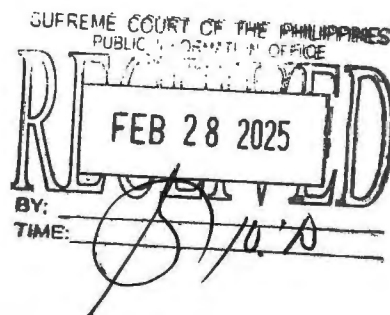




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

PLANTERS DEVELOPMENT
BANK (now CHINA BANK
SAVINGS, INC.),

Petitioner,

- versus -

G.R. No. 252841

Present:

CAGUIOA,* J., Chairperson,
INTING,**
GAERLAN,
DIMAAMPAO, and
SINGH,** JJ.

HEIRS OF NILO P. DELOS
SANTOS, namely: NENITA
DELOS SANTOS (Surviving
Spouse) and MICHAEL C.
DELOS SANTOS (Son),
Respondents.

Promulgated:

JAN 15 2025

~~MICHAEL C. BATO~~

X-----X

DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court seeking to reverse the Decision² dated July 26, 2019 and Resolution³ dated June 11, 2020 of the Court of Appeals (CA)

* On official business but left Concurring Opinion.

** Acting Chairperson per S.O. No. 3156 dated January 10, 2025.

*** On leave.

¹ *Rollo*, pp. 20–33.

² *Id.* at 44–57. Penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Ramon M. Bato, Jr. and Myra V. Garcia-Fernandez of the Seventh Division, Court of Appeals, Manila.

³ *Id.* at 40–43. Penned by Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Ramon M. Bato, Jr. and Myra V. Garcia-Fernandez of the Former Seventh Division, Court of Appeals, Manila.

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in CA-G.R. CV No. 109253. The CA granted the appeal and reversed and set aside the Decision⁴ dated April 17, 2017 of Branch 66, Regional Trial Court, Makati City in Civil Case No. 12-1049 which dismissed the Complaint for Annulment of Mortgage, Foreclosure Sale, and Damages, filed by the Heirs of Nilo P. Delos Santos (respondents). The CA nullified the foreclosure sale held on May 2, 2001.

The Antecedents

On November 9, 1995, spouses Nilo and Nenita Delos Santos (Spouses Delos Santos), as mortgagor, and Planters Development Bank (PDB) [now China Bank Savings, Inc.], as mortgagee, executed a Real Estate Mortgage⁵ over properties owned by Spouses Delos Santos and covered by Transfer Certificate of Title (TCT) Nos. T-166110⁶ and T-166111⁷ (subject properties) issued by the Registry of Deeds of Davao City. The Real Estate Mortgage stated that it was executed as security for a loan that PDB extended to Spouses Delos Santos in the total sum of PHP 1,000,000.00.

On May 28, 1998, spouses Delos Santos, as borrower, and PDB, as creditor, executed Promissory Note No. 98-044-910 (Promissory Note).⁸ The Promissory Note indicated that spouses Delos Santos obtained a loan from PDB in the amount of PHP 1,000,000.00, payable on November 24, 1998, with interest at the rate of 23% per annum plus 3% per annum service charge.

Spouses Delos Santos failed to fully pay their loan obligation.⁹ Consequently, PDB filed a Petition for Extra-Judicial Foreclosure of Mortgage dated January 16, 2001 before the Office of the Clerk of Court (OCC-RTC), Davao City. PDB foreclosed the mortgage on the subject properties on March 28, 2001. Thereafter, the OCC-RTC Davao City set the auction sale of the subject properties on May 2, 2001. During the auction sale, PDB was declared as the highest bidder and the foreclosed properties were sold in the amount of PHP 1,605,027.77.¹⁰ A Sheriff's

⁴ *Id.* at 69–73. Penned by Presiding Judge Joselito C. Villarosa.

⁵ *Id.* at 59–62, executed on November 9, 1995.

⁶ *Id.* at 60.

⁷ *Id.*

⁸ *Id.* at 148.

⁹ *Rollo*, p. 45, *see* CA Decision.

¹⁰ *Id.* at 162, *see* RTC Decision.

Provisional Certificate of Sale dated May 22, 2001, was later issued to PDB.¹¹

On May 2, 2001, Spouses Delos Santos filed a Complaint¹² (Davao Complaint) for Nullity of Mortgage, Extra-judicial Foreclosure and Sale, Damages and Attorney's Fees with Prayer for Injunctive Reliefs before Branch 13, Regional Trial Court, Davao City. Spouses Delos Santos averred that the extra-judicial foreclosure sale of the mortgaged properties was void on the grounds that (1) the Real Estate Mortgage that was executed in 1995 cannot extend to the loan under the Promissory Note executed in 1998; and (2) PDB failed to provide Spouses Delos Santos a detailed and full accounting of their remaining obligations prior to foreclosure. However, the Davao Complaint was dismissed without prejudice in an Order dated September 13, 2002 for having been filed at the improper venue.¹³

Meanwhile, for failure of Spouses Delos Santos to redeem their properties within the redemption period, PDB consolidated the ownership over the properties. The TCTs in the name of Spouses Delos Santos were cancelled and TCT Nos. T-360155 and T-360156 were issued in the name of PDB. Thereafter, PDB filed a Petition for the issuance of a writ of possession before Branch 11, Regional Trial Court of Davao City, which was granted in an Order dated May 5, 2004. Accordingly, the Writ of Possession was issued on even date.¹⁴

On January 8, 2005, Nilo died.¹⁵ On October 25, 2012, herein respondents, the Heirs of Nilo, namely: Nenita Delos Santos (surviving spouse) and Michael C. Delos Santos (son) re-filed the Complaint for Annulment of Mortgage, Foreclosure Sale and Damages with Branch 66, Regional Trial Court, Makati City (RTC), docketed as Civil Case No. 12-1049. The Complaint alleged, *inter alia*, that PDB had repeatedly failed to give the respondents the detailed and full accounting and/or demand of their remaining obligations to the bank prior to foreclosure despite respondents' request; and the interests, penalty charges, service charges are grossly excessive and exorbitant, hence, invalid.

¹¹ *Id.*

¹² *Id.* at 63–68.

¹³ *Id.* at 45, *see* CA Decision.

¹⁴ *Id.* at 46.

¹⁵ *Id.* at 23, *see* Petition.

The Ruling of the RTC

In a Decision¹⁶ dated April 17, 2017, the RTC dismissed the complaint for lack of merit. It ruled that the real estate mortgage is a valid, lawful and enforceable contract, and the resulting foreclosure of the subject properties was only a consequence of Spouses Delos Santos' failure to pay their loan obligation in full. The RTC also found the 23% interest per annum, 3% service charge per annum, and 3% monthly penalty charge valid because these are merely a result of Spouses Delos Santos' default. Finally, the RTC ruled that the foreclosure sale enjoys the presumption of regularity which the respondents failed to debunk.¹⁷

Respondents appealed the RTC Decision to the CA.

Ruling of the CA

On July 26, 2019, the CA rendered the herein assailed Decision¹⁸ which granted the appeal and reversed and set aside the Decision of the RTC. The CA nullified the foreclosure sale held on May 2, 2001 on the ground that no demand was made by PDB before it extrajudicially foreclosed upon the mortgaged properties, to wit:

WHEREFORE, the appeal is hereby **GRANTED**. The Decision of the RTC dated April 17, 2017 is **REVERSED and SET ASIDE**. The foreclosure proceedings held last May 2, 2001 is **NULL and VOID**.¹⁹

In reversing the RTC's Decision, the CA stated that while it may be true that the Promissory Note waived the requirement for demand, the Real Estate Mortgage on the other hand expressly stipulated that demand letters must be sent to the mortgagor, the Spouses Delos Santos. According to the CA, the purpose of the foregoing stipulation is to apprise Spouses Delos Santos that they would be declared in default and their mortgaged properties would be foreclosed, thus, affording them the opportunity to safeguard their rights. It ruled that the express provision in the Real Estate Mortgage requiring demand to be sent to the mortgagor cannot be disregarded simply because there was a waiver on the

¹⁶ *Id.* at 162–166.

¹⁷ *Id.* at 46.

¹⁸ *Id.* at 167–180.

¹⁹ *Id.* at 179.

Promissory Note. The CA emphasized that PDB was the one who explicitly mandated itself that demand must be sent to the mortgagor before foreclosure is made; thus, it cannot renege on its undertaking and use a contrary provision in another document to cover itself.²⁰

PDB filed a Motion for Reconsideration,²¹ but the CA denied the motion in a Resolution²² dated June 11, 2020.

Thus, the present Petition by PDB (petitioner).

Petitioner's Arguments

Petitioner ascribes error to the CA in nullifying the foreclosure sale on the ground that no demand was made to Spouses Delos Santos before foreclosure. Petitioner submits that the provisions of the Promissory Note should govern the necessity of sending demand letters while the provisions in the Real Estate Mortgage shall pertain to where or which address the demand letter may be sent. Petitioner asserts that the Promissory Note has an express provision that demand is not necessary and the Spouses Delos Santos were not able to pay their loan; thus, the latter were in default and the foreclosure was valid.²³

Petitioner further faults the CA in holding that the 3% monthly penalty charge is iniquitous, exorbitant, and excessive.

Respondents' Arguments

In their Comment²⁴ to the Petition, respondents maintain that there was no demand made by petitioner to the respondents before it filed its petition for extrajudicial foreclosure of mortgage. They argue that the absence of a proper demand letter pursuant to the express provision of the Real Estate Mortgage would render the foreclosure proceedings null and void and the foreclosure sale premature. They assert that it is the refusal to pay after proper demand that gives the creditor a cause of action against

²⁰ *Id.* at 171-173.

²¹ *Id.* at 181-189.

²² *Id.* at 40-43.

²³ *Id.* at 27.

²⁴ *Id.* at 131-143.

the debtor; thus, without the written demand, the effects of default will not arise.²⁵

Issue

The core issue in this Petition is whether the CA erred in nullifying the foreclosure sale on the ground that no demand was made by petitioner when it filed a petition to foreclose the mortgage.

The Ruling of the Court

The Petition is granted.

It is well-settled that only questions of law should be raised in petitions filed under Rule 45 of the Rules of Court as the Court is not a trier of facts. However, the rule of limited jurisdiction admits of exceptions and one of them is when the factual findings of the CA and the RTC are contradictory.²⁶ In this case, the RTC upheld the validity of the extrajudicial foreclosure while the CA nullified the foreclosure sale on the ground that no demand was made by petitioner to Spouses Delos Santos. Due to the conflicting findings and conclusions of the RTC and the CA, the Court deems it proper to re-assess the factual findings of the case as may be found necessary for its just resolution.²⁷

Essentially, the resolution of the present Petition primarily hinges on the issue of whether demand was expressly waived by respondents in the Promissory Note, such that there was no necessity for a demand to respondents prior to petitioner's extrajudicial foreclosure of the mortgaged properties.

Spouses Delos Santos waived the requirement of demand to be deemed in default

²⁵ *Id.* at 136.

²⁶ *Quiambao v. China Banking Corp.*, 903 Phil. 235, 240 (2021), citing *Office of the Ombudsman v. De Villa*, 760 Phil. 937, 949–950 (2015); *Miro v. Vda. de Erederos*, 721 Phil. 772, 787 (2013); *Office of the Ombudsman v. Dechavez*, 721 Phil. 124, 129–130 (2013); and *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990).

²⁷ *See Guadalquiver v. Sea Power Shipping Enterprise, Inc.*, 858 Phil. 708, 717 (2019).

The CA determined that Spouses Delos Santos cannot be considered in default because of a provision in the Real Estate Mortgage that supposedly requires petitioner to send a demand letter to the Spouses. Petitioner disagrees and insists that prior demand was not necessary before the Spouses delos Santos may be considered in default and before it may commence extrajudicial foreclosure proceedings because in the fifth paragraph of the Promissory Note, Spouses Delos Santos waived the requirement of demand.

The Court finds for petitioner and holds that based on the stipulations in the Promissory Note, Spouses Delos Santos waived the requirement of demand before being declared in default.

A. The Real Estate Mortgage
served as security for the
loan covered by the
Promissory Note

Preliminarily, the Court notes that the Real Estate Mortgage in the present case was executed in 1995, while the Promissory Note was executed in 1998. Nonetheless, it is settled that the consideration for the mortgage, i.e., the principal loan obligation, need not pass at the time of the execution of the real estate mortgage agreement, as the loan may either be a prior or subsequent matter.²⁸ However, “when the consideration is subsequent to the mortgage, the mortgage can take effect only when the debt secured by it is created as a binding contract to pay.”²⁹ Further, the parties may stipulate that a real estate mortgage shall serve as security for *future* credit facilities or *after-incurred* loan obligations.³⁰ Such stipulations, which are commonly known as “blanket mortgage clauses” or “dragnet clauses,”³¹ “will not be extended to cover future advances, *unless* the document evidencing the subsequent advance refers to the mortgage as providing security therefor, or unless there are clear and supportive evidence to the contrary.”³²

In the case at bench, the Real Estate Mortgage³³ contains a dragnet clause, wherein the parties agreed that the mortgage constituted over the

²⁸ *Central Bank of the Phils. v. Court of Appeals*, 223 Phil. 266, 277 (1985).

²⁹ *Id.*

³⁰ *Prudential Bank v. Spouses Alviar*, 502 Phil. 595, 607 (2005).

³¹ *Id.*

³² *Quiambao v. China Banking Corp.*, 903 Phil. 235, 241 (2021). (Emphasis supplied)

³³ *Rollo*, pp. 59–62.

subject properties shall act as security for the payment of new loans or credit accommodations that PDB may extend to Spouses Delos Santos:

[I]n the event that the Mortgagor/Borrower [Spouses Delos Santos] executes promissory note or notes either to restructure the former note, in extension thereof or *as a new loan/credit accommodation/s*; or extends or renews the loan/credit accommodation, *this mortgage shall stand as security for the payment of the said not or notes, loan/credit accommodation* without the necessity of executing a new contract and this mortgage shall have the same force and effect as if the said promissory note or notes, loan/credit accommodation were existing on the date hereof. *This mortgage shall also stand as security for any and all other obligations of whatever nature that Mortgagor/Borrower may have with the Mortgagee [PDB][.]*³⁴ (Italics supplied)

Meanwhile, the Promissory Note³⁵ referred to securities then in the hands of PDB that the latter may apply as payment for the loan covered by the Note. Thus, the Real Estate Mortgage³⁶ earlier executed by Spouses Delos Santos in 1995 acted as security for the loan obligation covered by the Promissory Note executed in 1998.

B. Waiver of demand in the Promissory Note

Article 1169³⁷ of the Civil Code requires a judicial or extrajudicial demand for the debtor to be considered in default. In order that the debtor may be in default, it is necessary that: (a) the obligation be demandable and already liquidated; (b) the debtor delays performance; and (c) the creditor requires the performance judicially or extrajudicially, unless demand is not necessary.³⁸ Particularly with regard to the third requisite of default, the Court has ruled that it is only when the demand to pay is made and subsequently refused that respondents can be considered in default that petitioner obtains the right to file an action to collect the debt or foreclose the mortgage.³⁹

³⁴ *Id.* at 59.

³⁵ *Id.* at 148.

³⁶ *Id.* at 59–52.

³⁷ CIVIL CODE, art. 1169 states:

ARTICLE 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

³⁸ *See Southstar Construction and Development Corp. v. Philippine Estates Corp.*, 927 Phil. 53, 77 (2022).

³⁹ *DBP v. Licuanan*, 545 Phil. 544 (2007), citing *Caltex Philippines, Inc. v. Intermediate Appellate Court*, 257 Phil. 753, 764 (1989).

In *Rivera v. Sps. Chua*,⁴⁰ the Court succinctly summarized the instances when demand is no longer necessary:

There are four instances when demand is not necessary to constitute the debtor in default; (1) *when there is an express stipulation to that effect*; (2) where the law so provides; (3) when the period is the controlling motive or the principal inducement for the creation of the obligation; and (4) where demand would be useless. In the first two paragraphs, it is not sufficient that the law or obligation fixes a date for performance; it must further state expressly that after the period lapses, default will commence.⁴¹ (Emphasis supplied)

Here, a reading of the Promissory Note⁴² reveals that it contains stipulations wherein Spouses Delos Santos *waived* the requirement of demand to be deemed in default:

I/We expressly agree that time is of the essence as regards my/our payment of this note. Should I/We fail to pay any amortization or portion hereof when due, all the other amortization together with all interest that may have accrued thereon *shall immediately become due and payable* and I/We agree to pay the BANK [PDB] over and above the principal and interest charges above stipulated penalty, at the rate of three percent (3.0%) per month, until the obligation represented by this note is fully paid.

....

In case of my/our default in the payment of this note or violation of any of the terms and conditions hereof or in the event of insolvency, receivership, levy on execution, garnishment or attachment against me/anyone of us, *I/We and each of us do hereby authorize and empower the BANK at its option at anytime without prior notice to me/us to apply to the payment of this note* or any other particular obligation or obligations of all or anyone of us to the BANK, as the latter may elect, irrespective of the dates of maturity, whether or not said obligations are then due, any and all money's, *securit[i]es* and things of value which may or hereafter be in its hands on deposit or otherwise to the credit of or belonging to me all or any one of us. . . . *I/We expressly waive any requirement* for diligence, presentment, *demand, notice of non-payment* and/or notice of dishonor *of this note* or of any and all checks or other negotiable instruments delivered by me/us in payment hereof.⁴³ (Italics supplied)

⁴⁰ 750 Phil. 663 (2015).

⁴¹ *Id.* at 680-681.

⁴² *Rollo*, p. 148.

⁴³ *Id.*

Based on the foregoing, Spouses Delos Santos expressly stipulated that in the event that they commit a violation of the terms of the Promissory Note, such as non-compliance with the amortization schedule, then all the amortizations shall become *immediately* due and payable. They also authorized PDB to apply any security for the loan obligation, including the Real Estate Mortgage, as payment for the amounts due at anytime and *without* prior notice to Spouses Delos Santos. In addition, Spouses Delos Santos expressly waived any requirement for demand in the payment of the loan obligation covered by the Promissory Note.

Notably, the waiver provisions in the present case are similar to those in *Premiere Development Bank v. Central Surety & Insurance Company, Inc.*,⁴⁴ wherein the Court ruled that the loan obligation had become past due and demandable, with notice thereof expressly waived based on the terms of the promissory note subject of that case:

When Central Surety directed the application of its payment to a specific debt, it knew it had another debt with Premiere Bank, that covered by Promissory Note 367-Z, which had been renewed under Promissory Note 376-X, in the amount of P40.898 Million. Central Surety is aware that Promissory Note 367-Z (or 376-X) contains the same provision as in Promissory Note No 714-Y which grants the Premiere Bank authority to apply payments made by Central Surety, *viz.*:

In case I/We have several obligations with [Premiere Bank], I/We hereby empower [Premiere Bank] to apply without notice and in any manner it sees fit, any or all of my/our deposits and payments **to any of my/our obligations whether due or not.** Any such application of deposits or payments shall be conclusive and binding upon us.

Obviously, Central Surety is also cognizant that Promissory Note 367-Z contains the proviso that:

the bank shall be entitled to declare this Note and all sums payable hereunder to be immediately due and payable, without need of presentment, demand, protest or notice of any kind, all of which I/We hereby expressly waive, upon occurrence of any of the following events: ...(ii) My/Our failure to pay any **amortization or installment due hereunder;**(iii) My/Our failure to pay money due under **any other document or agreement evidencing obligations for borrowed money[.]**

⁴⁴ 598 Phil. 827, 847-849 (2009).

by virtue of which, it follows that the obligation under Promissory Note 367-Z had become past due and demandable, with further notice expressly waived, when Central Surety defaulted on its obligations under Promissory Note No. 714-Y. (Emphasis and underscoring in the original; italics supplied)

As further pointed out by Justice Alfredo Benjamin S. Caguioa (J. Caguioa) during the deliberations,⁴⁵ the waiver provisos in the present case are also similar to that in *Bank of the Philippine Islands v. Court of Appeals*,⁴⁶ wherein the Court likewise ruled that therein private respondent waived the requirement of demand to be considered in default:

Private respondent claimed that demand was not made upon him, in spite of the fact that he co-signed the promissory notes. He also argues that only four of the eight promissory notes secured by the mortgage had become due. A reading of the promissory notes discloses that as co-signor, private respondent waived demand. Furthermore, the promissory notes contain an acceleration clause, to wit:

Upon the happening of any of the following events, **FAR EAST BANK AND TRUST COMPANY or the holder, may at its option, forthwith accelerate maturity and the unpaid balance of the principal**, as well as interest and other charges which have accrued, **shall become due and payable without demand** or notice[:] (1) default in payment or performance of any obligation of any of the undersigned to FAR EAST BANK AND TRUST COMPANY or its affiliated companies;

....

I/We hereby waive any diligence, presentment, **demand**, protest or notice of non-payment o[r] dishonor with respect to this note or any extension thereof. (Emphasis added)

The Civil Code in Article 1169 provides that one incurs in delay or is in default from the time the obligor demands the fulfillment of the obligation from the obligee. However, the law expressly provides that demand is not necessary under certain circumstances, and one of these circumstances is when the parties expressly waive demand. Hence, since the co-signors expressly waived demand in the

⁴⁵ J. Caguioa, Concurring Opinion, p. 3.

⁴⁶ 523 Phil. 548 (2006).

promissory notes, demand was unnecessary for them to be in default.⁴⁷
(Emphasis in the original)

Accordingly, it was error for the CA to hold that Spouses Delos Santos cannot be considered in default in the absence of demand. Contrary to the CA's conclusion, the Court finds that based on the terms of the Promissory Note, Spouses Delos Santos *expressly waived* the requirement of demand; hence, the moment that they failed to pay any of the amortizations due under the Promissory Note, petitioner may declare them defaulted and consider the entire obligation immediately due and payable, without need for prior demand or notice of default.

C. Waiver of demand in
the Promissory Note is
not the same as the
requirement of personal
notice in the Real Estate
Mortgage

The CA cited paragraph 12 of the Real Estate Mortgage as basis for its conclusion that prior demand was necessary for Spouses Delos Santos to be deemed in default:

12. *All correspondence* relative to this mortgage, including *demand letters*, summons, subpoenas or notification of any judicial or extra-judicial action, shall be sent to the Mortgagor at the above given address that may hereafter be given in writing by the Mortgagor to the Mortgagee.⁴⁸

Undeniably, default and foreclosure are interrelated concepts. In accordance with Article 2087⁴⁹ of the Civil Code, the right to foreclose a mortgage would be vested in the creditor-mortgagee upon the debtor's default on the mortgage debt.⁵⁰ Otherwise stated, it is only when the debtor-mortgagor is in default that the creditor-mortgagee obtains the right to file an action to collect the debt or foreclose the mortgage.⁵¹

⁴⁷ *Id.* at 559–560.

⁴⁸ *Rollo*, p. 61.

⁴⁹ ARTICLE 2087. It is also the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consist may be alienated for the payment to the creditor.

⁵⁰ *Maybank Philippines, Inc. v. Sps. Tarrosa*, 771 Phil. 423, 429 (2015); *Sps. Borromeo v. Court of Appeals*, 573 Phil. 400, 414 (2008).

⁵¹ *Maybank Philippines, Inc. v. Sps. Tarrosa*, *supra*.

However, the requirement of demand to be deemed in default is *distinct and separate* from the requirement of personal notice in the event of mortgage foreclosure. Demand refers to the *principal* obligation, i.e., the loan covered by the Promissory Note, while personal notice refers to the *accessory* obligation or *security* for the loan, i.e., the mortgage constituted over the subject properties pursuant to the Real Estate Mortgage. Hence, the waiver of demand in the Promissory Note cannot be confused with personal notice in the event of foreclosure under the Real Estate Mortgage, as was similarly held in *Global Holiday Ownership Corp. v. Metropolitan Bank & Trust Co.*,⁵² to wit:

Global's right to be furnished with personal notice of the extrajudicial foreclosure proceedings has been established. Thus, to continue with the extrajudicial sale without proper notice would render the proceedings null and void[.]

....

Under the parties' Debt Settlement Agreement, Global's obligation was reduced (Metrobank waived the penalties incurred), but the agreement carried a proviso that if such reduced obligation was not timely settled and Global defaulted on two consecutive amortizations, Metrobank shall be entitled to treat Global's obligation as outstanding, impose a penalty at the rate of 18% *per annum*, and/or foreclose on the real estate mortgage, *without need of demand*. According to Metrobank, this provision in the Debt Settlement Agreement resulted in a waiver by Global of the required personal notice under Paragraph 14 of the mortgage contract.

We disagree. Demand here relates to the principal obligation, which shall become due and demandable and shall incur interest and penalties without need of informing Global, were the conditions of the Debt Settlement Agreement not observed. It does not relieve Metrobank of its obligation under Paragraph 14 of the Mortgage Contract, which is a *separate* agreement, *distinct* and *apart* from the Debt Settlement Agreement. As we have said, only an addendum or modification of the mortgage agreement can relieve Metrobank of the adverse effects of Paragraph 14.⁵³ (Emphasis in the original; underscoring supplied)

Notably, in *Sps. Agner v. BPI Family Savings Bank, Inc.*,⁵⁴ the Promissory Note with Chattel Mortgage in issue therein likewise

⁵² 607 Phil. 850 (2009).

⁵³ *Id.* at 864-866.

⁵⁴ 710 Phil. 82, 86 (2013).

contained a provision on waiver of notice or demand⁵⁵ for the debtor to be in default. Similar to the present case, the contract likewise included a provision stating that “[a]ll correspondence relative to this mortgage, including demand letters, summonses, subpoenas, or notifications of any judicial or extrajudicial action shall be sent to the MORTGAGOR at the address indicated on this promissory note with chattel mortgage or at the address that may hereafter be given in writing by the MORTGAGOR to the MORTGAGEE or his/its assignee.” Notwithstanding the latter provision, the Court still ruled that the debtor-mortgagor therein *waived* the requirement of notice or demand before being considered in default.

The ruling in *Spouses Agner* equally applies to the present case. It should be emphasized that when a debtor is in default, the foreclosure of mortgage is only one of the alternative remedies available to a secured creditor.⁵⁶ That a debtor has defaulted does not necessarily mean that the creditor will elect the remedy of foreclosure to collect payment. The fact of default remains distinct and separate from the remedy of foreclosure.

Necessarily, then, the requirement of notice in the event of foreclosure in the Real Estate Mortgage cannot be lumped together with the provisions of the Promissory Note on the waiver of demand before Spouses Delos Santos may be considered in default. Accordingly, it was error for the CA to rule that Spouses Delos Santos cannot be deemed in default based on paragraph 12 of the Real Estate Mortgage, when demand had been expressly waived by the Spouses under the Promissory Note.

D. The records show that
there was prior demand
before foreclosure

Even assuming that demand was not waived by Spouses Delos Santos, the records show that there was *prior demand* before petitioner instituted extrajudicial foreclosure proceedings against the subject properties.

⁵⁵ The waiver clause in the Promissory Note with Chattel Mortgage states:
In case of my/our failure to pay when due and payable, any sum which I/We are obliged to pay under this note and/or any other obligation which I/We or any of us may now or in the future owe to the holder of this note or to any other party whether as principal or guarantor . . . then the entire sum outstanding under this note shall, *without prior notice or demand*, immediately become due and payable. [Emphasis and underscoring in the original]

⁵⁶ *Sps. Bautista v. Premiere Development Bank*, G.R. No. 201881, July 15, 2024.

The Court notes that the Petition for Extra-Judicial Foreclosure of Mortgage⁵⁷ attached to the records indicate that petitioner sent a demand letter to Spouses Delos Santos through registered mail, to wit:

The terms and conditions of the Deeds of Real Estate/Chatter mortgage/s were violated by reason of the failure of the debtors whose performance of the principal obligation is hereby secured by said mortgage, to pay their long overdue account *despite several and repeated demands for payment of the same*. [A] copy of the *Demand Letter and the corresponding registry return receipt* are hereto attached and marked as **Annexes “D” and “D-1”**.⁵⁸ (Emphasis in the original; emphasis supplied)

Notably, the postal address of Spouses Delos Santos in the Real Estate Mortgage⁵⁹ and the Petition for Extra-Judicial Foreclosure of Mortgage,⁶⁰ a copy of which was admittedly *received* by Spouses Delos Santos,⁶¹ are *the same*, i.e., Flores Subdivision, Bangkal, Davao City. Thus, insofar as the Demand Letter mentioned in the Petition for Extra-Judicial Foreclosure of Mortgage is concerned, the presumption that “a letter duly directed and mailed was received in the regular course of the mail”⁶² stands in the absence of satisfactory proof to the contrary.⁶³

Even more, as pointed out by J. Caguioa,⁶⁴ Spouses Delos Santos never alleged in their Davao Complaint that they did *not* receive a demand letter from petitioner.⁶⁵ Their silence as regards the demand letter further bolsters the conclusion that petitioner sent a demand letter to Spouses Delos Santos, which the latter received in the regular course of mail.

Admittedly, the demand letter itself nor the registry receipt corresponding thereto do *not* form part of the records of the case. However, as explained by petitioner, it no longer has a copy of its correspondences with Spouses Delos Santos because with the passage of time, it had already lost several documents relevant to the transaction in issue, considering that more than 10 years had lapsed by the time that the Complaint for Annulment of Mortgage, Foreclosure Sale and Damages

⁵⁷ Records, pp. 232–234.

⁵⁸ *Id.* at 233.

⁵⁹ *Id.* at 15.

⁶⁰ *Id.* at 234.

⁶¹ *Id.* at 42, Davao Complaint.

⁶² 2019 REVISED RULES ON EVIDENCE, Rule 131, sec. 3(v).

⁶³ *See Sps. Agner v. BPI Family Savings Bank, Inc.*, *supra* note 54, at 87.

⁶⁴ J. Caguioa, Concurring Opinion, p. 4.

⁶⁵ Records, pp. 41–47.

was filed with the RTC, Makati City.⁶⁶ Undeniably, respondents' delay in instituting the Complaint made it more difficult for petitioner to controvert the correctness and veracity of respondents' claims, such that any relief accorded now to respondents would result in petitioner being held answerable for liabilities that it could have otherwise avoided.⁶⁷

Given the situation, the Court is constrained to rely on the existing records on the issue of whether petitioner sent a demand letter to Spouses Delos Santos. As shown above, the records support the conclusion that petitioner complied with the legal requirement of demand before initiating the extra-judicial foreclosure proceedings in issue.

Besides, *the Court has taken judicial notice of the standard practice in commercial transactions for banks to send demand letters to their debtors as part and parcel of every collection effort*, especially in light of the legal requirement that demand is required before default may set in, subject to well-known exceptions recognized by law and jurisprudence.⁶⁸ Given the same, there is basis to hold that petitioner sent a demand letter to Spouses Delos Santos before extra-judicially foreclosing on the mortgage, *moreso*, when the matter is supported by the extant records.

E. Detailed accounting is not
a requirement of default

Spouses Delos Santos harp on the lack of detailed and full accounting of their loan obligation in support of their argument that the extrajudicial foreclosure proceedings are null and void. However, it is well-settled that detailed accounting is *not* required for a debtor to be considered in default,⁶⁹ *as a debt is already liquidated when its existence and amount are determined*.⁷⁰

Thus, a lack of full accounting cannot enjoin foreclosure, especially when the debtor fails to establish that a detailed accounting would show

⁶⁶ Rollo, pp. 28-29, Petition.

⁶⁷ *Z. E. Lotho, Inc. v. Ice & Cold Storage Industries of the Philippines, Inc.*, 113 Phil. 713, 720 (1961).

⁶⁸ *Premiere Development Bank v. Central Surety & Insurance Company, Inc.*, 598 Phil. 827, 847 (2009). (Emphasis supplied)

⁶⁹ *TML Gasket Industries, Inc. v. BPI Family Savings Bank, Inc.*, 701 Phil. 44, 52 (2013); *Selegna Management and Development Corp. v. United Coconut Planters Bank*, 522 Phil. 671 (2006).

⁷⁰ *First United Constructors Corp. v. Bayanihan Automotive Corp.*, 724 Phil. 264 (2014).

that it is *not* in default.⁷¹ The rule is especially applicable to the present case, given that despite Spouses Delos Santos' claim that they had paid PHP 1,200,000.00 to PDB, they only produced receipts evidencing payment up to the sum of PHP 271,000.00 only,⁷² which is *manifestly insufficient* to discharge the principal loan of PHP 1,000,000.00.

Personal notice of the extrajudicial foreclosure

As previously discussed, the Promissory Note contains an authorization for petitioner, at its option at any time and without prior notice to Spouses Delos Santos, to apply the payment of "any and all money's, securit[i]es and things of value which may or hereafter be in its hands on deposit or otherwise to the credit of or belonging to [Spouses Delos Santos.]" Paragraph 5 of the Real Estate Mortgage likewise states that when Spouses Delos Santos fail to pay any of the amortizations due, then all the amortizations shall become due, payable, and *defaulted* and petitioner may *immediately* foreclose the mortgage judicially or extrajudicially:

5. If at any time the Mortgagor [Spouses Delos Santos] shall fail or refuse to pay any of the amortizations on the indebtedness, or the interest when due or whatever other obligation herein secured. . . , then all the amortizations and other obligations of the Mortgagor of any nature with the Mortgagee [PDB] *shall become due, payable and defaulted and the Mortgagee may immediately foreclose this Mortgage judicially or extrajudicially under Act No. 3135 as amended and/or Act No. 1508 as amended[.]*⁷³ (Emphasis supplied)

Based on the foregoing provisions, it cannot be denied that petitioner was empowered to apply for the extrajudicial foreclosure of the mortgage constituted over the subject properties after Spouses Delos Santos defaulted on the payment of their loan obligation.⁷⁴

Still, the Court notes that paragraph 12 of the Real Estate Mortgage includes a provision on correspondence relative to the mortgage, including demand letters or notification of any judicial or extra-judicial

⁷¹ *Selegna Management and Development Corp. v. United Coconut Planters Bank*, 522 Phil. 671 (2006).

⁷² TSN, Nenita Delos Santos, August 3, 2016, pp. 4–5.

⁷³ Rollo, p. 59.

⁷⁴ *Supra* note 71.

action. Importantly, the subject provision was interpreted by the Court in *Planters Development Bank v. Lubiya Agro Industrial Corp.*,⁷⁵ wherein it was held that the clause requires the creditor-mortgagee to send a personal notice of foreclosure to the borrower-mortgagor *before* instituting extrajudicial foreclosure proceedings:

As a general rule, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary. Section 3 of Act No. 3135 governing extra-judicial foreclosure of real estate mortgages only requires the 1) posting of the notice of extrajudicial foreclosure sale in three public places; and 2) publication of the said notice in a newspaper of general circulation, viz.:

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality and city.

Nevertheless, jurisprudence is replete with Our pronouncement that despite the above provisions of the law, the parties to a mortgage contract are not precluded from imposing additional stipulations. This includes the requirement of *personal notification* to the mortgagor of any action relative to the mortgage contract, such as the institution of an extrajudicial foreclosure proceeding.

Thus, the exception to the rule is when the parties stipulate that personal notice is additionally required to be given the mortgagor. Failure to abide by the general rule, or its exception, renders the foreclosure proceedings null and void.

In the instant case, paragraph 12 of the parties' real estate mortgage contracts state:

All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or ***notification of any judicial or extra-judicial action***, shall be sent to the Mortgagor at the above given address or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee. (Emphasis and italics supplied)

However, in an effort to extricate itself from its duties under the mortgage contracts, Planters Bank avers that the foregoing provision

⁷⁵ 843 Phil. 217 (2018).

does not state that it should notify Lubiya of the actual extrajudicial foreclosure sale before it can be validly conducted. As such, it conveniently insists that the demand letter dated June 8, 1998, which Lubiya received on June 24, 1998 prior to the auction sale on October 6, 1998, duly satisfied the notice requirement agreed upon by the parties.

This argument fails to persuade.

The provisions of Act No. 3135 notwithstanding, under paragraph 12 of the real estate mortgage contracts signed by the parties, Planters Bank obligated itself to notify Lubiya of any judicial or *extrajudicial action* it may resort to with respect to the mortgages. Hence, *We cannot agree with Planters Bank that the June 8, 1998 demand letter that it sent to Lubiya satisfies the bank's additional obligation to provide personal notice of the extrajudicial foreclosure sale to the mortgagor.*⁷⁶ (Emphasis in the original; italics supplied)

In the more recent case of *Philippine Savings Bank v. Co*,⁷⁷ the Court explained that if a contract contains a stipulation⁷⁸ similar to the present case as regards the borrower-mortgagor's address for purposes of service, "*notwithstanding the absence of words specifically requiring personal notice of foreclosure be given to a mortgagor,*" the failure to notify the borrower-mortgagor prior to extrajudicial foreclosure of a mortgage *invalidates* the foreclosure. The rule ensures the observance of *due process* in extrajudicial foreclosure proceedings by affording the borrower-mortgagor the opportunity to safeguard his or her rights over the mortgaged property. Notably, the requirement of personal notification was recognized by the Court, notwithstanding the provision in the promissory note that as a consequence of default, the creditor-mortgagee may foreclose the mortgage "without need of notice or demand."


Given the circumstances, the Court holds that *before* the subject properties may be sold at public auction to satisfy the mortgage debt in accordance with Act No. 3135, petitioner had the contractual duty to

⁷⁶ *Id.* at 221–223.

⁷⁷ 912 Phil. 695, 708 (2021).

⁷⁸ The personal notification clause in *Philippine Savings Bank v. Co* reads:

60. Stipulation on the address of CLIENT/S. All correspondents relative to this AGREEMENT, including demand letters, summons, subpoenas or notification of any judicial or extra-judicial actions shall be sent to the CLIENT/S at the address given above or at the address that may hereafter be given in writing by the CLIENT/S to the BANK and the mere act of sending any correspondence by mail or personal delivery to the said address shall be valid and effective notice to the CLIENT/S for all legal purposes, and the fact that any communication is not received by the CLIENT/S or that it has been returned unclaimed to the BANK, or that no person was found at the address given, or that the address given is fictitious, or cannot be located, shall not excuse or relieve the CLIENT/S from the effect of such notice.



personally notify Spouses Delos Santos of the intended foreclosure sale. The question, therefore, is whether petitioner complied with this obligation when it opted to collect the unpaid loan obligation of Spouses Delos Santos through the extrajudicial foreclosure proceedings in question.

The Court finds that petitioner *complied* with the personal notification requirement by furnishing a copy of the Petition for Extra-Judicial Foreclosure of Mortgage to Spouses Delos Santos on January 16, 2001, a date prior to the extrajudicial foreclosure sale of the subject properties on May 2, 2001.

The records show that on January 16, 2001, petitioner filed the Petition for Extra-Judicial Foreclosure of Mortgage⁷⁹ with the Executive Judge of RTC, Davao City through the Office of the Clerk of Court and Ex-Officio Sheriff of the said trial court. Petitioner prayed for the Sheriff to cause the public auction sale of the subject properties in accordance with Act No. 3135, to wit:

The terms and conditions of the Deeds of Real Estate/Chattel mortgage/s were violated by reason of the failure of the debtors whose performance of the principal obligation is hereby secured by said mortgage to pay their long overdue account despite several and repeated demands for payment of the same copy of the Demand Letter and the registry return receipt are hereto attached and marked as Annexes "D" and "D-1."

....

The principal obligation exclusive of interest and charges thereon secured by the mortgagee, as of October 15, 2000 stands at a total of ONE MILLION PESOS (P1,000,000.00), Philippine Currency.

IN VIEW THEREOF and pursuant to the Deed of Real Estate Mortgage confers upon the mortgagee the power to sell the mortgaged properties at public auction. It is respectfully requested that you enter upon and take possession of the mortgaged properties, effect the requisite levy and sell and dispose of the same to the highest bidder at public auction after the requisite publication of notice in accordance with the provisions of Act 3135, as amended, to satisfy the indebtedness of the debtors in accordance with the terms and conditions of the corresponding loan documents.⁸⁰

⁷⁹ Records, pp. 232-234.

⁸⁰ *Id.* at 233, Petition for Extrajudicial Foreclosure of Mortgage.

The records further disclose that a copy of the Petition for Extra-Judicial Foreclosure of Mortgage was furnished to Spouses Delos Santos on January 16, 2001 at their address, i.e., Flores Subdivision, Bangkal, Davao City,⁸¹ the same address that they provided to PDB when they executed the Real Estate Mortgage.⁸²

Importantly, Spouses Delos Santos *admitted* that they received *from petitioner* a copy of the Petition for Extrajudicial Foreclosure on April 28, 2001, *before* the extrajudicial foreclosure sale was held on May 2, 2001:

3. That last April 28, 2001, the plaintiffs were surprise [*sic*] to receive from the defendants herein the copies of the Petition for Extra-Judicial Foreclosure of Mortgage (Annex C), Notices of Foreclosure (Annex D) and Extra-Judicial Sale (Annex E) docketed as EJF-REM Case No. 4146-2001 foreclosing the aforestated properties, which are to be sold at public action on May 2, 2001 at 10:00 o'clock in the morning at the main entrance of the Halls of Justice, Ecoland, Davao City[.]⁸³

In fact, because Spouses Delos Santos were notified of the extrajudicial foreclosure proceedings, by *April 30, 2001* or two days *before* the actual extrajudicial foreclosure sale of the subject properties on May 2, 2001, the Spouses had already caused the preparation of and signed their Davao Complaint.⁸⁴ Even more, they were able to file the Davao Complaint with the RTC, Davao City on the same day of the public auction sale of the subject properties on May 2, 2001.

In view of the foregoing, the Court finds that it was error for the CA to declare as null and void the extrajudicial foreclosure sale of the subject properties on May 2, 2001. Petitioner complied with its obligation to personally notify Spouses Delos Santos of the afore-stated extrajudicial foreclosure proceedings. Stated otherwise, there was no violation of Spouses Delos Santos' right to due process as they were personally notified of the extrajudicial foreclosure sale of the mortgaged properties; hence, there is no basis to avoid the said foreclosure proceedings.

⁸¹ *Id.* at 234, Verification for the Petition for Extrajudicial Foreclosure of Mortgage.

⁸² *Id.* at 15, Real Estate Mortgage.

⁸³ *Rollo*, p. 64.

⁸⁴ Records, pp. 41-46.

Prescription has not set in

Petitioner points out that the Complaint with the RTC Makati was filed only after more than 11 years since the foreclosure sale of the mortgaged properties in 2001. Indeed, as may be gleaned from the parties' submissions, the mortgaged properties were foreclosed on March 28, 2001, and sold at public auction on May 2, 2001, in the amount of PHP 1,605,027.77 in favor of petitioner. Further, in 2003, the mortgaged properties have already been transferred in the name of petitioner under TCT Nos. T-360155 and T-360156, respectively. However, the Complaint for annulment of foreclosure sale was re-filed with the RTC Makati only on October 25, 2012.⁸⁵

Notwithstanding the foregoing, prescription cannot be said to have set in as to bar respondents' action to avoid the foreclosure proceedings and the extra-judicial sale of the mortgaged properties.

Where a sale under a special power of attorney may be avoided at the election of the mortgagor for some irregularity—as when the mortgagee purchased without authority, or that there was an inadequacy in the price obtained, a want of sufficient or proper notice, or the like—the mortgagor must institute proceedings for avoidance within apt and reasonable time.⁸⁶ The debtor-mortgagor may file an action to annul an extrajudicial foreclosure sale on the ground that the mortgagee failed to comply with its contractual obligation to send to the debtor-mortgagor personal notice of the extrajudicial foreclosure.⁸⁷

The action to recover an improperly foreclosed property is based on constructive trust under Article 1456⁸⁸ of the Civil Code. A constructive trust is “a trust *by operation of law* which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of *wrong*, or *by any form of unconscionable conduct*, artifice, concealment, or questionable means, or who *in any way against equity and good conscience*, either has obtained or holds the *legal right* to property which he ought not, in equity and good

⁸⁵ Rollo, pp. 149–151, Pre-Trial Order.

⁸⁶ *Olizon v. Court of Appeals*, 306 Phil. 162, 175 (1994).

⁸⁷ *See Global Holiday Ownership Corp. v. Metropolitan Bank & Trust Co.*, 607 Phil. 850, 860 (2009).

⁸⁸ CIVIL CODE, art. 1456 states:

ARTICLE 1456. If property acquired through mistakes or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for benefit of the person from whom the property comes.

conscience, hold and enjoy.”⁸⁹ Under Article 1144(2)⁹⁰ of the Civil Code, obligations created by law, such as constructive trusts, must be filed within 10 years from the time the cause of action accrues.⁹¹

Thus, in *Heirs of Espiritu v. Spouses Landrito*,⁹² the Court ruled that a constructive trust is created in favor of the mortgagor when a secured creditor improperly forecloses upon a real estate mortgage despite lack of prior valid demand. In such a case, the mortgagor may recover the foreclosed property from the one who purchased it at public auction, subject to the rights of innocent purchasers for value.

The action to recover the real property must be filed within 10 years, counted from the date of the registration of the Sheriff’s Certificate of Sale,⁹³ following Section 51⁹⁴ of Presidential Decree No. 1529, which provides that registration of the sale is the operative act of conveyance. However, when the mortgagor has *actual* knowledge of the improper foreclosure sale, the period must be counted from actual notice of the sale because actual knowledge or notice is equivalent to registration.⁹⁵

Similar to *Heirs of Espiritu*, the foreclosure of the Real Estate Mortgage in the present case was alleged to be improper and premature because no prior valid demand was supposedly sent to the Spouses Delos Santos. Consequently, when the mortgaged properties were sold to petitioner on May 2, 2001, during the foreclosure sale, a constructive trust

⁸⁹ *Sumaoang v. RTC, Branch XXXI, Guimba, Nueva Ecija*, 289 Phil. 577, 591–593 (1992), citing *Roa, Jr. v. Court of Appeals*, 208 Phil. 2, 14 (1983).

⁹⁰ CIVIL CODE, art. 1144 states:
ARTICLE 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment.

⁹¹ *Sps. Ty v. Heirs of Spouses Palermo*, G.R. No. 240863, October 6, 2021 [Notice].

⁹² *Heirs of Espiritu v. Sps. Landrito*, 549 Phil. 180 (2007).

⁹³ *Id.*

⁹⁴ PRESIDENTIAL DECREE NO. 1529, sec. 51 reads:

SECTION 51. *Conveyance and Other Dealings by Registered Owner.* — An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, leases or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease, or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies. (Emphasis supplied)

⁹⁵ See *Lavides v. Pre*, 419 Phil. 665 (2001) and *Abuyo v. De Suazo*, 124 Phil. 1138 (1966).

was created in favor of the Spouses Delos Santos, as trustors, and petitioner, as trustee, who incurred the obligation to restore or return the foreclosed properties to the Spouses.⁹⁶ Notably, the Spouses had *actual knowledge* of the extrajudicial foreclosure sale considering that they filed their complaint for nullity of the sale with the RTC Davao City on the same date, i.e., May 2, 2001. Thus, the prescriptive period must be counted on said date.

In relation thereto, Article 1155 of the Civil Code provides three modes through which prescription of an action may be interrupted: *first*, when the action is filed before the court; *second*, when there is a written extrajudicial demand by the creditors; and *third*, when there is any written acknowledgment of the debt by the debtor.

The interruption of the period of prescription through any of the foregoing modes *wipes out* the period that has already elapsed and starts anew the prescriptive period. Thus, in a case where the first complaint was dismissed for lack of jurisdiction over the subject matter, the action was deemed to have *interrupted* the prescriptive period; hence, the prescriptive period is reset *and* the plaintiff was given a *fresh period* of prescription, counted from the dismissal of the first action.⁹⁷

Here, the Complaint for Nullity of the Foreclosure Sale in RTC Davao City filed on May 2, 2001 was dismissed by the RTC Davao City on the ground of wrong venue. The dismissal became the subject of a Motion for Reconsideration, which was denied by the RTC Davao City in its Order dated January 7, 2003.⁹⁸

Pursuant to Article 1155 of the Civil Code, the action before RTC Davao City, despite its dismissal, wiped out the period of prescription that already lapsed and started it anew. Thus, the period for respondents to file the Complaint with the RTC Makati must be counted from January 7, 2003. Accordingly, prescription has not yet set in when the Complaint was re-filed with the RTC Makati on October 25, 2012, or about nine years and nine months from the dismissal of the first action.

Laches is also not applicable. Laches does not apply where the delay is within the period prescribed by law. Laches, being a recourse in

⁹⁶ See *Banzon v. Cruz*, 150-A Phil. 865 (1972).

⁹⁷ *F.H. Stevens & Co., Inc. v. Norddeutscher Lloyd*, 116 Phil 483 (1962).

⁹⁸ *Rollo*, p. 23, Petition.

equity, would only apply in the absence of a statutory prescriptive period. Thus, as a rule, laches cannot abate an action that was filed within the prescription period mandated by the Civil Code.

All told, the Court reverses and sets aside the Decision and Resolution of the CA and holds that the extrajudicial foreclosure sale on May 2, 2001 is valid. The Decision of the RTC, Makati City dismissing respondents' Complaint for lack of merit is thus reinstated.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated July 26, 2019, and the Resolution dated June 11, 2020, of the Court of Appeals in CA-G.R. CV No. 109253 are **REVERSED and SET ASIDE**. The Decision dated April 17, 2017 of Branch 66, Regional Trial Court, Makati City in Civil Case No. 12-1049 is **REINSTATED**.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

On official business but left
Concurring Opinion



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

On leave
MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest 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.


HENRI JEAN PAUL B. INTING
Associate Justice
Acting Chairperson, Third Division
(per S.O. No. 3156 dated January 10, 2025)

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Acting Chairperson's Attestation, 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