando is not [the] correct and proper amount chargeable due (sic) and payable under the said RCML of x x x Rolando’*”, in view of the disquisition in the first two assigned errors, this court must be consistent in upholding the finding that there is proof duly established in the records of this case that **the past due principal balance of [Spouses Rodriguez’s] obligation at the time of [the extra-judicial] foreclosure was [Php2,344,000.00] or even more.** In addition to the evidence and [Spouses Rodriguez’s] admission against interest x x x, there were also other pieces of evidence that will substantiate the finding of [Spouses Rodriguez’s] principal balance due and demandable in the amount of more than [Php2,344,000.00]. These are: [Spouses Rodriguez’s] Exhibit “C” x x x which document show (sic) the approval by Urban Bank of x x x Rolando’s [individual] RCML for [Php2,344,000.00] x x x and Exhibit [“E”], which is a letter also indicating the same amount of [Php2,344,000.00], as the approve[d] loan line for x x x Rolando.

⁴⁹ Id. at 84.

x x x x

More telling are (sic) [Spouses Rodriguez's] stand during the pre-trial of this case wherein they never put in issue the correct amount of their principal obligation. What they raised as the issues to be tried were the following:

- a. Whether or not the imposition of interest by [EIB] on [Spouses Rodriguez's] loan is valid;
- b. Whether or not [Spouses Rodriguez] were in default to justify [EIB's] foreclosure of the [Makati property];
- c. Whether [Spouses Rodriguez] have a valid cause of action against [EIB]; and
- d. Whether [EIB is] entitled to [its] counterclaims.

It was, therefore, beyond the scope of the defined issues for this court to even discuss the factual issue regarding the correct amount of [Spouses Rodriguez's] principal obligation prior to the [extra-judicial] foreclosure or at the time of [the extra-judicial] foreclosure as that fact is deemed as [a] non-issue anymore (sic) with the issuance of [the] pre-trial order defining the issues for trial x x x[.]⁵⁰ (Emphasis and underscoring supplied)

As to the interest and penalty charges, the RTC held that Spouses Rodriguez already admitted during pre-trial that they were duly apprised of the terms and conditions of the 1999 RCML. Since Spouses Rodriguez freely agreed to these terms and conditions, they should be bound by them.⁵¹

Finally, the RTC held that Spouses Rodriguez failed to overcome the presumption of regularity accorded to the extra-judicial foreclosure proceedings.⁵²

CA proceedings

Aggrieved, Spouses Rodriguez filed an appeal with the CA under Rule 41 of the 1997 Rules.

There, Spouses Rodriguez argued, among others, that the individual RCMLs had been explicitly cancelled by the 1999 RCML. Hence, Spouses Rodriguez claimed that the demands made by EIB were without effect, since they pertained to loans that had been cancelled.

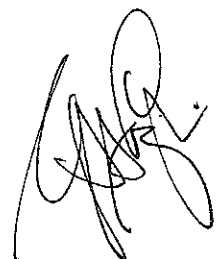
On January 20, 2014, the CA issued the assailed Decision denying Spouses Rodriguez's appeal. The dispositive portion of this Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the instant appeal for lack of merit. The

⁵⁰ Id. at 88-90.

⁵¹ See id. at 85.

⁵² Id. at 90-91.



Resolution issued by Branch 145 of the [RTC] on February 9, 2012 in Civil Case No. 03-1467 is hereby **AFFIRMED**.

SO ORDERED.⁵³

According to the CA, Spouses Rodriguez's admissions during pre-trial established that they freely and voluntarily entered into the 1999 RCML and that they were unable to pay their outstanding obligation in full.⁵⁴ The CA added that Spouses Rodriguez's previous loans (evidenced by the promissory notes) were carried over to their individual RCMLs, and later, the 1999 RCML.⁵⁵

The CA also found no factual or legal basis to nullify the extra-judicial foreclosure and the subsequent sale of the Makati property.⁵⁶

Spouses Rodriguez filed a motion for reconsideration which the CA denied through the assailed Resolution.⁵⁷

Spouses Rodriguez, through counsel, received a copy of the assailed Resolution on October 7, 2014. On October 21, 2014, they filed a Motion for Extension of Time to File Petition for Review on Certiorari under Rule 45 praying for an additional period of thirty (30) days from October 22, 2014, or until November 21, 2014 to file their petition.

This Petition was filed on the last day of the extension prayed for.

The Court issued a Resolution dated January 28, 2015 directing EIB to file its comment on the Petition within ten (10) days from notice.

EIB filed its Comment⁵⁸ on March 23, 2015, to which Spouses Rodriguez filed their Reply.⁵⁹

Here, Spouses Rodriguez assail anew the validity of the extra-judicial foreclosure. This time, Spouses Rodriguez's challenge is anchored on lack of personal notice. They assert that EIB sent the copy of the Extra-Judicial Foreclosure Petition and corresponding Notice of Sheriff's Sale to their old residence located at "#24 Melantic St., San Lorenzo Village, Makati City", instead of their current residence located at "#5 24th St. Capitol Subdivision, Bacolod City". Spouses Rodriguez claim that while their residential address in Makati was the one indicated in the loan documents and Additional Mortgage Agreement, the fact that they later moved to their new residence in Bacolod

⁵³ Id. at 65.

⁵⁴ Id. at 60-61.

⁵⁵ See id. at 61.

⁵⁶ Id. at 63.

⁵⁷ Id. at 68-69.

⁵⁸ Id. at 146-165. Denominated as "Comment on the Petition for Review on Certiorari".

⁵⁹ Id. at 179-194.



City was known to EIB. As basis, Spouses Rodriguez point out that all demand letters sent by EIB were addressed and sent to their Bacolod address.⁶⁰

Further, Spouses Rodriguez reiterate that the extra-judicial foreclosure and subsequent sale of the Makati property are null and void since they were based on the alleged non-payment of obligations that had already been cancelled.⁶¹ On this score, Spouses Rodriguez argue that they were not in default at the time the mortgage in dispute was extra-judicially foreclosed.⁶²

Spouses Rodriguez also assert that the “meteoric rise” of their outstanding obligation (from ₱2,382,558.11 representing their total availment, to ₱34,542,468.43 as of March 14, 2003) is due to the unjust imposition of excessive, iniquitous and unconscionable interest rates and penalty charges.⁶³

Based on these allegations, Spouses Rodriguez argue that they are entitled to damages for the wrongful and illegal foreclosure and sale of the Makati property, and the consequent demolition of the residence situated thereon.⁶⁴

For its part, EIB argues that the Petition warrants outright dismissal as it ultimately calls upon the Court to determine a factual issue, that is, whether or not the extra-judicial foreclosure in question was done in accordance with law.⁶⁵ In any event, EIB reiterates that the Additional Mortgage Agreement had been foreclosed due to Spouses Rodriguez’s failure to pay a subsisting obligation. Moreover, as already ruled by the CA, EIB complied with all the requirements for a valid extra-judicial foreclosure sale under Act No. 3135.⁶⁶

EIB thus argues that the extra-judicial foreclosure is valid, and that Spouses Rodriguez are not entitled to the damages prayed for.⁶⁷

The Issue

The sole issue for the Court’s resolution is whether the CA erred in upholding the validity of the extra-judicial foreclosure in dispute.

The Court’s Ruling

The Petition is granted, in part.

⁶⁰ Id. at 30-31.

⁶¹ Id. at 37-39.

⁶² See id. at 39-40.

⁶³ Id. at 40-41.

⁶⁴ Id. at 41-42.

⁶⁵ Id. at 148-152.

⁶⁶ Id. at 153-158.

⁶⁷ Id. at 161.



The extra-judicial foreclosure of the Makati property was premature

There are three (3) elements that must be established before a creditor may proceed with the extra-judicial foreclosure of a mortgage, thus:

“x x x [F]irst, there must have been the failure to pay the loan obtained from the mortgagee-creditor; *second*, the loan obligation must be secured by a real estate mortgage; and *third*, the mortgagee-creditor has the right to foreclose the real estate mortgage either judicially or extra[-]judicially.”⁶⁸

Subsumed in the first and third elements is the requirement that the mortgagor-debtor be in default. In the absence of a contractual stipulation to the contrary, the mortgagor-debtor can only be deemed in default when the latter fails to pay despite a valid demand made by the mortgagee-creditor. Thus:

x x x [I]t would only be when a demand to pay had been made and was subsequently refused that a borrower could be considered in default, and the lender could obtain the right to collect the debt or to foreclose the mortgage. x x x⁶⁹

Clearly, without a prior *valid* demand, the mortgagee-creditor’s resort to extra-judicial foreclosure is premature and thus, void. The Court’s ruling in *Development Bank of the Philippines v. Licuanan*⁷⁰ (*Licuanan*) lends guidance:

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.**⁷¹ (Emphasis supplied; citations omitted)

Stripped of the non-essentials, the resolution of the Petition lies in the determination of whether Spouses Rodriguez were in default at the time of the extra-judicial foreclosure. To resolve this issue, the Court must first determine whether EIB’s written demands were valid, for as learned from *Licuanan*, Spouses Rodriguez’s default must proceed from a prior valid demand for payment of their obligation under the 1999 RCML.

⁶⁸ *Metropolitan Bank and Trust Company v. S.F. Naguiat Enterprises, Inc.*, G.R. No. 178407, March 18, 2015, 753 SCRA 474, 505-506.

⁶⁹ *Development Bank of the Philippines v. Guarina Agricultural & Realty Development Corp.*, G.R. No. 160758, January 15, 2014, 713 SCRA 292, 306, citing *Development Bank of the Philippines v. Licuanan*, G.R. No. 150097, February 26, 2007, 516 SCRA 644, 652.

⁷⁰ G.R. No. 150097, February 26, 2007, 516 SCRA 644.

⁷¹ *Id.* at 650.

In *Bulatao v. Estonactoc*⁷² (*Bulatao*), the Court explained that the characteristics of a valid demand must mirror the characteristics of a valid payment, thus:

For there to be a valid payment, the three characteristics of payment must be present. These are: (1) **integrity of payment**, which is provided for in Article 1233 of the Civil Code: “A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be”; (2) **identity of payment**, which is provided for in Article 1244: “The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due. In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee’s will”; and (3) **indivisibility of payment**, which is provided for in Article 1248: “Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments. However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.” Since integrity of payment requires that the thing or service in which the obligation consists has been *completely* delivered or rendered as the case may be, the debtor must comply in its entirety with the prestation and that the creditor is satisfied with the same.

These characteristics of payment should mirror the demand made by the creditor in order for the debtor to incur in delay under Article 1169 of the Civil Code. The demand must comply with the integrity, identity[,] and indivisibility characteristics as well. Since the debtor cannot compel the creditor to accept an incomplete delivery or an amount less than what is due, it follows that the creditor cannot compel the debtor to pay more than what is due. Thus, the characteristics of integrity and identity will be violated if the creditor demands more than what is due.⁷³ (Emphasis supplied)

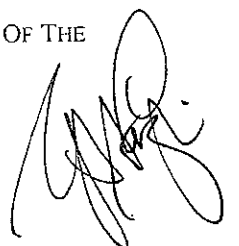
Hence, for the creditor’s demand to be considered valid, it must: (i) specifically relate to the obligation that is due and demandable; and (ii) fully apprise the debtor of the amount due to the creditor, including any accrued interest and penalties imposed on the obligation. It follows that an incomplete demand, or one that leaves the debtor unable to make a valid payment, is ineffective and is insufficient for the purpose of rendering the debtor in default of the obligation.

Whether or not a valid demand was made is, undoubtedly, a question of fact. Time and again, the Court has emphasized that only questions of law may be raised in a petition for review on *certiorari* filed before the Court, as it is not a trier of facts.⁷⁴ Nevertheless, this well-established rule is subject to

⁷² G.R. No. 235020, December 10, 2019, accessed at <<https://sc.judiciary.gov.ph/10139/>>.

⁷³ Id. at 11-12, citing Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES, Vol. IV, 1983 Rev. 2nd Ed., pp. 303-304.

⁷⁴ *Ambray v. Tsourous*, G.R. No. 209264, July 5, 2016, 795 SCRA 627, 636-637.



certain exceptions, as when the assailed judgment is based on a misapprehension of facts, or when the lower courts manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.⁷⁵ These exceptional circumstances are present in this case.

The Extra-Judicial Foreclosure Petition clearly shows that EIB specifically prayed for the extra-judicial foreclosure of the Additional Mortgage Agreement on the ground of Spouses Rodriguez's failure to pay their obligations under the 1999 RCML. The relevant allegations therein read:

2. The [Additional Mortgage Agreement] was executed by [Spouses Rodriguez] in favor of [EIB, formerly Urban Bank] in order to partially secure the prompt payment of x x x their loan with [EIB] denominated as [the 1999 RCML] and as evidenced by the RCML [Letter-Agreement] dated April 12, 1999. x x x

x x x x

4. The [Spouses Rodriguez] defaulted on the payment due under the said [1999 RCML], and **despite several demands by [EIB], the latest being that of August 12, 2002**, their obligation remains unpaid. x x x

6. The outstanding balance on the principal and accrued interest [due EIB] as of November 30, 2002, exclusive of accrued interest, and penalty (sic)[,] attorney's fees[,], other charges[,], and incidental expenses, amounts to **PESOS: SIX MILLION FOUR HUNDRED FORTY NINE THOUSAND THREE HUNDRED NINE and 89/100 (P)6,449,309.89**.

x x x x

WHEREFORE, it is respectfully requested that you sell at public auction the real estate properties (sic), together with all improvements thereon, described in the [Additional Mortgage Agreement], x x x in accordance with law, particularly, x x x Act No. 3135, as amended.⁷⁶ (Additional emphasis supplied)

It was therefore incumbent upon EIB as mortgagor-creditor to establish that a valid demand for payment of the loan obligation under the 1999 RCML had been made, and that Spouses Rodriguez had failed to pay despite such demand. Thus, EIB had the burden to prove that its written demands specifically pertained to the obligation covered by the mortgage in question, and that such obligation was already due and demandable. Further, these written demands must have fully apprised Spouses Rodriguez of the total amount payable.

EIB clearly failed to overcome this burden.

⁷⁵ *Tapayan v. Martinez*, G.R. No. 207786, January 30, 2017, 816 SCRA 178, 187-188, citing *Ambray v. Tsourous*, id. at 636-637.

⁷⁶ *Rollo*, pp. 128-129.

EIB's written demands pertained to obligations which had been extinguished by way of extinctive novation

Spouses Rodriguez claim that EIB's written demands were ineffective as they pertained to obligations which had been extinguished by the 1999 RCML. The Court agrees.

Reference to the Civil Code provisions governing novation is proper. They state:

ART. 1291. Obligations may be modified by:

- (1) Changing their object or principal conditions;
- (2) Substituting the person of the debtor;
- (3) Subrogating a third person in the rights of the creditor.

ART. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

Novation is the substitution or alteration of an obligation by a subsequent one that cancels or modifies the preceding one. Unlike other modes of extinguishing of obligations, novation is a juridical act of dual function, in that at the time it extinguishes an obligation, it creates a new one in lieu of the old.⁷⁷ Novation may be total or extinctive, when there is an absolute extinguishment of the old obligation, or partial, when there is merely a modification of the old obligation.⁷⁸

Here, the written demands made and referred to by EIB in the Extra-Judicial Foreclosure Petition pertain *not* to Spouses Rodriguez's loan obligation under the 1999 RCML, but to the individual RCMLs previously issued in favor of Cynthia and Rolando. Specifically, the letters dated August 12, 2002 cited by EIB in the Extra-Judicial Foreclosure Petition demanded Spouses Rodriguez to pay the outstanding balances in RCML Account No. 7255-00017-0 (under Cynthia's name) and RCML Account No. 7255-00016-4 (under Rolando's name), in the amounts of ₱3,358,024.65 and ₱2,344,000.00, respectively.

Notably, these individual RCMLs were explicitly cancelled under clause 13 of the Letter-Agreement detailing the terms of the 1999 RCML, to wit:

⁷⁷ Eduardo P. Caguioa, *supra* note 73, at 410.

⁷⁸ *Rizal Commercial Banking Corp. v. Plast-Print Industries, Inc.*, G.R. No. 199308, June 19, 2019, 904 SCRA 508, 533.

(This facility shall **cancel** the RCML of Ms. Cynthia C. Rodriguez for [P]3,591,000[.00] with Account No. 7255-00017-0 and RCML of Mr. Rolando C. Rodriguez with Account No. 7255-00016-4. x x x)⁷⁹
(Emphasis supplied)

In the absence of any qualifying stipulation, the term “cancel” in clause 13 should be interpreted in its literal sense, and should be construed to effect a complete cancellation and extinguishment of Spouses Rodriguez’s individual RCMLs and the creation of the 1999 RCML in lieu thereof. Pursuant to clause 13, the parties changed the object of Spouses Rodriguez’s obligation through extinctive novation.

While EIB vehemently insists that the 1999 RCML was merely created with the intention of consolidating Spouses Rodriguez’s previous loans under one account, it failed to explain, much less prove, that such was the case. Neither the Loan Agreement nor the Letter-Agreement corresponding to the 1999 RCML bears any stipulation that supports EIB’s contention. It bears stressing that the loan documents corresponding to the 1999 RCML were prepared solely by Urban Bank, EIB’s predecessor-in-interest. If the parties intended to consolidate Spouses Rodriguez’s previous loans under the 1999 RCML, the loan documents should have so stated.

It thus becomes clear that the prior written demands served by EIB upon Spouses Rodriguez pertained to obligations which had been explicitly extinguished under the 1999 RCML. These demands could not have had the effect of placing Spouses Rodriguez in default of the obligation arising from the 1999 RCML. Accordingly, Spouses Rodriguez were not in default at the time of the extra-judicial foreclosure. Thus, the extra-judicial foreclosure of the Makati property was, in law, premature, and therefore, null and void.⁸⁰

In view of the foregoing, the Court deems it unnecessary to pass upon the other arguments raised by the parties with respect to terms and conditions of the 1999 RCML.

The case must be remanded for reception of evidence on the value of the improvements at the time of demolition

Actual or compensatory damages may be awarded in satisfaction of, or in recompense for, loss or injury sustained.⁸¹ Except as provided for by law or stipulation, the claimant is entitled to actual or compensatory damages only to the extent of the pecuniary loss suffered and duly proved.⁸²

⁷⁹ Rollo, p. 110.

⁸⁰ See *Development Bank of the Philippines v. Licuanan*, supra note 69, at 654.

⁸¹ *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 111584, September 17, 2001, 365 SCRA 326, 337.

⁸² CIVIL CODE, Art. 2199.

Here, Spouses Rodriguez pray for actual damages in the sum of ₱4,486,469.10, which represents the cost of reconstructing the improvements demolished by EIB.

The alleged cost of reconstruction cannot be the basis for the award of actual damages. To be sure, actual damages serves as compensation for actual loss suffered, which, in this case, corresponds to the value of the improvements at the time of demolition, *not* the cost of reconstructing the same. Moreover, an award of actual damages must be premised upon competent proof, and based on the best evidence obtainable.⁸³ Here, Spouses Rodriguez admit that the alleged cost of reconstruction is merely an estimate based on the assessment of their architect. No other evidence was presented to corroborate this assessment.

Nevertheless, following the recent ruling in *Swim Phils., Inc. v. CORS Retail Concept, Inc.*,⁸⁴ and in the higher interest of substantive justice, the Court deems it proper to remand the case for reception of evidence to determine the actual value of damages sustained by Spouses Rodriguez as a result of the demolition of the improvements built on the Makati property.

There is no basis to award moral damages and attorney's fees

Moral damages may be recovered on account of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.⁸⁵ These damages may also be awarded based on a finding of willful injury to property.⁸⁶

On the other hand, attorney's fees may be awarded based on the grounds set forth under Article 2208.⁸⁷ However, such award presupposes

⁸³ *Legaspi v. People*, G.R. No. 246533, July 30, 2019, p. 1 (Unsigned Resolution), accessed at <<https://sc.judiciary.gov.ph/7043/>>.

⁸⁴ G.R. No. 224194, June 19, 2019 (Unsigned Resolution), accessed at <<https://sc.judiciary.gov.ph/5511/>>.

⁸⁵ CIVIL CODE, Art. 2217.

⁸⁶ See *id.*, Art. 2220.

⁸⁷ The provision states:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;

the existence of factual, legal, and equitable justification for no premium should be placed on the right to litigate.⁸⁸ Thus:

x x x [E]ven when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still, attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause. x x x⁸⁹ (Citations omitted)

Here, Spouses Rodriguez allege, among others, that they are entitled to moral damages and attorney's fees on account of EIB's bad faith. Specifically, they assert that EIB acted in bad faith when it caused the service of the Extra-Judicial Foreclosure Petition and Notice of Sheriff's Sale at their Makati address knowing that Spouses Rodriguez had relocated to Bacolod City. Spouses Rodriguez further lament that EIB demolished the improvements built on the Makati property as it "obviously wanted to render nugatory any decision the [C]ourt may have on the [Makati property] and its improvements."⁹⁰ However, these allegations, without more, do not support a finding of bad faith.

Foremost, the Additional Mortgage Agreement itself requires that all notices and correspondences relative thereto be sent to the address stated in the document, or "at the address that may hereafter be given in writing" by Spouses Rodriguez. It is not disputed that the address indicated in the Additional Mortgage Agreement is Spouses Rodriguez's Makati address, and that no written notice of change of address had been transmitted by Spouses Rodriguez to EIB prior to the extra-judicial foreclosure. Hence, the notices and correspondences were served upon Spouses Rodriguez in accordance with the provisions of the Additional Mortgage Agreement.

Moreover, the demolition was done after title had already been consolidated in EIB's name. In the absence of any injunctive order, EIB cannot be said to have acted in bad faith when it proceeded with the demolition in question as it was premised on the genuine albeit mistaken belief that the extra-judicial foreclosure was valid.

All told, the Court finds no bad faith on the part of EIB.

As a final note, the Court emphasizes that in ordinary civil cases, the party making allegations has the burden of proving them by preponderance of evidence. All parties must rely on the strength of their own evidence and

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

⁸⁸ *Cabrera v. Baguio*, G.R. No. 247238, March 4, 2020, p. 2 (Unsigned Resolution), accessed at <<https://sc.judiciary.gov.ph/12895/>>.

⁸⁹ *Id.*

⁹⁰ *Rollo*, p. 4.



not upon the weakness of the defense offered by their opponent. It is therefore a well-established rule that “[t]he extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required”⁹¹ by the 1997 Rules.

Apart from opposing Spouses Rodriguez’s prayer to nullify the extra-judicial foreclosure of the Makati property, EIB asserts here that Spouses Rodriguez’s outstanding obligation had ballooned to ₱34,542,468.43 as of March 14, 2003, or the date the Makati property was sold at the public auction. Considering that the winning bid price was only ₱12,000,000.00, EIB claims that it is entitled to be paid the remaining balance, as well as moral and exemplary damages.

However, EIB did not only fail to establish Spouses Rodriguez’s default. It also failed to establish, by preponderance of evidence, the exact amount of Spouses Rodriguez’s principal obligation at the time it filed the Extra-Judicial Foreclosure Petition. In fact, the records show that EIB remains in a state of continuing confusion with respect to Spouses Rodriguez’s outstanding principal obligation.

In the May 2002 SOA, EIB indicated that the “past due principal balance” under Rolando’s individual RCML amounted to ₱2,344,000.00 as of April 30, 2002. However, the May 2002 SOA did not indicate Cynthia’s “past due principal balance”.

In its subsequent letters dated August 1, 2002 and August 12, 2002, EIB demanded payment of the outstanding principal balance under Rolando *and* Cynthia’s individual RCMLs, amounting to ₱2,344,000.00 and ₱3,358,024.65, respectively. These are the amounts which EIB alleged to be due as of the filing of the Extra-Judicial Foreclosure Petition.

However, in its Comment filed before this Court, the “subsisting obligations” which EIB cited as basis for the extra-judicial foreclosure are those reflected in Spouses Rodriguez’s previously issued 1993 and 1995 promissory notes. As stated in EIB’s Comment:

8. During trial, x x x EIB was able to establish that the [1999 RCML] was the result of the consolidation of the two (2) promissory notes, which fact was admitted by [Spouses Rodriguez]. Thus:

Q: How about the loans how many loans did you have with Urban Bank (Now: EIB)?

A: At first, we have two (2) loans in 1993, and we acquired a loan of P2 million 100 thousand, and in 1995, we acquired another loan of P1 million 250 thousand [.]

Q: Were these loans evidenced by any document?

⁹¹ *Evangelista v. Andolong III*, G.R. No. 221770, November 16, 2016, 809 SCRA 271, 276-277.



A: Yes, ma'am. We have a promissory note with them, the loan for P2,100,000.00 if I recall has PN No. 546371 and the other PN which I don't have with me, I think it has a PN No. 697073 for P1,250,000.00."

x x x x

10. Thus, it cannot be said that [Spouses Rodriguez's] loan obligation is akin to a credit card obligation since there is already a pre-existing obligation when the latest RCML was constituted.⁹² (Italics and underscoring in the original)

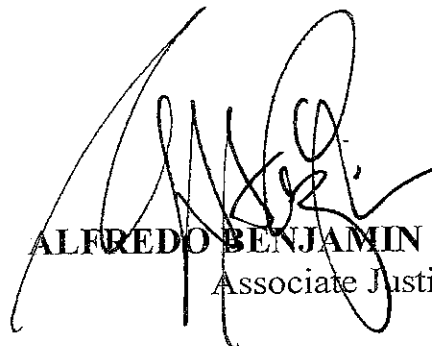
In the absence of preponderant evidence to establish the exact amount of Spouses Rodriguez's principal obligation, EIB's counter-claim must necessarily be denied.

WHEREFORE, premises considered, the Petition is **GRANTED, IN PART**. The Decision dated January 20, 2014 and Resolution dated September 17, 2014 rendered by the Court of Appeals in CA-G.R. CV No. 98745 are hereby **REVERSED and SET ASIDE**.

The extra-judicial foreclosure of the Additional Mortgage Agreement notarized on July 9, 1999 is declared **NULL and VOID**. The possession of the subject property located at No. 24 Melantic Street, San Lorenzo Village, Makati City is **ORDERED** restored in favor of petitioners Rolando and Cynthia Rodriguez. Transfer Certificate of Title No. 220455 issued in the name of respondent Export and Industry Bank, Inc. is **CANCELLED**. The Register of Deeds of Makati City is **ORDERED** to restore the title of ownership of the subject property in the name of petitioners, subject to the subsisting mortgage liens and encumbrances duly registered in favor of respondent Export and Industry Bank, Inc.


The case is **REMANDED** to the court of origin for reception of evidence on the amount of actual damages sustained by petitioners as a result of the premature extra-judicial foreclosure of the subject property and the demolition of the improvements built thereon.

SO ORDERED.

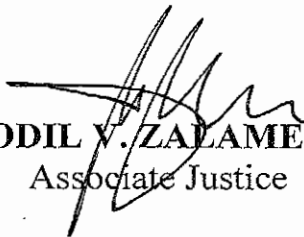

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

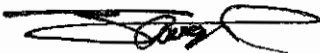
⁹² *Rollo*, pp. 152-153.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

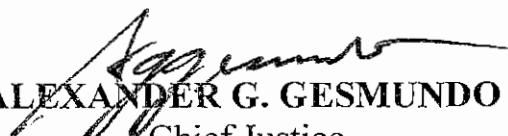

ROSMARID. CARANDANG
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the, 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.


ALEXANDER G. GESMUNDO
Chief Justice