



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PANACAN LUMBER CO.,  
ANTONIO B. GO, MA. TERESA  
C. GO and DOROTEA B. GO,

Petitioners,

G.R. No. 226272

Present:

PERLAS-BERNABE, J.,  
*Chairperson,*

HERNANDO,  
INTING,

DELOS SANTOS, and

BALTAZAR-PADILLA, \* JJ.

- versus -

SOLIDBANK CORP., (now  
METROPOLITAN BANK &  
TRUST COMPANY),<sup>1</sup>

Respondent.

Promulgated:

16 SEP 2020

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DECISION

**HERNANDO, J.:**

Challenged in this Petition<sup>2</sup> is the July 31, 2015 Decision<sup>3</sup> and August 12, 2016 Resolution<sup>4</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 99342 which reversed and set aside the February 13, 2012 Decision<sup>5</sup> of the Regional Trial Court (RTC), Branch 42 of Manila in Civil Case No. 99-95722. The CA affirmed the following obligations of petitioner Panacan Lumber Co. (PLC), Antonio B. Go (Antonio), Ma. Teresa C. Go (Teresa) and Dorotea B. Go (Dorotea) in favor of respondent Solidbank Corp. (Solidbank), now Metropolitan Bank & Trust Company (MBTC): (a) PLC's remaining loan obligation under the Foreign Letter of Credit (FLC) in the amount of US\$108,000.00 subject to 6% interest rate per *annum* from May 1997 until the

\* On leave.

<sup>1</sup> Jesusa Prado-Maningas, Clerk of Court and Ex-Officio Sheriff, and Mario P. Villanueva, Sheriff-in-Charge, were deleted as party-respondents pursuant to Section 4, Rule 45 of the Rules of Court.

<sup>2</sup> *Rollo*, pp. 9-53.

<sup>3</sup> *CA rollo*, pp. 180-196; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Agnes Reyes-Carpio.

<sup>4</sup> *Id.* at 257-261.

<sup>5</sup> *Records*, Vol. 2, pp. 680-689.

date of foreclosure sale in October 1999; and (b) PLC's loan obligation of ₱700,000.00 under renewal promissory note (PN) subject to 6% interest rate per *annum* from November 1997 until the date of foreclosure sale in October 1999.

The appellate court further 1) declared the title over the mortgaged property consolidated in the name of Solidbank as null and void for having been issued in violation of the writ of preliminary injunction issued by the trial court; 2) granted to mortgagors, petitioners PLC, Antonio, Teresa and Dorotea, a period of one (1) year from the finality of the decision within which to redeem the subject property by paying the redemption price plus one percent (1%) interest per month from the time of foreclosure until the actual redemption; 3) deleted the award of temperate damages of ₱400,000.00 and attorney's fees of ₱100,000.00 for lack of sufficient basis and merit; and 4) affirmed the dismissal of MBTC's counterclaims for lack of merit.

### The Antecedents

On March 7, 1997, Solidbank issued a FLC<sup>6</sup> worth US\$168,000.00 in favor of PLC to finance the latter's importation of lumber which was allegedly secured by a Domestic Letter of Credit (DLC)<sup>7</sup> dated February 14, 1997 valued at ₱4,240,000.00 issued by Philippine Commercial and Industrial Bank (PCIB). However, when the shipment arrived in Davao City, Solidbank refused to release the shipping documents necessary for the discharge of the goods for failure of PLC to pay the amount of US\$168,000.00 under the FLC. In April 1997, PLC made partial payments of US\$60,000.00 on its obligation under the FLC.<sup>8</sup>

Meanwhile, on March 27, 1997, PLC obtained a loan from Solidbank in the amount of ₱700,000.00 under PN No. 96000251 which would pay for the taxes, duties and insurance premium on said lumber importation. As a security for the said loan, petitioners Antonio and Teresa executed a real estate mortgage (REM) over the property covered by Transfer Certificate of Title (TCT) No. T-217531. They were allegedly made to sign blank forms purporting to be a deed of REM with a principal amount of ₱2,000,000.00<sup>9</sup>

On October 24, 1997, Solidbank agreed to renew PLC's loan for another ₱700,000.00 after payment of interests and other charges by petitioners. However, petitioners failed to pay the balance of the total obligation which resulted in the extra-judicial foreclosure of mortgage over the property covered by TCT No. T-217531 with a principal obligation of ₱700,000.00. Solidbank later amended its Petition for Extra-Judicial Foreclosure of Mortgage to increase the loan obligation to ₱1,140,245.10. It

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<sup>6</sup> Id., Vol. 1, pp. 111-115.

<sup>7</sup> Id. at 117-119.

<sup>8</sup> *Rollo*, p. 68.

<sup>9</sup> Records, Vol. 1, pp. 120-122.

then filed a Second Amended Petition to include petitioner PLC's obligation under the FLC which resulted in the total loan obligation of ₱9,151,667.89.<sup>10</sup>

On October 4, 1999, a public auction was held where Solidbank was adjudged as the highest bidder for the bid price of ₱2,637,600.00. Consequently, on November 22, 1999, petitioners filed a complaint<sup>11</sup> against Solidbank, the Clerk of Court and Ex-Officio Sheriff of Manila, and Mario P. Villanueva (Villanueva), Sheriff-in-Charge, with prayer for the issuance of a temporary restraining order and writ of preliminary injunction. Petitioners claimed that they suffered damages by way of unrealized profits on account of Solidbank's refusal to release the shipping documents pertaining to the lumber importation and that they were prejudiced by the subsequent foreclosure of mortgage over the property covered by TCT No. T-217531, which wrongfully included the obligation under the FLC.

Solidbank opposed petitioners' application for a temporary restraining order and writ of preliminary injunction. In its Answer with Compulsory Counterclaim,<sup>12</sup> Solidbank argued that it acted within its rights when it did not release the shipping documents pertaining to PLC's lumber importation as the latter failed to submit the documents required to effect payment on its PCIB's DLC despite several extensions given. As to the foreclosure of the REM, Solidbank insisted that it included "any and all existing indebtedness of, and such other Loans and Credit facilities which may hereafter be granted to Panacan Lumber Company". In addition, the bank contended that it has fully and substantially complied with the legal and procedural requirements to foreclose the REM. It denied any liability for any unrealized profits or damages the petitioners may have suffered when it withheld the release of the shipping documents. It further asserted that the interest and other charges are reasonable and based on the prevailing interest rate at the time the loan was granted and that the dollar-to-peso conversion rate was computed at the time of payment pursuant to law and prevailing jurisprudence.

On October 31, 2000, the trial court issued an Order<sup>13</sup> which granted petitioners' prayer for the issuance of a writ of preliminary injunction and enjoined respondent from further executing acts towards consolidating Solidbank's ownership over the property covered by TCT No. T-217531. Thereafter, trial on the merits ensued.

Despite the issuance of a preliminary injunction, Solidbank proceeded to consolidate its ownership over the subject property. Thus, petitioners filed a Motion to Admit Supplemental Complaint<sup>14</sup> to include Solidbank's successor-

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<sup>10</sup> Id. at 31

<sup>11</sup> Id. at 1-21.

<sup>12</sup> Id. at 84-93.

<sup>13</sup> Id. at 228-229.

<sup>14</sup> Id., Vol 2, pp. 6-8.

in-interest, MBTC, the registered owner of the subject property. The trial court granted the said motion in its February 17, 2005 Order.<sup>15</sup>

However, Solidbank failed to present any of its witnesses and file its memorandum within the reglementary period. Thus, petitioners moved that the case be submitted for decision. Nonetheless, the trial court allowed Solidbank to present its witness in its March 20, 2009 Order<sup>16</sup> over the objection of petitioners. Petitioners moved for the reconsideration of the said Order and for the inhibition of Judge Gregorio B. Clemeña (Judge Clemeña). Consequently, Judge Clemeña inhibited from the case but denied petitioners' motion for reconsideration in his May 11, 2009 Order.<sup>17</sup>

Hence, petitioners elevated the case on *certiorari*<sup>18</sup> under Rule 65 before the CA docketed as CA-G.R. SP No. 109777. The appellate court subsequently granted the petition in its March 29, 2010 Decision<sup>19</sup> and set aside the March 20, 2009 and May 11, 2009 Orders issued by Judge Clemeña of the RTC of Manila, Branch 51. The appellate court also enjoined the Presiding Judge of RTC of Manila, Branch 42, to which the case was re-raffled, from further receiving evidence for Solidbank and considered the case submitted for decision. Solidbank's motion for reconsideration was likewise denied by the CA in its August 13, 2010 Resolution.<sup>20</sup> Thus, it brought the matter to this Court via a petition for review on *certiorari* which was however denied in Our September 27, 2010<sup>21</sup> and January 12, 2011<sup>22</sup> Resolutions.

Meanwhile, Solidbank presented its bank manager, Teresita Javellana, as witness and filed its formal offer of evidence. However, the trial court in its April 19, 2011 Order<sup>23</sup> refused to act on the said formal offer upon notice of this Court's ruling on the petition for review on *certiorari*. Solidbank moved for the reconsideration thereof which was however denied by the trial court in its July 4, 2011 Order.<sup>24</sup> Hence, Solidbank simply tendered its excluded evidence.

### ***Ruling of the Regional Trial Court:***

On February 13, 2012, the trial court rendered its Decision<sup>25</sup> which ordered Solidbank to pay petitioners the amount of ₱400,000.00 as temperate damages and ₱100,000.00 as attorney's fees plus costs. The trial court likewise nullified the foreclosure proceedings and sale of the subject property

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<sup>15</sup> Id. at 48-49.

<sup>16</sup> Id. at 118-119.

<sup>17</sup> Id. at 142.

<sup>18</sup> Id. at 164-178.

<sup>19</sup> Id. at 589-597; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Normandie B. Pizarro and Ruben C. Ayson.

<sup>20</sup> Id. at 476-477.

<sup>21</sup> Id. at 490.

<sup>22</sup> Id. at 506.

<sup>23</sup> Id. at 575.

<sup>24</sup> Id. at 587.

<sup>25</sup> Id. at 680-689.

and TCT No. T-251604 registered under MBTC. Lastly, the trial court ordered the dismissal of Solidbank's counterclaims.

***Ruling of the Court of Appeals:***

Upon appeal, the appellate court in its July 31, 2015 Decision,<sup>26</sup> partially granted Solidbank's appeal. It reversed and set aside the RTC's February 13, 2012 Decision, to wit:

WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED.

The Decision dated February 13, 2012, of Branch 42 of the Regional Trial Court of Manila in Civil Case No. 99-95722 is REVERSED and SET ASIDE. Judgement is hereby rendered as follows:

(I) Affirming the remaining balance of loan obligation under the letter of credit in the amount of US\$108,000.00 subject to 6% interest per annum from May 1997 until the date of the foreclosure sale in October 1999 and applying the current exchange rate at the time payment is to be made;

(II) Affirming the loan obligation of ₱700,000.00 under renewal promissory note subject to 6% interest per annum from November 1997 until the date of the foreclosure sale, October 1999;

(III) Declaring the consolidation of title over the mortgaged property now in the name of defendant-appellant Metropolitan Bank & Trust Company, as null and void, for being in violation of the writ of preliminary injunction issued by the trial court and granting to the mortgagors, plaintiffs-appellees herein, a period of one (1) year from the finality of this Decision within which to redeem the subject property by paying the redemption price, following the computation in paragraphs I and II hereof, plus one percent (1%) interest per month thereon, from the time of foreclosure up to the time of the actual redemption, pursuant to Section 28, Rule 39 of the 1997 Rules of Civil Procedure.

(IV) Deleting the award of temperate damages of ₱400,000.00 for the claim of unrealized profits and attorney's fees of ₱100,000.00 for lack of sufficient basis and for lack of merit.

(V) Affirming the dismissal of defendant-appellant Solidbank Corporation's (now Metropolitan Bank & Trust Company) counterclaims for lack of merit.

No pronouncement as to costs.

SO ORDERED.<sup>27</sup>

Petitioners moved for the reconsideration of the appellate court's assailed Decision but the same was denied by the CA in its August 12, 2016

<sup>26</sup> CA rollo, pp. 180-196.

<sup>27</sup> Id. at 194-195.

Resolution.<sup>28</sup> Hence, petitioners filed this Petition for Review on *Certiorari*<sup>29</sup> under Rule 45.

### ISSUES

The issues to be resolved in this case are the following:

1. Whether or not the extra-judicial foreclosure of the [REM] is null and void due to the lack of personal notice to petitioners of the two amended petitions for extra-judicial foreclosure filed by Solidbank.
2. Whether or not the PCIB's [DLC] was issued for the purpose of securing the transaction covered by the [FLC].
3. Whether or not the mortgage contract includes PLC's other loan obligations.
4. Whether or not Solidbank committed a breach of contract when it amended the petition for foreclosure of [REM] to include PLC's other loan obligations.
5. Whether or not the appellate court erred when it granted Solidbank's counterclaim despite its failure to adduce evidence and when it adjudicated matters not litigated nor raised by the parties in their pleadings.

Petitioners argue that the foreclosure proceedings should be declared null and void due to Solidbank's failure to notify them of the two amended petitions for extra-judicial foreclosure of the REM. They contend that although Section 3 of Act No. 3135,<sup>30</sup> as amended by Act No. 4118,<sup>31</sup> requires only posting of sale in three public places and the publication of that notice in a newspaper of general circulation, however, the parties may stipulate with respect to notices of the foreclosure. Petitioners assert that they agreed that all correspondence relative to the mortgage shall be sent by Solidbank to PLC. Nonetheless, Solidbank failed to notify petitioners of its two amended petitions for extra-judicial foreclosure as well as the foreclosure sale.

Petitioners further argue that the appellate court did not act on the issue of the nullity of the foreclosure on the pretext that it was not raised as a cause of action and/or on appeal. Petitioners insist that lack of notice to them of the two amended petitions was a judicially admitted fact, thus, it was grievous

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<sup>28</sup> Id. at 257-261.

<sup>29</sup> *Rollo*, pp. 9-53.

<sup>30</sup> An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real-Estate Mortgages. Approved: March 6, 1924.

<sup>31</sup> An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five, entitled "An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real-Estate Mortgages". Approved: December 7, 1933.

error on the part of the appellate court not to rule on the issue of nullity of foreclosure due to lack of personal notice.

Moreover, petitioners contend that they submitted the PCIB's DLC to Solidbank as a security for the FLC. The testimony of Antonio is undisputed that PLC applied for a FLC to finance its lumber importation and as required by Solidbank, PLC submitted PCIB's DLC as a collateral security. However, Solidbank was remiss in its duty when it did not ensure that it can draw from the PCIB's DLC to protect its interest before it issued the FLC to PLC. Thus, Solidbank committed a breach of contract when it refused to release the shipping documents in favor of PLC despite the presence of a collateral security. In addition, Solidbank had no valid reason to withhold the bill of lading as the agreement states that it shall have a lien on the goods, or shipment in case of default in payment.

Petitioners further argue that the REM only covers the loan obligation in the amount of ₱700,000.00 and not the loan obligation under the FLC in the amount of US\$168,000.00 and other loan obligations absent any mention in the mortgage contract that the mortgage stands as security therefor. If the parties intended that the FLC be secured by the REM, then the same should have been indicated in the contract. Also, if it was indeed the intention of the parties to include the same, Solidbank would not have any reason not to release the shipping documents pertaining to PLC's lumber importation knowing fully well that the said transaction is secured by the REM and PCIB's DLC.

Finally, petitioners opine that the appellate court erred when it awarded Solidbank's counterclaims by ordering petitioners to pay its loan obligation under the FLC and the ₱700,000.00 loan obligation under the renewal PN. Petitioners claim that these issues have not been litigated nor raised in the pleadings, thus, the same cannot be awarded by the appellate court. No evidence whatsoever was presented by Solidbank on these matters which resulted in the dismissal thereof in the trial court.

On the other hand, Solidbank argues that the lack of personal notice to petitioners of the two amended petitions was not raised during the trial. Thus, the appellate court correctly refused to act on the said issue as issues raised for the first time on appeal are not allowed under settled jurisprudence. Solidbank insists that petitioners did not raise before the trial court the issue of wrongful inclusion of the FLC in the foreclosure of mortgage. Likewise, the issue of lack of personal notice was not properly put in issue during the trial considering that the testimony of Antonio was not offered for such purpose but for the following purposes: (a) that PLC suffered irreparable damage resulting from the foreclosure proceeding; (b) that PCIB issued a DLC to secure the FLC acquired by PLC from Solidbank; and (c) that Solidbank committed wrongful acts in the mortgage foreclosure.

Solidbank further contends that the appellate court correctly ruled that the PCIB's DLC did not secure Solidbank's FLC issued to PLC because it was issued for a different transaction. Also, Solidbank claims that the REM covered all obligations of PLC to Solidbank by virtue of the blanket dragnet clause stipulated therein. Even assuming that the FLC is secured by PCIB's DLC, an additional security like the REM is not prohibited by law, unless otherwise agreed upon by the parties.

Moreover, Solidbank is justified in refusing the release of the shipping documents considering that PLC failed to pay its loan obligation under the FLC. It is undisputed that the parties entered into a letter of credit wherein the buyer, PLC, obliged itself to reimburse the issuing bank, Solidbank, upon receipt of the documents of title. On the other hand, Solidbank undertook to pay the seller upon receipt of the draft and proper documents of titles and to surrender the documents to PLC upon reimbursement. The seller ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment. Hence, Solidbank argues that the failure of PLC to reimburse or pay despite its repeated demands justified its refusal to surrender the shipping documents to PLC.

In addition, Solidbank contends that the parties did not agree that the payment or reimbursement may be made by assigning the PCIB's DLC. The contract clearly provides that the reimbursement shall be made upon demand of Solidbank. It cannot be compelled to receive anything other than what was contemplated in the FLC. Nonetheless, even assuming that Solidbank accepted PCIB's DLC as a security, its failure to draw from the said DLC cannot be deemed as a waiver of its right to seek payment. The option to demand payment from PLC under the FLC or to draw from the PCIB's DLC remains with Solidbank. It has no obligation to exhaust its remedies against PCIB's DLC before demanding payment from PLC.

Solidbank maintains that it did not act in bad faith during the foreclosure proceedings when it twice amended the petition for extra-judicial foreclosure resulting in PLC's increased mortgage indebtedness from ₱700,000.00 to ₱9,151,667.89. Nothing in the provisions of Act No. 3135 prohibits the amendment of a petition for extra-judicial foreclosure. Also, petitioners failed to adduce any evidence to prove Solidbank's bad faith.

Lastly, Solidbank argues that the appellate court did not err in adjudicating on petitioners' outstanding obligations as the same were judicially admitted during the trial. Thus, petitioners cannot now claim that it was not litigated by the parties as they themselves put forth their outstanding obligations in their pleadings. Notwithstanding the fact that Solidbank failed to submit evidence on its behalf, it is evident that petitioners have not yet fully discharged their obligations to Solidbank.



### The Court's Ruling

We find the petition partly meritorious.

Well-settled is the rule that personal notice to the mortgagor in extrajudicial foreclosure proceedings is not necessary.<sup>32</sup> Section 3 of Act No. 3135, as amended by Act No. 4118, requires only the posting of the notice of sale in three public places and the publication of that notice in a newspaper of general circulation. An exception to this rule is when the parties stipulate that personal notice is additionally required to be given to the mortgagor. Failure to abide by the general rule or its exception renders the foreclosure proceedings null and void.<sup>33</sup>

In the present case, petitioners invoke paragraph 14 of the Deed of REM<sup>34</sup> which provides:

14. All correspondence relative to this mortgage, including demand letters, summons, subpoenas, or notification of any judicial or extrajudicial action, shall be sent to the Mortgagor at above address or at the address that may hereafter be given in writing by the Mortgagor to the Mortgagee.  
x x x<sup>35</sup>

The foregoing stipulation is the law between the parties and should be faithfully complied by them. A perusal of the records reveals that petitioners were notified of the foreclosure proceedings by Solidbank through the Application of Extra-Judicial Foreclosure of Mortgage filed by the bank in 1998.<sup>36</sup> However, Solidbank twice amended the said petition for extra-judicial foreclosure which consequently resulted in the increase of PLC's mortgage indebtedness from ₱797,806.18 to ₱9,151,667.89.<sup>37</sup> In both instances, Solidbank did not send petitioners a personal notice of the two amended petitions. Instead, it proceeded with the foreclosure of mortgage as per Notice of Extra-Judicial Sale dated September 7, 1999.<sup>38</sup>

The provision clearly establishes that personal notice is required before Solidbank may proceed with the foreclosure of the subject property. Thus, Solidbank's act of proceeding with the foreclosure despite the absence of personal notice to petitioners violated the said deed of REM which accordingly renders the foreclosure null and void. If indeed the parties did not intend to require personal notice in addition to the statutory requirements of

<sup>32</sup> *Olizon v. Court of Appeals*, 306 Phil. 162, 170 (1994) citing *Cortes v. Intermediate Appellate Court*, 256 Phil. 979, 984 (1989); *Cruz v. Court of Appeals*, 269 Phil. 175, 178-179 (1990); *Gravina v. Court of Appeals*, 292-A Phil. 280, 283 (1993).

<sup>33</sup> *Paradigm Development Corp. of the Philippines v. Bank of the Philippine Islands*, 810 Phil. 539, 564 (2017), citing *Global Holiday Ownership Corporation v. Metropolitan Bank and Trust Company*, 607 Phil. 850, 864 (2009).

<sup>34</sup> Records, Vol 1, pp. 120-121.

<sup>35</sup> Id. at 121.

<sup>36</sup> Id. at 125.

<sup>37</sup> Id. at 31.

<sup>38</sup> Id.

posting and publication, then the said provision should not have been included in the mortgage contract.

The appellate court therefore erred when it ruled on the validity of the foreclosure sale in the amount of ₱9,151,667.89 without touching on the issue of the lack of personal notice to petitioners on the ground that it was not raised as an issue during the trial. While it is true that issues not raised on trial cannot be raised on appeal, it is not the situation in the present case. The records show that petitioners timely raised in their Complaint<sup>39</sup> and Memorandum<sup>40</sup> filed before the trial court of Solidbank's failure to notify petitioners of its two amended petitions for extra-judicial foreclosure, to wit:

### Complaint

20. – That, the filing of said amended petition and Second Amended Petition for Foreclosure, was done in evident bad faith and constituted another breach of contract committed by defendant Bank, because:

x x x x

(B) Further, in wanton disregard to the rights of plaintiffs, Defendant Bank did not [notify] nor [furnish] plaintiffs copy of said Amended Petition as well as the Second Amended Petition for Foreclosure.<sup>41</sup>

### Plaintiff's Memorandum

However, plaintiffs discovered that defendant bank without notice, filed on February 25, 1999 an amended verified petition for Extra-Judicial Foreclosure increasing its claim from the original amount to ₱700,000.00 to ₱1,140,245.10.

Subsequently, defendant bank again filed a Verified Second Amended Petition for Extra-Judicial Foreclosure without giving notice thereof to plaintiff spouses. In utter bad faith, it included therein, the dollar account in said foreclosure proceedings thereby increasing its claim to ₱9,151,667.89.

Plaintiffs maintain that the wrongful inclusion by defendant bank of the dollar account in its Second Amended Petition for foreclosure dated June 15, 1999 as well as the latter's failure to give notice thereof constitutes a breach of contract which justifies the annulment of the Sheriff's Certificate of Sale dated October 19, 1999 in favor of defendant bank.

x x x x<sup>42</sup>

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<sup>39</sup> Id. at 1-21.

<sup>40</sup> Id., Vol. 2, pp. 630-644.

<sup>41</sup> Id., Vol 1, pp. 10-11.

<sup>42</sup> Id., Vol 2 at 664.

In fact, petitioners, in their Appellees' Brief<sup>43</sup> filed before the CA, raised the same issue to support and justify the assailed February 13, 2012 Decision of the RTC, to wit:

Thereafter, appellees discovered that appellant bank without notice, filed on February 25, 1999 an amended verified petition for Extra-Judicial Foreclosure, increasing its claim from the original amount of ₱700,000.00 to ₱1,140,245.10.

Subsequently, appellant bank filed a Verified Second Amended Petition for Extra-Judicial-Foreclosure, again, without giving notice thereof to appellee spouses. In utter bad faith it included therein the dollar account thereby increasing its claim to P9,151,667.89.

Appellees have proven that the malicious and wrongful inclusion by the appellant bank of the dollar account in its second amended petition which in consequence ballooned appellees' indebtedness to almost ₱10Million justifies the annulment of the foreclosure sale.<sup>44</sup>

As to whether the mortgage contract covers all other existing and future obligations of petitioners, *i.e.* the FLC, PN No. 96000251 and renewal PN, a review of the Deed of REM is proper, *viz.*:

**That, for and in consideration of certain loans, and other credit accommodations obtained from the Mortgagee, and to secure the payment of the same and those that may hereafter be obtained,** the principal of all of which is hereby fixed at TWO MILLION ONLY (PhP 2,000,000.00) Pesos, Philippine Currency, as well as those that the Mortgagee may extend to the Mortgagor/Debtor, including interest and expenses or any other obligation owing to the Mortgagee, whether direct or indirect, principal or secondary, as appears in the accounts, books and records of the Mortgagee, the Mortgagor does hereby transfer and convey by way of mortgage unto the Mortgagee, its successors, or assigns, the parcels of land which are described at the back of this document, and/or appended hereto, together with all the buildings, improvements, or machineries now existing or which may hereafter be erected, constructed thereon or attached thereto, of which the Mortgagor declares that he/it is the absolute owner free from all liens and encumbrances. However, if the Mortgagor/Debtor shall pay to the Mortgagee, its successors or assigns, the obligation/s secured by this mortgage when due, together with interest, and shall keep and perform all and singular the covenants and agreements herein contained for the Mortgagor/Debtor to keep and perform, then this mortgage shall be void; otherwise, it shall remain in full force and effect.<sup>45</sup> (sic) [Emphasis and underscoring ours.]

Patently, the above provision in the Deed of REM is considered a "blanket mortgage" or a "dragnet" clause. The nature and concept of which

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<sup>43</sup> CA *rollo*, pp. 103-147.

<sup>44</sup> *Id.* at 139-141.

<sup>45</sup> Records, Vol. I, p. 120.

were already discussed in *Philippine Charity Sweepstakes Office (PCSO) v. New Dagupan Metro Gas Corporation*,<sup>46</sup> thus:

As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if from the four corners of the instrument the intent to secure future and other indebtedness can be gathered.

Alternatively, while a real estate mortgage may exceptionally secure future loans or advancements, these future debts must be specifically described in the mortgage contract. An obligation is not secured by a mortgage unless it comes fairly within the terms of the mortgage contract.

**The stipulation extending the coverage of a mortgage to advances or loans other than those already obtained or specified in the contract is valid and has been commonly referred to as a "blanket mortgage" or "dragnet" clause.** In *Prudential Bank v. Alviar*, this Court elucidated on the nature and purpose of such a clause as follows:

**A "blanket mortgage clause," also known as a "dragnet clause" in American jurisprudence, is one which is specifically phrased to subsume all debts of past or future origins. Such clauses are "carefully scrutinized and strictly construed."** x x x.

A mortgage that provides for a dragnet clause is in the nature of a continuing guaranty and constitutes an exception to the rule [that] an action to foreclose a mortgage must be limited to the amount mentioned in the mortgage contract. x x x.<sup>47</sup> [Emphasis and underscoring ours; citations omitted]

Although a blanket mortgage or a dragnet clause is generally recognized as valid, these other obligations, past or future, secured by the REM must be specifically described within the terms of the mortgage contract. As can be gleaned from the records, the REM with maximum amount of ₱2,000,000.00 was constituted by the parties to secure PLC's loan obligation in the amount of ₱700,000.00 under P.N. No. 96000251. The Deed of REM also includes all extensions or renewals of the loan or credit accommodation granted to PLC as the mortgagor or debtor, *i.e.* renewal PN, in the amount of ₱700,000.00, to wit:

5. The loans and other credit facilities herein granted or which may hereafter be granted are further evidenced by other documents or promissory notes or such documents which may hereafter be executed, the terms and conditions of which shall be considered as an integral part of this mortgage agreement; that any violation of the terms and

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<sup>46</sup> 690 Phil. 504 (2012).

<sup>47</sup> *Id.* at 521-522.

conditions of the promissory note or notes or documents executed by virtue of this mortgage or default in the payment thereof, shall be considered as a violation of the terms and conditions of this mortgage. **This mortgage shall likewise stand as security for any extension(s) or renewal(s) of the loan or credit accommodation granted to the DEBTOR or MORTGAGOR.**<sup>48</sup> [Emphasis and underscoring ours.]

Thus, it cannot be denied that the REM covered not only PN No. 96000251 but the renewal PN as well since the REM clearly provides that it shall stand as security for any “extension(s) or renewal(s) of the loan or credit accommodation granted to the DEBTOR or MORTGAGOR”. There is no doubt, therefore, as to the inclusion of the renewal PN under the coverage of the Deed of REM.

However, as to the FLC, the Deed of REM is bereft of any reference or provisions that it likewise secured the aforesaid obligation. It bears noting that the FLC was executed by the parties before the execution of PN No. 96000251 and the renewal PN. Although a REM may validly secure past obligations executed by the parties, this is not the case herein. The Deed of REM is clear and explicit that it only covers certain loans and other accommodations obtained from Solidbank without reference to its past obligations such as the FLC. Also, the Deed of REM states that:

This MORTGAGE made and executed by Antonio Go and Ma. Teresa Go, both of legal age, Filipino citizens and residents of Davao City, Philippines, **in order to secure and guarantee, jointly and severally, the loan or credit accommodation which has been granted or may hereafter be granted** to PANACAN LUMBER, CO., xxx<sup>49</sup> [Emphasis and underscoring ours.]

The terms of the Deed of REM are plain and clear that it only secures the loan or credit accommodation granted by Solidbank to PLC upon the execution of PN No. 96000251 and those which may thereafter be granted, *i.e.* the renewal PN. No reference has been made in the REM that past obligations of PLC, *i.e.* the FLC, is also secured by the same Deed of REM. Further, the Deed of REM has a maximum limit of ₱2,000,000.00. Plainly, the obligation under FLC, *i.e.* US\$168,000.00, exceeds this benchmark of ₱2,000,000.00 considering the exchange rate prevailing in 1997.<sup>50</sup> Although the parties are not prohibited to secure the FLC with the Deed of REM, the provisions thereof bear no evidence of their intention for its inclusion. Thus, in the absence of clear and satisfactory evidence of a contrary intention, the Deed of REM does not extend to PLC’s past obligations specifically, the FLC.

Despite the foregoing, We affirm the findings of the appellate court that PLC has an outstanding obligation of ₱700,000.00 in favor of Solidbank under

<sup>48</sup> Records, Vol. I, p. 120.

<sup>49</sup> Id.

<sup>50</sup> *Bangko Sentral ng Pilipinas*, Selected Philippine Economic Indicators, 1993-2002, August 12, 2020. Retrieved from [http://www.bsp.gov.ph/statistics/speiy\\_02/uscross\\_9302.htm](http://www.bsp.gov.ph/statistics/speiy_02/uscross_9302.htm).

the renewal PN No. 96000251 which renewal was granted and executed after PLC paid its obligation of ₱700,000.00 under the original PN No. 96000251. The declaration of nullity of this foreclosure, however, is without prejudice to Solidbank's filing of another action to foreclose the Deed of REM against PLC taking into account the rule on proper notice and the amount of loan secured by the Deed of REM as stated in the renewal PN and applicable interest and penalty charges, as well as other requirements for foreclosure of the REM.

Nonetheless, despite the nullity of the foreclosure sale as to the amount of ₱9,151,667.89, petitioners' obligations to Solidbank under the FLC remain. Solidbank's failure to present any evidence to establish its claims against petitioners cannot prevent this Court to hold petitioners liable to Solidbank as there was enough proof extant in the records on which to base a ruling. This Court has the duty to consider and give due regard to everything on record relevant and material to its resolution of the issues presented. Here, We could not disregard the records that showed petitioners' outstanding obligations due to Solidbank based on petitioners' own admission and evidence formally offered.

Evidently, Solidbank extended to PLC a FLC worth US\$168,000.00. Petitioners claim that Solidbank's refusal to release the documents of title of PLC's lumber importation despite securing it with PCIB's DLC caused them substantial losses by way of unrealized profits. In *Bank of America, NT & SA v. Court of Appeals*,<sup>51</sup> We elucidated on the nature and use of a Letter of Credit in trade transactions:

A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. To break the impasse, the buyer may be required to contract a bank to issue a letter of credit in favor of the seller so that, by virtue of the letter of credit, the issuing bank can authorize the seller to draw drafts and engage to pay them upon their presentment simultaneously with the tender of documents required by the letter of credit. The buyer and the seller agree on what documents are to be presented for payment, but ordinarily they are documents of title evidencing or attesting to the shipment of the goods to the buyer.

Once the credit is established, the seller ships the goods to the buyer and in the process secures the required shipping documents or documents of title. To get paid, the seller executes a draft and presents it together with the required documents to the issuing bank. The issuing bank redeems the draft and pays cash to the seller if it finds that the documents submitted by the seller conform with what the letter of credit requires. The bank then obtains possession of the documents upon paying the seller. The transaction is completed when the buyer reimburses the issuing bank and acquires the documents entitling him to the goods. Under this arrangement,

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<sup>51</sup> 298-A Phil. 326 (1993).

the seller gets paid only if he delivers the documents of title over the goods, while the buyer acquires the said documents and control over the goods only after reimbursing the bank.

What characterizes letters of credit, as distinguished from other accessory contracts, is the engagement of the issuing bank to pay the seller once the draft and the required shipping documents are presented to it. In turn, this arrangement assures the seller of prompt payment, independent of any breach of the main sales contract. By this so-called "independence principle," the bank determines compliance with the letter of credit only by examining the shipping documents presented; it is precluded from determining whether the main contract is actually accomplished or not.

There would at least be three (3) parties: (a) the *buyer*, who procures the letter of credit and obliges himself to reimburse the issuing bank upon receipt of the documents of title; (b) the *bank issuing* the letter of credit, which undertakes to pay the seller upon receipt of the draft and proper documents of titles and to surrender the documents to the buyer upon reimbursement; and, (c) the *seller*, who in compliance with the contract of sale ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment.<sup>52</sup>

In this case, petitioner PLC, the buyer, procured the letter of credit from Solidbank and obliged itself to pay the latter US\$168,000.00 upon receipt of the documents of title. On the other hand, Solidbank undertakes to pay the seller or the beneficiary of the credit instrument upon receipt of the draft and proper documents of title and to surrender the documents to PLC upon reimbursement. Finally, the seller or the beneficiary of the credit instrument, Ricoland Resources SND BWD (Ricoland), ships the goods to the buyer and delivers the documents of title and draft to the issuing bank to recover payment.

Undoubtedly, the seller, Ricoland, shipped the goods to Davao City, Philippines and delivered the documents of title to Solidbank, which in turn refused to release said documents of title to PLC for its failure to reimburse Solidbank the amount of US\$168,000.00. Admittedly, petitioners failed to pay its total obligation to Solidbank under the FLC. Thus, Solidbank cannot be faulted when it denied to release the documents of title pertaining to the lumber importation.

Petitioners' claim that Solidbank is obliged to surrender the documents of title to petitioners despite non-payment of their obligation under the FLC, it being secured by PCIB's DLC, is untenable. Solidbank appropriately refused to rely on the PCIB's DLC when PLC defaulted on its obligation. As stated in their agreement for commercial letter of credit:<sup>53</sup>

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<sup>52</sup> Id. at 334-337.

<sup>53</sup> Records, Vol. 1, pp. 111-114.

## 18. Events and Consequences of Default

If the undersigned fails at any time to maintain a margin security with you, or upon the non performance of any of the promises to pay hereinabove set forth, or upon the non-payment of any of the other obligations or liabilities above mentioned; or upon the failure of the undersigned forthwith, with or without notice, to furnish satisfactory additional collateral or to make payments on account as hereinabove agreed; or to perform or comply with any of the other terms or provisions of this Agreement; x x x then and at any time the happening of such event, any or all of the aforesaid obligations and/or liabilities of the undersigned shall, at your option, become due and payable immediately, without demand or notice, and you may proceed against the undersigned judicially or otherwise to enforce payment or demand additional collaterals from the undersigned that shall protect you from any proceedings by the beneficiary, x x x<sup>54</sup>

The foregoing stipulation clearly gives Solidbank the right to enforce payment on the obligation of PLC under the FLC. Solidbank has the option to demand payment directly from PLC upon the latter's default and is not obliged to first go after the collateral security. In addition, Solidbank is not obliged under the agreement to surrender the documents of title before PLC's payment of its obligation under the FLC. The collateral security does not guarantee the release of documents of title to PLC, but rather the reimbursement of US\$168,000.00 as agreed upon by parties. Even so, PCIB's DLC, which was allegedly issued to secure Solidbank's FLC, pertains to a different transaction. This, furthermore justified the withholding by Solidbank of the documents of title before payment of the total loan obligation by the PLC.

In conclusion, petitioners have no right to demand payment of damages from Solidbank on the ground of substantial losses in its lumber importation caused by Solidbank's refusal to release the documents of title. However, in view of PLC's partial payment in the amount of US\$60,000.00, its remaining loan obligation under the FLC is reduced to US\$108,000.00. The rate of exchange should be that prevailing at the time of payment.<sup>55</sup> However, We delete the appellate court's award of compensatory interest at the rate six percent (6%) per *annum* from May 1997 until the date of the foreclosure sale in October 1999 in view of the absence of express stipulation of the parties as to the payment of interest on the FLC. Instead, PLC shall be liable to pay compensatory interest of 12% per *annum* from the date of judicial demand, *i.e.* the filing of its Answer with Compulsory Counterclaim in January 7, 2000 until June 30, 2013 and 6% per *annum* from July 1, 2013 until the finality of this Decision, in the absence of extra-judicial demand and express stipulation as to rate of compensatory interest.<sup>56</sup> In addition, the monetary award shall

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<sup>54</sup> *Id.* at 113.

<sup>55</sup> *Buenaventura v. Court of Appeals*, 260 Phil 206 (1990) citing *Zagala v. Jimenez*, 236 Phil. 158 (1987) citing *Phoenix Assurance Company vs. Macondray & Co., Inc.*, G.R. No. L-25048, May 13, 1975.

<sup>56</sup> *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).



earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.<sup>57</sup>

Moreover, We deem it proper to discuss the propriety of interest due on the renewal PN No. 96000251 even if the same was not assigned as an error in this petition in order to arrive at a just and complete resolution of this case. Besides, PLC raised in its complaint the issue of the propriety of interests and other charges, thus, it is crucial to finally settle PLC's total obligation secured by the Deed of REM especially when there is sufficient evidence on which to base a ruling.

Contrary to the findings of the appellate court, the monetary interest rate agreed upon by the parties on the renewal PN No. 96000251 is not 28.6889% per month, but 28.6889% per annum. The parties agreed to an interest rate of 28.6889% per *annum* to be repriced every 30 days and payable monthly in advance within 180 days from October 24, 1997 or until April 22, 1998. Based on existing jurisprudence,<sup>58</sup> an interest of three percent (3%) per month or higher is considered as excessive or unconscionable. Hence, We do not find the monetary interest of 28.6889% per *annum* or 2.39% per month as excessive or unconscionable.

In addition, in case of default, PLC agreed to pay a penalty or a compensatory interest of two percent (2%) per month based on the total amount due from the time of default until full payment as well as ten percent (10%) as attorney's fees on the total amount due. We likewise find this as not excessive or unconscionable and in conformity with prevailing jurisprudence as well.

In sum, PLC is liable to pay monetary interest of 28.6889% per *annum* on ₱700,000.00 under renewal PN No. 96000251 from October 24, 1997 until April 22, 1998. In addition, PLC is liable to pay compensatory interest on the total amount due including monetary interest of 2% interest per month from the time of default, that is, the filing of Answer with Compulsory Counterclaim on January 7, 2000 in the absence of evidence of extrajudicial demand, until finality of this Decision. Also, PLC is liable to pay 10% of the total amount due including monetary and compensatory interests as attorney's fees. All these monetary awards shall earn interest at the rate of 6% per *annum* from date of finality of this judgment until fully paid.<sup>59</sup>

Finally, We affirm the declaration of nullity of the consolidation of title over the mortgaged property in the name of MBTC for being in violation of the writ of preliminary injunction issued by the trial court. Consequently, we delete the appellate court's grant of one (1) year period of redemption in favor

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<sup>57</sup> *Id.*

<sup>58</sup> See *Spouses Mallari v. Prudential Bank*, 710 Phil. 490 (2013), *Ruiz v. Court of Appeals*, 449 Phil. 419 (2013), *Chua v. Timan*, 584 Phil. 144, 148 (2008).

<sup>59</sup> *Nacar v. Gallery Frames*, *supra* note 56.

of mortgagors Antonio and Ma. Teresa in view of the nullity of the whole foreclosure proceedings.

**WHEREFORE**, the Petition is **PARTLY GRANTED**. The assailed July 31, 2015 Decision and August 12, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 99342 are hereby **AFFIRMED** with **MODIFICATIONS**:

a) Petitioner Panacan Lumber Co. is hereby **ORDERED** to pay Solidbank US\$108,000.00 under the foreign letter of credit at the rate of exchange prevailing at the time of payment subject to twelve percent (12%) interest per *annum* from January 7, 2000 until June 30, 2013 and six percent (6%) interest per *annum* from July 1, 2013 until finality of judgment. The total monetary award shall be subject to six percent (6%) interest rate per *annum* from the date of finality of this Decision until fully paid;

b) Petitioner Panacan Lumber Co. is hereby **ORDERED** to pay Solidbank: (1) ₱700,000.00 under renewal Promissory Note No. 96000251; (2) monetary interest of 28.6889% per *annum* from October 24, 1997 until April 22, 1998; (3) compensatory interest of two percent (2%) per month on the total amount due, *i.e.* ₱700,000.00 plus monetary interest, from the time of judicial demand on January 7, 2000 until finality of this Decision; (4) attorney's fees of 10% of the total amount due, *i.e.* ₱700,000.00 plus monetary and compensatory interests, under renewal Promissory Note No. 96000251; and (5) six percent (6%) legal interest rate per *annum* on the total monetary award, *i.e.* ₱700,000.00, monetary interest, compensatory interest and attorney's fees, from finality of this Decision until fully paid. In the alternative, Solidbank may secure payment of ₱700,000.00 under renewal Promissory Note No. 96000251 including the applicable interest and penalty charges by instituting an action for foreclosure of the Deed of Real Estate Mortgage;

c) The foreclosure proceedings as to mortgage indebtedness of ₱9,151,667.89 is hereby declared null and void in view of the violation of the notice requirement under the Deed of Real Estate Mortgage, without prejudice to Solidbank's right to institute an action for foreclosure of real estate mortgage taking into consideration the rule on proper notice, the amount of loan secured by the Deed of Real Estate Mortgage as stated in the renewal Promissory Note No. 96000251 as well as the applicable interests and penalty charges there under, and other necessary requirements;

d) Consequently, the consolidated title of the mortgaged property registered in the name of Metropolitan Bank & Trust Company is declared null and void as it was made in violation of the writ of preliminary injunction and in view further of the declaration of nullity of the foreclosure proceedings.

**SO ORDERED.**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson


  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

On leave  
**PRISCILLA J. BALTAZAR-PADILLA**  
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.



**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, and the Division 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.



**DIOSDADO M. PERALTA**  
Chief Justice